

Guideline for Trademark Registration in Kurdistan

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Iraqi-Kurdistan (Kurdistan Region of Iraq) is an autonomous region of Iraq, with Erbil as its capital. The region is officially governed by the Kurdistan Regional Government (“KRG”) and the new Iraqi constitution defines Kurdistan as a federal entity of Iraq, with a population of 5 million and establishes Arabic and Kurdish as Iraq’s joint official languages.

The KRG has taken extensive steps to encourage foreign investment and attract local capital by offering a variety of opportunities, which are possible due to its resources, security, and stability.

Amongst the steps that have been taken by the competent authorities in the KRG to encourage foreign investment, is the establishment of the Trademarks Department in Erbil in 2011, under the purview of the KRG Ministry of Industry & Trade, in order to begin receiving applications for trademark registration.

The governing law for Trademarks in Iraq, including the Kurdistan region, is the Iraqi Trademarks and Commercial Data Law No. 21 of the year 1957, amended by Coalition Provisional Authority Order No.80. It was renamed, by the same order, as the Law of Trademarks and Geographical Indications (the “Trademarks Law”).

Previously, trademark owners had the option to file an application at the Iraqi Trademark Office (“ITMO”), with rights to the trademark in the entire country. However, in 2015, the practice was suspended and independent registrations are now required in both Erbil and Baghdad. Where the application is made directly to Kurdistan’s Trademark Office, the trademark will only be registered and protected in the Kurdistan region; it will not automatically be recognised by the ITMO, and vice-versa.

Therefore, it is currently possible to register in both Baghdad and Kurdistan Offices for the protection of a

trademark, depending on where in Iraq they intend to conduct business. The duration of the protection of a trademark shall be for ten years, renewable at the end of each period.

Trademark Registration Procedure in Kurdistan

Depending on the status of their rights, companies have two options for registering their trademark(s) in the Kurdistan region, namely:\

- **the trademark has been registered at and/or accepted by the ITMO**

Where a trademark has already been registered and/or accepted by the ITMO, the trademark proprietor can request that the office send an official letter to the Trademark Department in Erbil requesting that the trademark's registration be validated in the territory. The Trademarks Department in Erbil will check for similar or identical marks in its records before recognising the registration;

- **the trademark has not been registered at or applied for by ITMO**

Where an Iraqi registration or application does not exist, the trademark proprietor will need to file an application at the Trademark Department in Erbil. A compulsory filing search is conducted (accompanied by evidence of its submission) prior to an application for registration being filed. Additional documents and procedures will be required.

Rise in Official Fees

The Kurdistan region employs a multi class and subclass system. Hence, the cost of trademark registration varies in accordance with the number of classes selected in the trademark application. The registration process typically takes six to eight months from the date of the application.

Due to the new procedures, the cost of all services provided by the Trademark Department in Erbil has soared by around 15-20 percent. The cost for filing a trademark application in the first class has spiked, with significant rises in search, publication and certificate costs.

Filing a trademark application in each additional class costs a supplemental sum. The cost of extending trademark rights of a registered trademark in Baghdad to the Kurdistan region is fixed, and has proven a cheaper route to protection for those with Baghdad registered trademarks.

Trademark Infringement

As aforementioned, the Trademarks Law, including its provisions on trademark infringement, is applicable in the Kurdistan region. It provides that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using identical or similar signs for goods or services, which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. However, the owner of a well known trademark is entitled to enjoy the protection conferred by the Trademarks Law even if the trademark is unregistered in Iraq.

The Trademark Law provides whosoever commits any of the following acts of trademark infringement shall be punished by imprisonment for a period of not less than one year and not more than five years and by a fine of not less than 50,000,000 Dinars and not more than 100,000,000 Dinars, or by one of those penalties:

1. whoever counterfeits a trademark which is lawfully registered or imitates it in such a manner as to mislead the public, or uses in mala fide a counterfeited or an imitated trademark;
2. whoever unlawfully uses a registered trademark owned by another party;
3. whoever puts, in mala fide, a registered trademark owned by another party on that person's products;
4. whoever knowingly sells or offers for sale or circulation or possesses for the purpose of sale, products bearing a counterfeited or an imitated trademark, or a trademark which is unlawfully affixed; and

5. whosoever intentionally offers or renders services under a forged, imitated or unlawfully used mark.
In all of the cases above, the court may order the confiscation of the infringing products, goods, firms name etc., which bear the mark of the subject offer of the offence, the revenue and the returns of such products as well as the implements used in the infringement.

Conclusion

As the KRG continues to develop at every stage, the necessity to enhance trademark protection in the region will significantly increase. The Trademarks Law offers practicable measures for the protection and enforcement of trademarks. Brand owners should be proactively monitoring applications and existing registrations, to ensure that infringers and counterfeiters do not capitalise on any potential market turbulence.