

## Trademark Law

### **Coalition Provisional Authority Order Number 80 Amendment to the Trademarks and Descriptions Law No. 21 Of 1957**

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 and 1511 (2003),

Having worked closely with the Governing Council to ensure that economic change as necessary to benefit the people of Iraq occurs in a manner acceptable to the people of Iraq,

Acknowledging the Governing Council's desire to bring about significant change to the Iraqi intellectual property system as necessary to improve the economic condition of the people of Iraq,

Determined to improve the conditions of life, technical skills, and opportunities for all Iraqis and to fight unemployment with its associated deleterious effect on public security,

Recognizing that companies, lenders and entrepreneurs require a fair, efficient, and predictable environment for protection of their intellectual property,

Noting that several provisions of the current Iraqi trademark legislation do not meet current internationally-recognized standards of protection, and that current Iraqi legislation does not extend protection to geographical indications,

Recognizing the demonstrated interest of the Iraqi Governing Council for Iraq to become a full member in the international trading system, known as the World Trade Organization, and the desirability of adopting modern intellectual property standards,

Acting in a manner consistent with the Report of the Secretary General to the Security Council of July 17, 2003, concerning the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a free market economy characterized by sustainable economic growth through the establishment of a dynamic private sector, and the need to enact institutional and legal reforms to give it effect,

In close consultation with and acting in coordination with the Governing Council, I hereby promulgate the following:

#### **Section 1**

#### **Amendments to the Trademarks and Descriptions Law No. 21 of 1957**

1. The Trademark and Descriptions Law No. 21 of 1957 is hereby renamed the "Trademark and Geographical Indications Law".
2. Article 1, definition for "Mark" is amended to read as follows: "Mark" – Shall include trademarks, service marks, collective marks and certification marks.

3. Following the definition for “Mark”, a definition for “Trademark” is added to read as follows: “Trademark” – Any sign, or any combination of signs, capable of distinguishing the goods of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, registrability will depend on distinctiveness acquired through use. Signs need not be visually perceptible in order to be eligible for protection as trademarks.
4. Following the definition for “Trademark”, a definition for “Service Mark” is added to read as follows: “Service Mark” – Any sign, or any combination of signs, used by a person to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor. Marks used in connection with retail services, whether associated with the selling of the goods of the service provider or those of others, or both, are eligible for protection as service marks.
5. Following the definition for “Service Mark” a definition for “Certification Mark” is added to read as follows: “Certification Mark” - Any sign, or any combination of signs, used by a person other than its owner to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization. Certification marks shall include geographical indications.
6. Following the definition for “Certification Mark” a definition for “Geographical Indications” is added to read as follows: “Geographical Indications” – Indications which identify a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
7. Following the definition for “Geographical Indications” a definition for “Collective Mark” is added to read as follows: “Collective Mark” – A trademark or service mark used by the members of a cooperative, an association, or other collective group or organization, and includes marks indicating membership in a union, an association, or other organization.”
8. Following the definition for “Collective Mark” a definition for “Nice Classification” is added to read as follows: “Nice Classification means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on June 15, 1957, as revised and amended.”
9. Article 2.1 is amended to read as follows: “1. There shall be kept at the Ministry of Industry a Register in the custody of the Registrar, wherein shall be recorded all the marks, the names and addresses of their owners, and descriptions of their goods. The public shall be entitled to inspect the Register. The public shall also be entitled to receive certified copies thereof on payment of the prescribed fees.”
10. Article 2.2 is suspended.

11. Article 3 is amended to read as follows: “A mark shall be deemed to be the property of the person who registered it. The ownership of the mark may not be contested if the owner used it for five consecutive years from the date of completion of registration, except as provided in Article 21.”
12. Article 4 is amended to read as follows: “Any natural person or legal entity shall have the right to apply for the registration of a trademark with all attendant rights in accordance with the provisions of this Law.”
13. Article 4bis is added following Article 4 to read as follows:
  1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade 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. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.
  2. The owner of a well-known trademark shall have the right to enjoy the protection conferred by this Law even if such a mark is not registered in Iraq.
  3. The preceding provision shall apply to marks intended for use in connection with goods or services which are not identical with those of the well-known mark, where the use of the marks in relation to those non-identical goods or services would indicate a connection between the owner of the well-known mark and those products, and that such a use may be prejudicial to the interests of the owner of the well-known mark.
14. Article 4quater is added following Article 4ter to read as follows: “Collective and certification marks, including geographical indications, shall be registrable in the same manner and with the same effect as trademarks by any natural persons or legal entities, including nations, states, municipalities, and other regional authorities, exercising legitimate control over the use of the marks sought to be registered. When registered, they shall be entitled to the protection provided in this chapter in the case of trademarks.”
15. Article 5.1 is amended to read as follows: 1. Marks devoid of any distinctive character or which are used in trade to describe the kind, nature, quantity or place of production of the goods, or marks which in the ordinary language of Iraq indicate any of such matters. Where signs are not inherently capable of distinguishing the relevant goods or services, registrability will depend on distinctiveness acquired through use.
16. Article 5.2 is amended to read as follows: “2. Marks, expressions, or designs which are contrary to public order or morality.”
17. Article 5.3 is amended to read as follows: “Marks which are identical with, or similar to armorial bearings, flags or other State emblems of Iraq or other countries of the Paris Union or international intergovernmental organizations, official signs or hallmarks, indicating control and warranty adopted by them, and any imitation from a heraldic point of view.”
18. Article 5.4 is amended to read as follows: “4. Marks which are identical with, or similar to, the insignia of the Red Cross, Red Crescent, or Geneva Cross.

19. Article 5.5 is amended to read as follows: “5. The name, title, portrait, or armorial bearing of a person except with that person’s written consent.”
20. Article 5.6 is amended to read as follows: “6. Designations of honorary degrees to which the applicant is unable to prove a right.”
21. Article 5.7 is amended to read as follows: “7. Marks which are likely to mislead or confuse the public, or which contain false descriptions as to the origin of products, whether goods or services, or their other qualities, as well as the signs that contain an indication of a fictitious, imitated or forged trade name.”
22. Article 5.8 is amended to read as follows: “8. Marks that are identical or similar to a well-known mark, or marks that are identical or similar to a previously registered trademark if registration of that mark will result in confusing the consumer public as to the goods distinguished by the mark or other similar goods.”
23. Articles 5.9-5.12 are suspended.
24. Article 6bis is added following Article 6 to read as follows: “Where an application for registration of a mark is filed:
  - a) by any person whose country of origin is a member in the Paris Union, the WTO, or party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which Iraq is a party, or a country which extends reciprocity to Iraq;
  - b) in a country described in subsection (a)The applicant, or rightful successor, may, within six months from the date of filing the application, file with the Registrar a similar application for the same mark covering the same products included in the previous application in accordance with the terms and conditions prescribed by this Law and its Regulations. In such a case the priority date shall be that of the first application filed in the foreign country.”
25. Article 7 is amended to read as follows:
  1. A mark shall be permitted to be registered in respect of one or more articles or in one or more classes. The application shall indicate the goods or services by their names, grouped according to the classes of the Nice Classification.
  2. Goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.
  3. In a single application, an applicant may apply to register the same mark in multiple classes for all of the goods and/or services on or in connection with the mark that is sought to be protected. The applicant must specifically identify the

goods or services in each class. A single certificate of registration shall issue for such mark.”

26. Article 8 is amended to read as follows: “Where before any publication is made two or more persons apply simultaneously for the registration of the same mark or of identical or similar marks in respect of goods or articles of the same class of products, the Registrar may suspend all such applications until the renunciation by one of the disputants is duly attested to or a final decision is made in favor of one of them.”
27. Article 8bis is added following Article 8 to read as follows:
  1. The Registrar may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.
  2. No disclaimer shall prejudice or affect the applicant’s or registrant’s rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.”
28. Article 9 is suspended.
29. Articles 12.2 and 12.3 are suspended.
30. Article 15 is amended to read as follows:
  1. The owner of a mark shall, on completion of registration thereof, be given a certificate containing the particulars published in the aforementioned bulletin.
  2. The registration of a trademark shall in all legal proceedings constitute prima facie evidence of the validity and ownership of the trademark.”
31. Article 17 is amended to read as follows: “The ownership of a mark shall be transferable and the mark shall be pledged or seized together with the business dealing in the goods carrying that mark, or with that part of the business connected with the use of and symbolized by the mark.”
32. Article 18bis is added following Article 18 to read as follows:
  - “1. The owner of a mark may license one or more natural persons or legal entities to use the owner’s mark on all or some of the products for which the mark was registered. Such license to a third party shall not prevent the owner from using the mark, unless otherwise agreed.
  2. Recordal of an assignment or a license for the mark shall not be required for the assignee or licensee to establish the validity of the mark or to assert rights in the mark against third parties.”
33. Article 19 is suspended.
34. Article 20 is amended to read as follows:
  - “1. The duration of protection of a mark shall be for ten years, renewable for like periods

- upon application made during the last year in the manner prescribed in the regulation and payment of the prescribed fee.
2. The owner of the mark may request a renewal within six months after the date of its expiry against payment of the prescribed fees and a supplemental fee prescribed by the regulations, failing which the Registrar shall proceed to cancel the said mark from the register.”
35. Article 21 is amended to read as follows:  
“1. Any interested person shall be entitled to apply to the Court within five years of the registration of any mark for its cancellation, stating the grounds relied upon.  
2. Notwithstanding paragraph 1 of this Article, a petition to cancel a registration of a mark may be filed at any time if the registered mark:  
a) becomes the generic name for the goods or services, or a portion thereof, for which it is registered;  
b) is functional;  
c) was obtained fraudulently or contrary to the provisions of registrability;  
d) has gone unused for an uninterrupted period of three years, unless such nonuse may be proved to be due to uncontrollable cause or lawful excuse; or  
e) is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.”
36. Article 24.1 is suspended.
37. Article 24.2 is suspended.
38. Article 24.3 is amended to read as follows: “3. Decisions issued by the Registrar in accordance with paragraph 2 of Article 5, and Article 21 of this Law are subject to appeal to the Minister within 30 days from the date of notification of the decision, and those concerned may object to the Minister’s decision, subject to appeal to the court within 30 days from the date of notification of the Minister’s decision.”
39. Article 25 is suspended.
40. Article 26 is amended to read as follows: “The Registrar may, whenever there is justification, make any alteration in the Register if this alteration is designed to correct a mistake or to complete a technical deficiency.”
41. Article 27 is suspended.
42. Article 32 is amended to read as follows: “Trade indications may not be misleading to the public, whether they are placed on the goods themselves, on the premises or stores or in their firm names, or on packages, invoices, letters, advertising materials and the like, which are used in offering the goods to the public.”

43. Article 33.1 is suspended.
44. Article 35 is amended to read as follows: “Any person who commits any of the following acts 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; or
  - 5) Whoever intentionally offers rendering services under a forged, imitated or unlawfully used mark.

In all cases, the court shall order the confiscation of the infringing products, goods, firm name, wrapping materials, papers, hang tags, stickers, etc., which bear the mark of the subject matter of the offence, the revenue and the returns of such products as well as the implements used in the infringement.”

45. Article 36 is suspended.
46. Article 36bis is added following Article 36 to read as follows: “Any person who commits for the second time one of the offenses mentioned in Articles 35 and 36 of this Law, shall be punished by imprisonment for a period of not less than 5 years and not more than 10 years and by a fine of not less than 100,000,000 Dinars and not more than 200,000,000 Dinars in addition to the closure of the commercial store or enterprise for a period of not less than fifteen days and not exceeding six months, together with the publication of the judgment at the expense of the infringer.”
47. Article 37 is amended to read as follows:
- “1. The owner of a mark may, at any time even before the institution of any civil or criminal action, obtain, upon application supported by evidence establishing the registration of the mark, an order from the examining magistrate or from the court which has the jurisdiction to hear and determine the offence or damages to take provisional measures, more particularly to seize the instruments and tools used in the commission of the offence as well as the products, goods, firm name, wrapping materials, papers, hang tags, stickers, etc., which bear the mark of the subject matter of the offence. This includes seizure of products, goods, firm name, wrapping materials, papers, hang tags, stickers, etc., that are imported from abroad.
  2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable

harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. Provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within 20 working days or 31 calendar days, whichever is the longer.

4. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.”

48. Article 38 is amended to read as follows:

“A. The court competent to hear any civil action shall be permitted to order:

i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement;

ii) profits of the infringer that are attributable to the infringement and are not taken into account in computing the amount of the actual damages referred to in clause (i) of this Article; and

iii) seizure and destruction of the infringing articles, as well as materials and implements that have been used in the manufacture or creation of such counterfeit goods. The charitable donation of counterfeit trademark goods shall not be ordered by the competent court without the authorization of the right holder. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce.”

49. Article 38bis is added following Article 38 to read as follows: “The court shall provide final judicial decisions in writing and shall state any relevant findings of fact and the reasoning or the legal basis upon which the decisions are based. The court shall publish such decisions or, where such publication is not practicable, otherwise make publicly available.”

50. Article 39bis is added following Article 39 to read as follows: "Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which Iraq is also a party, or extends reciprocal rights to nationals of Iraq by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter."

## Section 2 Entry into Force

**This Order shall enter into force on the date of signature.**

**L. Paul Bremer, Administrator**

**Coalition Provisional Authority  
CPA/ ORD/26 April 2004/80**

**Trademarks & Indications Law  
Law No. 21 for the Year 1957  
With Amendments**

Pursuant to law No. 21/1957 and its amendments, the Iraqi legislator regulates the protection of trademarks. The provisions of this law are the same ones as in the Egyptian, the Libyan and the Kuwaiti trademarks laws. They indicate clearly the trademarks capable of registration, their registration procedures, offences related to trademarks and the decisions concerning them.

We, Faisal II, King of Iraq, after perusal of Article 26 (a) of the constitution and with the approval of the Senate and the Chamber of Deputies, do hereby sanction the following law order the promulgation thereof:

**Chapter I**

General Provisions

**Article 1**

In this law the following words shall have the meanings shown against them:

"Minister" - Minister of Economics.

"Registrar" - Registrar of Trademarks.

"Register" - Register of Trademarks.

"Court" - The court of First Instance.

"Mark" - Any distinctive shape of words, signatures, figures, letters, design, symbols, addresses, seals, drawings, engravings or combinations, thereof if used upon or intended to be used upon any goods or in connection therewith as indicant that the goods belong to the proprietor of such trademarks b virtue of manufacture, selection, dealing with or offering for sale.

**Article 2**

1 There shall be kept at the Ministry of Economics a Register in the custody of the Registrar, wherein shall be recorded all the marks, the names and addresses of their proprietors, descriptions of their goods, declarations of assignments, transfers, and cessions affecting them. The public shall be entitled to inspect the Register and receive certified copies thereof on payment of the prescribed fees.

2 The existing Register shall be deemed to be supplementary to the Register provided for in this Article. The validity of any entry in respect of any mark recorded in that register shall be determined in accordance with the law which was in force at the date of such entry. Such marks shall obtain their original dates and shall be deemed to be marks registered under this law.

**Article 3**

A mark shall be deemed to be the property of the person who registered it. The proprietorship of the mark may not be contested if the proprietor used it for five consecutive years from the date of completion of registration.

**Article 4**

Anyone desirous of using a mark for distinguishing goods of his own production, manufacture, working, or selection, or goods in which he trades or offer for sale or intends to trade in, may apply for the registration thereof in accordance with the provisions of this law.

## Article 5

For the purpose of this law, the following shall not be registrable as marks:

- 1 Marks devoid of any distinctive character or which are used in trade to describe the kind, nature, quantity or place of production of the goods, or marks which in the ordinary language of Iraq indicate any of such matters.
- 2 Marks, expressions, or designs which are injurious to public morals or contrary to public order and which the Registrar considers to conflict with the public interest.
- 3 Marks which are identical with, or similar to the flags, coats of arms, decorations and medals of Iraq or of any foreign State, or of the United Nations or of any Agency thereof.
- 4 Marks which are identical with, or similar to, the insignia of the Red Cross, Red Crescent, Geneva Cross, or Red Star.
- 6 The name, title, portrait, or armorial bearing of a person except with his written consent.
- 7 Figures, letters and words which are calculated to deceive the public or which lead the public to believe in the genuineness of untrue descriptions in respect of the goods.
- 8 Marks which are calculated to lead the public to believe in the genuineness of untrue declarations as to the origin and qualities of the goods as well as marks containing a fictitious, imitated, or counterfeit business name.
- 9 Declarations in respect of titles of honour which the applicant for registration cannot legally prove his title there to, or which contain statements calculated to lead to the belief that the proprietor thereof enjoys sublime patronage without any supporting written evidence.
- 10 Marks similar to a mark belonging to other persons for the same article, if it is calculated to deceive, or cause confusion to the public.
- 11 Geographical names where the use thereof is likely to cause confusion to the source or origin of the goods,
- 12 Marks which the office of Israel boycott decides to be identical to or resembling on Israeli Mark, emblem or symbol.

## Chapter II Registration Procedure

### Article 6

An application for the registration of a mark shall be filed with the Registrar in the manner and according to the conditions prescribed in regulation made under this law.

### Article 7

A mark shall be permitted to be registered in respect of one or more articles or in one or more classes of the products in the schedule of classification of goods annexed to the regulation made under this law.

### Article 8

Where before any publication is made two or more persons apply simultaneously for the registration of the same mark or of identical or similar marks in respect of goods or articles of the same class of products, the Registrar may suspend all such applications until the production to

him of a renunciation by the disputants in favour of one of them dully attested or a final judgement from the court.

#### **Article 9**

The Registrar may impose limitations or modifications as he may deem necessary for the better specification, description, mode or place or user of the mark, or such other matters, for preventing confusion with any other mark already registered, or for any other reason as he may think fit. In case of refusal or conditional acceptance, the Registrar shall notify the applicant, in writing, of the grounds, of his decision and of the relevant facts. If the applicant shall not, within thirty days, comply with the limitations imposed by Registrar he shall be deemed to have abandoned his application.

#### **Article 10**

Decisions issued by the Registrar (except those stipulated in para. 3 of Article 24 of the Law) will be subject to appeal to the court within 30 days from the date of notification of the decision.

#### **Article 11**

1 In the event of the acceptance of the mark in principle, the Registrar shall publish, in three consecutive numbers of the bulletin of the directorate General of Commerce, an advertisement to that effect.

2 Any interested person may, within ninety days from the date of the last advertisement, file a written notice of opposition against the registration of the mark.

3 The Registrar shall serve a copy of the notice of opposition on the applicant for registration who shall, within thirty days, send a written reply to the opposition. If no reply is received within the said period, the applicant shall be deemed to have abandoned the application.

#### **Article 12**

1 Before giving a decision on the opposition, the Registrar shall, if requested to do so, hear both of the parties.

2 The Registrar may decide either to accept the registration or to reject it. In the former event, he may impose any limitations he may deem necessary.

3 If there is reason to believe that the opposition is not serious, the Registrar may, notwithstanding the opposition, give a reasonable decision to proceed with the registration.

#### **Article 13**

The proprietor of a registered mark may apply at any time to the Registrar to alter or add to such mark in manner not substantially affecting its identification. The Registrar shall give a decision approving the registration of such alteration in principle, in accordance with the provisions prescribed for decisions on original applications for registration of mark. The decisions shall be notified to the interested parties and shall be subject to opposition as aforementioned.

#### **Article 14**

The registration shall have a retroactive affect as from the date of filing the application.

#### **Article 15**

The proprietor of a mark shall, on completion of registration thereof, be given a certificate containing the particulars prescribed in the regulation.

#### Article 16

Where registration of a mark is not completed within six months from the date of the application by reason of default on the part of the applicant the Registrar may inform the applicant, in writing, to complete the registration within the period prescribed in the regulation made under this law. Otherwise he shall be considered as having abandoned the application.

### **Chapter III Transfer Of Ownership & Pledge On Marks**

#### Article 17

The ownership of a mark shall be transferable and the mark shall be pledged or seized together with the business dealing in the goods carrying that mark.

#### Article 18

1 In the absence of any agreement to the contrary, the transfer of a business includes the mark, where a business is transferred without the mark, the transferor shall continue, unless it is agreed to the contrary, to manufacture, produce and trade in the products in respect of which the marks is registered.

2 If for any reason, a person cease to carry on his business and such cessation results in the devolution of ownership of the mark on more than one person, and the successors desire the apportionment of the ownership of the mark, the Registrar shall be permitted to apportion it between the persons who prove to be actually carrying on that business, subject to any limitations, conditions and modifications which the Registrar may deem fit.

### **Chapter IV Cancellation & Renewal**

#### Article 19

The transfer of ownership, pledge, and seizure of a mark shall not be proof against third parties except after advertisement and registration.

#### Article 20

1 The duration of protection of a mark shall be for fifteen years, renewable from time to time by the proprietor for like periods upon application made during the last year in the manner prescribed in the regulation and payment of the prescribed fee.

2 Where a trademark has been removed from the register by reason of non-payment of the renewal fees, such removal shall not nevertheless preclude the mark from remaining in the name of its proprietor for one year following the date of such removal provided that it may be registered during this period if the Registrar is satisfied that there has been no effective use of the mark which has been removed during the two years immediately preceding its removal or that no deception or confusion would be likely to arise from the use of the mark presented for registration by reason of any prior use of the mark which has been removed.

#### Article 21

Any interested person shall be entitled to apply to the court for the cancellation of the registration of any mark, relying in his application upon the grounds that its registration had been obtained unlawfully, or that there was bad intention in its use or if it had not been used during the two years following the date of its registration unless such non-use may be proved to be due to uncontrollable cause or lawful excuse.

#### **Article 22**

No canceled mark may be registered for a like period in a name other than that of its proprietor until after the lapse of at least one year from the date of its cancellation.

#### **Article 23**

The cancellation and renewal of registration shall be advertised in the manner prescribed in the regulation.

#### **Article 24**

- 1 The Registrar as well as any interested person shall apply to the court for the cancellation of a mark registered contrary to the law.
- 2 The Registrar shall be allowed to cancel any trademark which he considers to be conflicting with the public interest or which the Boycott of Israel Office in Iraq decided to be identical or resembling an Israeli mark, emblem or symbol and refuse its registration if not already registered.
- 3 Decisions issued by the Registrar according to para 1 of this Article and para 2 of Article 5 of this law are subject to appeal to the Minister within 30 days from the date of notification of the decision and those concerned may object the Minister's decision, the Council of Ministers within 15 days from the date of notification and the Council decision in this respect is final.

#### **Article 25**

Where, for any reason whatsoever, proprietorship in a mark devolves upon a person, such person shall apply to the Registrar to register in his name. The Registrar shall register the mark in the name of that person and shall record the means of devolution.

#### **Article 26**

The Registrar may, whenever there is justification, make any alteration in the register if this alteration is designed to correct a mistake or to complete a technical deficiency. In the case of fault in the registration, assignment or transmission of any registered trademark the Registrar shall refer the matter to the court for an order for correction.

#### **Article 27**

- 1 Subject to any limitations or condition on the Register, the registration of a person as a proprietor mark shall entitle such person to the exclusive use of such mark on in connection with the goods in respect of which it is registered, if such registration is in conformity with the provisions of the law.
- 2 Provided that where two or more persons are registered as proprietors of the same or substantially the same trademark or marks in respect of the same goods, no rights of exclusive use (except in so far as their respective rights shall have been defined by the Registrar or by the court) shall be acquired by any such person as against any other by the registration thereof, but each of such persons shall have the same rights as if he were the sole registered proprietor

thereof.

#### **Article 28**

The Registrar shall be entitled to, upon application by the owner of a registered mark, in the manner prescribed:

- 1 Strike out any error in the registered name or address of the owner of the mark.
- 2 Enter any change occurring in the name or address of the person registered as owner of the mark.
- 3 Strike out any of the goods in respect of which the trademark has been registered.
- 4 Enter any disclaimer or any memorandum connected with any mark where that disclaimer or memorandum does not increase the rights created by the existing registration of the mark.
- 5 Cancel the entry of any mark recorded in the Register in his name.

#### **Article 29**

1 The Minister may from time to time, make orders as he may deem necessary, empowering the Registrar to amend the register whether by making new entries or expunging or altering certain entries in so far as may be required to obtain uniformity in the description of goods or classes of goods mentioned in it and relating to the registered trademark.

2 The Registrar shall not, in the exercise of any of the powers conferred upon him by the Minister as aforesaid, make any amendment in the register which will result in the addition of other goods in respect of which the mark has been registered, nor shall he be entitled to date the registration of a mark of any goods with a date prior to the date of registration.

3 The proprietor of a registered mark shall be notified of any amendment connected therewith and such amendment shall be published in the bulletin. Any person aggrieved by such amendment may file a notice of opposition with the Registrar.

#### **Article 30**

The Registrar shall have the right to appear before the court and state his opinion in every notice of opposition filed with the court. He shall also appear before the court if the court requires him to do so, or shall file an appropriate statement signed by him stating what he considers necessary as to the details of the proceedings taken in the case or any other matters connected therewith and which have bearing on his duties as a Registrar.

### **Chapter V Trade Indications**

#### **Article 31**

Any statement or details which have reference either directly or indirectly to the following, shall be deemed to be a trade description.

- 1 Nature, number, quantity, measure, weights and strength of the goods.
- 2 Country of manufacture.
- 3 Method of manufacture and production.
- 4 Ingredients entering in the composition.
- 5 Name and description of their producer and manufacturer.
- 6 Whether there are any patents, or commercial or industrial privileges, prizes, or characteristics in respect thereof.
- 7 Name of shape in which the goods are ordinarily known.

### **Article 32**

Every trade indication must be true in all respects whether it is placed on the goods themselves, or on the premises or stores or in their firm names, or on packages, invoices, letters, advertising materials and the like, which are used in offering the goods to the public.

### **Article 33**

The name or firm name of the vender shall not be placed on goods imported from a country other than that in which the sale is concluded unless accompanied by a precise statement written in conspicuous letters specifying the locality in which they were produced.

Residents of a locality having particular fame in the production of manufacture of certain products, who trade in similar products imported from elsewhere shall not place on the latter products their marks if such action is calculated to deceive the public as to the source of those products unless satisfactory measures are taken to prevent any confusion.

Medals, diplomas, prizes, and titles of honour of any kind whatsoever shall not be mentioned except in respect of products entitled to such awards or in respect of persons and trade names to whom they were awarded or their successors in title on condition that an accurate statement is given as to date and kind thereof and the exhibitions or tournaments in which they were granted. Any person participating with others in exhibiting products may not use for his own goods the awards granted to the common exhibits unless he shows clearly the source and nature of such awards.

### **Article 35**

Whosoever:

- 1 Contravenes the provisions of Chapter Five of this law, or
- 2 Counterfeits or imitates a mark registered under this law in a manner likely to deceive the public or willfully uses a counterfeit or imitated mark, or
- 3 Willfully places on his products a mark which is the property of another person, or
- 4 Willfully sells, offers for sale or circulation, or possesses for sale products bearing a counterfeit or imitated mark or a mark which, to his knowledge, has been unlawfully placed thereon, shall, upon conviction be punished with imprisonment for a term not exceeding three years and with a fine not exceeding two hundred Iraqi Dinars or with either of such penalties.

### **Article 36**

Whosoever:

- 1 Uses an unregistered mark of those prescribed in paragraphs 2 to 11 of Article 5 of this law, or
- 2 Contrary to reality puts on his marks or commercial papers any references calculated to lead to the belief that the marks are registered whereas in fact they are not registered, shall upon conviction, be punished with imprisonment for a term not exceeding one year and with a fine not exceeding one hundred Dinars or with either of such penalties.

### **Article 37**

The proprietor of a mark may, at any time even before the institution of any civil or criminal action, obtain, upon application supported by an official certificates establishing the registration of his mark, an order (from the examining magistrate or from the court which has the jurisdiction to hear and determine the offence or damages) to take provisional measures, more particularly to seize the instruments and tools used in the commission of the offence as well as the products, goods, firm name, wrapping materials, papers etc., which bear the mark the subject matter of the

offence; provided the applicant shall provide the necessary guarantee fixed by the examining magistrate or the appropriate court, guaranteeing the losses which may be sustained by others as a result of that measure.

Seizure may also be ordered upon goods imported from abroad. The measures prescribed in this article shall be null and void if, within ten days from date of taking them, no civil or criminal suit is brought against those against whom they were taken.

#### **Article 38**

The court competent to hear any civil or criminal action shall be permitted to order the confiscation and sale of the seized articles and the recovery from the sale price the damages awarded or fines imposed or order the disposal thereof in the manner it may deem advisable. The court may also order the publication of the judgement at the expense of the adjudged person. Likewise, the court may order the destruction of the illegal trademarks or the products bearing such marks as well as the wrappings, packing material, firm names, etc. It may also order the destruction of the instruments and tools used in the commission of the offence.

### **Chapter VII General Provisions**

#### **Article 39**

Provisions may be replaced by special regulations for ensuring the necessary provisional protection to marks placed on products or goods exposed in exhibitions which will be held in Iraq provided that such arts are protected in their own countries.

#### **Article 40**

The Trademark Law No. 39 of 1931, as well as its amendments and the regulations made thereunder are hereby repealed.

#### **Article 41**

This law shall come into force one month after its publication in the Official Gazette.

#### **Article 42**

The Ministers of Economics and Justice are to implement this law.

**Done at Baghdad this 25th day of Shawal 1376, A.H.  
corresponding to 25th day of May 1957, A.D.  
Published on 16 June, 1957. Comes into effect on 16 July, 1957.**