

Royal Decree No. 38/2000
Promulgating the Law of Trade Marks, Descriptions and Secrets
and Protection from Unfair Competition

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We, Qaboos Bin Said, Sultan of Oman

After perusal of the Basic Law of the State promulgated by the Royal Decree No. 101/96.

And the Law of Trade Marks and Descriptions promulgated by the Royal Decree No. 68/87 and its amendments.

And in accordance with the public interest.

Have decreed as follows:

- 1.** The provisions of the attached Law of Trade Marks, Descriptions and Protection from Unfair Competition shall take effect.
- 2.** The Minister of Commerce and Industry shall issue the regulations and decisions necessary for the implementation of the provisions of the present Law.
- 3.** The Royal Decree No. 68/87 mentioned above shall be cancelled.
- 4.** This Decree shall be published in the Official Gazette and shall take effect as from the date of its publication.

Qaboos Bin Said
Sultan of Oman

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Law on Trade Marks, Indications and Secrets and Protection against Unfair Competition

Part I Trademarks; Registration Procedure

Chapter I Trademarks; Registration of Trademarks

1. A trademark means any visible form capable of being distinguished and consisting of words, signatures, personal names, letters, numbers, logos, symbols, addresses, seals, engravings, combinations of colors, figurative elements or any other sign or combination of such elements, if it used or intended to be used to distinguish goods, products or services as those of the owner of the mark by reason of their manufacture, choice, sale or offering for sale.

2. The following signs shall not be considered trademarks and may not be registered as such:

(i) signs devoid of any distinctive feature or consisting of generic names of goods or products, or ordinary drawings or images of such goods or products.

(ii) any expression, drawing or sign that is contrary to public order or morality.

(iii) signs that are identical to, imitations of or containing as an element, an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or any organization created by an international convention, unless authorized by the competent authority of that State or organization.

(iv) signs identical with or similar to symbols of merely religious nature.

(v) signs likely to mislead the public or trade circles particularly as to the geographical origin of the goods or services, or containing false indications as to the origin, nature or other characteristics of the products, and signs containing a fictional trade name.

(vi) name, surname, picture or logo of a third party, unless with a prior consent of use.

(vii) if the sign is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name well known in Oman for identical or similar goods or services of another enterprise, or if it is well known and registered in Oman for goods or services which are not identical with or similar to those in respect of which registration is applied for, provided that, in the latter case, use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use.

(viii) if the sign is identical with a mark belonging to a different owner and already on the register, or if an application has been filed for the concerned mark with an earlier filing date or priority date, in respect of the same goods or services or closely related goods or services, or if it is so nearly similar as to be likely to deceive or cause confusion.

3. Any person who wishes to use a mark to distinguish goods produced or chosen by the person, if such goods are sold or offered for sale by that person or intended for such purposes, may apply for the registration of that mark according to the provisions of this Law.

4. Any person who registered a trademark shall be considered the sole owner of that mark, unless registered in bad faith. The ownership of the mark may not be challenged if the person who registered the mark uses the mark continuously at least for five years from the date of registration, without being opposed as to the validity of the mark.

Chapter II *Registration Procedure*

5. A register shall be established with the Department of Agencies and Intellectual Property (“Department”) at the Ministry of Commerce and Industry, which shall include recordings of all trademarks, names and addresses of owners, descriptions of related goods and any transmission, assignment or transfer. The public shall have access to that register and may obtain certified copies upon payment of the fees prescribed by the Regulations.

6. The Head of the Department mentioned in the preceding Article shall act as registrar according to the following provisions.

7. The application for the registration of the mark shall be filed with the Department in accordance with the conditions and upon payment of the fees, prescribed by the Regulations.

The application shall contain a representation of the mark and a list of goods and services for which the registration of the mark is applied for, arranged according to the applicable class or classes of the International Classification.

The application may contain a declaration claiming the priority of an earlier application filed by the applicant with a Member State of the World Trade Organization or Paris Convention. Such application shall have priority in accordance with the conditions prescribed by the Regulations.

8. If two or more persons simultaneously apply for the registration of the same mark or closely related or similar marks for identical or similar goods or services, all applications shall remain pending with the Registrar until a certified assignment is made by the parties to the conflict to one of them or a final decision is rendered by the Commerce Court.

9. The Registrar may apply the limitations or modifications he considers necessary to identify the mark in such a manner as to avoid any confusion with another mark that has been registered or filed, or for any other reason he sees.

10. If the Registrar rejects a trademark or makes the registration of the mark subject to limitations or modifications, he shall inform the applicant in writing of the reasons for taking such a decision.

11. Any decision by the Registrar refusing registration or making it subject to a condition may be opposed by the applicant before the Commerce Court within thirty days from the date of notification of the decision. The Court may confirm, cancel or modify the decision.

If, within the fixed period, the applicant fails to oppose the decision and proceed with the modifications required by the Registrar, the applicant shall be deemed to have abandoned the application.

12. If the Registrar accepts the trademark, he shall publish it by any means of publication prescribed by the Regulations.

Any interested person, within two months from the date of publication, shall give notice to the Registrar in writing of opposition to the registration. The Registrar shall notify the applicant by virtue of a copy of the opposition. The applicant shall send to the Registrar a

counter-statement, within two months from notification. If the counter-statement is not received within the indicated period, the applicant shall be deemed to have abandoned the application.

13. The Registrar shall decide on the opposition after hearing the parties if so requested, and shall issue the decision accepting or refusing the registration.

In the former case, he may decide whatever limitations he considers necessary. Any interested person may oppose the decision before the Commerce Court within thirty days from the date he was notified. The Commerce Court may confirm, cancel or modify the decision. Notwithstanding opposition, if the Registrar finds that the opposition to registration is not based on serious grounds, he may issue a decision to proceed with the registration of the trademark, indicating the reasons for such a decision.

14. If the mark is registered, registration shall have effect from the filing date of the application. Upon registration, a certificate shall be granted to the owner of the mark, including

- (i) the serial number of the mark.
- (ii) the filing date of the application and the registration date.
- (iii) the name, surname, domicile and nationality of the owner of the mark.
- (iv) an authentic copy of the mark.
- (v) a list of the goods, products and services for which the mark is intended.

15. The owner of a registered mark may request from the Registrar to make an addition to or modification of the mark, provided that such addition or modification does not substantially affect the original mark. A decision to that effect shall be issued by the Registrar according to the terms relating to the initial applications for registration. Such decision may be opposed by the same means.

Chapter III *Renewal; Removal*

16. The term of protection resulting from the registration of the mark shall be ten years. The right holder may secure the continuity of such protection for similar periods by making a request for renewal, within the last year and under the conditions prescribed by the Regulations. Within the month following the expiration of the term of protection, the Registrar shall send at the address of the owner of the mark a written notification of the expiration of the mark. If, within the six months following the expiration date, the owner of the mark fails to make a request for renewal, the Registrar shall remove the mark from the Register *ex officio*.

17. Without prejudice to Article 4, the Registrar or any interested person shall have the right to request the removal of a mark that has been unrightfully registered. The Registrar shall remove the registration upon receipt of a final decision to that effect from the Commerce Court.

Upon request from the Registrar or any interested person, the Commerce Court may order the addition to the Register of any omitted indication, or the deletion or modification of any unrightfully recorded or false indication in the Register.

18. Upon request from any interested person, the Commerce Court may order the removal of the registration if it is proven that the mark has not been used seriously for five consecutive years, unless the owner of the mark shows grounds for not using the mark.

19. The renewal of the registration shall be published in the manner prescribed by the Regulations. Subject to the provisions of Articles 16 and 24, the Registrar may publish an indication as to the registration or removal of a mark or any modification of the indications relating to a registered mark.

20. If the registration of a mark is removed on the ground of non-renewal, the mark may be re-registered for a third party in respect of the same or similar products or services only after three years from the date of removal.

21. Unless otherwise agreed, the ownership of a trademark may be the subject of a transfer, pawn or seizure only with the commercial establishment or enterprise using the mark to distinguish its products or services.

In all cases, the transfer or pawn of the ownership of a mark may be invoked against third parties only after an indication to that effect is made in the Register and the transfer or pawn is published in the manner prescribed by the Regulations.

22. Unless otherwise agreed, the transfer of the ownership of a commercial establishment or an enterprise shall include marks which are registered in the name of the transferor and can be regarded as closely related to the commercial establishment or enterprise.

Unless otherwise agreed, if the ownership of a commercial establishment or an enterprise is transferred without the ownership of the mark itself, the transferor may continue to manufacture the same products or offer the same services for which the mark was registered or trade in those products or services.

Chapter IV *Contracts; Licenses*

23. The owner of a mark may grant any natural person or legal entity a license to use the mark in respect of some or all the products or services for which the mark is registered. The owner of the mark shall have the right to grant third parties licenses for the use of the same mark and to use the mark himself, unless otherwise agreed. The duration of the license may not exceed the prescribed term of protection.

The licensee shall have the rights deriving from the registration of the mark.

Unless otherwise agreed, the licensee may not assign the license to a third party or grant sub-licenses.

24. The license contract shall indicate

- (i) the scope and duration of the use of the mark.
- (ii) conditions required for the effective quality control of the products or services.
- (iii) obligations imposed on the licensee to refrain from any act that can cause prejudice to the trademark.

The contract shall be made in writing and duly certified.

25. The license shall be recorded in the Register and shall have effect against third parties only upon such recordation and publication in the manner prescribed by the Regulations.

26. The recordation of a license shall be removed from the Register upon request from the owner of the mark or licensee after filing evidence of the termination or rescission of the contract.

The Registrar shall inform the other party of the request to remove the license. He may, in this case, make an opposition according to the provisions of the Regulations.

Part II Trade Indications

27. A trade indication means any clarification directly or indirectly related to

- (i) the number, quantity, dimension, measure, weight or capacity of the goods.
- (ii) the region or country in which the goods were manufactured or produced.
- (iii) the process used in the manufacture or production of the good.
- (iv) the elements of which the goods are composed.
- (v) the name or quality of the producer or manufacturer.
- (vi) any existing patents or other industrial property rights or any other commercial or industrial privileges, awards or distinctions.
- (vii) the name or form with which some goods are usually identified or evaluated.

28. A trade indication shall be totally conform to reality, whether it appears on the products, commercial establishments, storehouses, addresses thereof, packages, lists, correspondence, advertisements or any other means used to display the goods to the public.

29. Unless in conjunction with a precise indication made in clear characters of the country or region where the products were manufactured or produced, the name or address of the seller may not appear on products imported from a country other than that where sale is to occur.

Persons residing in regions well known for the production or manufacture of some products and trading in similar products imported from other regions may not affix their marks on those products if the marks are likely to mislead the public as to origin of the products, even if the marks do not include the names or addresses of those persons, unless measures to avoid any confusion have been taken.

30. A manufacturer may not use the name of a region in which he has a main plant in respect of products he manufactures for his own benefit in a different region, unless that name appears in conjunction with an indication of the latter region in such a manner as to avoid any confusion.

31. Awards, medals, diplomas or any honorary degree may be mentioned only in respect of products for which they apply and persons to whom and businesses to which they were granted or to successors in title, provided that a valid indication is made as to the date, nature, exhibitions or competitions in which they were granted.

Any person who participates with other persons in an exhibition of his products may not use for his own products distinctions granted to products jointly exhibited, unless the origin and nature of such distinctions is clearly indicated.

32. If the quantity, dimension, measure, capacity, weight, origin or composing elements of a product a factor taken into account in the estimation of the value of that product, the importation, sale or offering for sale of that product may be prohibited by decision of the Ministry of Commerce and Industry, unless the product bears one or more of the said indications.

The manner in which the indications are to appear on the product and, where impossible, the alternative procedure to be followed, shall be fixed by decision of the Ministry of Commerce and Industry, provided that such indications are in Arabic.

Part III

Protection from Unfair Competition

Protection of Trade Secrets

33. Any natural person or legal entity may not carry out acts of competition contrary to honest practice in industry or trade, including in particular

(i) acts of such a nature as to create confusion with an establishment, good or service in the course of any industrial or commercial activity.

(ii) unjustified false allegations against any commercial or industrial producer with the intention to damage or dilute his goodwill or reputation.

(iii) use, in the course of any industrial or commercial activity, of indications or allegations that result in misleading the public as to the characteristic features of the goods or services.

34. Any natural person or legal entity may not disclose trade secrets in his or its possession in a manner that is contrary to honest practice in trade. A commercial or industrial activity shall be considered secret if, due to its nature, it is not known, it draws its commercial value from its confidentiality, reasonable measures have been taken to maintain its confidentiality or it is not easily accessible to an ordinary person having skill in the art.

Disclosure shall include making use of information, tests or other secret information presented to the competent authorities in order to obtain a marketing authorization necessary for pharmaceuticals and agricultural products containing new chemical material provided that a tangible effort was furnished to obtain such products.

Part IV

Sanctions

35. A punishment by imprisonment for a period not exceeding two years and/or a fine not exceeding two thousand rials Omani shall be applicable to any person who

(i) counterfeits a mark registered under this Law, imitates such a mark in a manner that is likely to mislead the public or uses in bad faith a counterfeited or imitated mark.

(ii) knowingly sells, offers for sale or circulation, possesses with the intention to sell products bearing a counterfeited, imitated or illicitly placed mark.

(iii) uses in bad faith a mark identical with or similar to a well-known mark, whether registered or not registered, in a manner that is likely to mislead the public, provided that, in the case of a well-known mark that is not registered, goods or services are identical or similar.

(iv) contravenes in bad faith provisions on trade indications;

(v) intentionally contravenes provisions on unfair competition or protection of trade secrets.

36. The owner of a mark may, at any time even before filing a commercial or criminal action, request, by a petition accompanied by an official certificate of the registration of the mark, that the chief judge of the Commerce Court issues an order to take the necessary conservative measures, particularly the seizure of equipment and implements likely to be used or effectively used in committing the offense. The same shall apply to products, goods, titles, packages, papers or whatever bears the infringing mark or indications.

Such seizure may be executed upon importation of the goods. The order may include the designation of an expert or more to assist in the seizure and require that the person making the request makes a deposit.

37. The seizure procedure provided for in the preceding Article shall be considered invalid if it is not followed within eight days from the date of execution of the seizure by an action for damages or the date when the public attorney was notified of the person against whom the measures were to be taken.

38. In any commercial or criminal action, the competent court may decide to confiscate the material seized or to be seized to deduct its value from damages or fines or dispose thereof in any other manner considered convenient by the court.

In addition, the court may decide the destruction of illegal marks and, when necessary, products, packages, wrapping material, titles, catalogues and other material bearing such marks or illegal indications. It may also order the destruction of equipment and implements particularly used in counterfeiting. Such orders may be issued even in the case where a judgement of non guilty is rendered.

The court may order the publication of the decision in the Official Gazette at the expense of the person against whom the decision was pronounced.

Part V Final Clauses

39. Natural persons or legal entities, whether or not in the industrial or commercial sector, exercising control on given products or services as to the origin, composition, manufacturing process, performance, characteristics, nature or any other particulars of such products or services shall be authorized to register a certification mark, where the Minister of Commerce and Industry finds that such authorization serves a public interest.

The registration of such a mark shall have all the effects provided for in this Law. However, the ownership of that mark may not be transferred without a special authorization from the Minister of Commerce and Industry.

40. The Regulations shall include provisions securing provisional protection of marks affixed on products or goods displayed in national or international exhibitions organized in Oman or a country that applies reciprocity to Oman. Such exhibitions shall be designated by decision of the Minister of Commerce and Industry.

41. Provisions of international bilateral or multilateral treaties or conventions regulating the rights of nationals of States party to such treaties and conventions or persons assimilated to nationals as far as trademarks and trade indications are concerned, to which Oman is or may become party shall be applicable under this Law.

42. Foreigners shall have the same rights as those of nationals of Oman, provided that such foreigners are nationals of or residents in countries that apply national treatment to nationals of Oman.

43. The Regulations shall include detailed provisions for the implementation of this Law and, in particular,

(i) provisions regulating the procedure for the registration of marks and maintenance of registers and archives.

(ii) conditions and time-limits related to the registration procedure.

(iii) classification of all products according to their nature or species.

(iv) fees payable for the delivery of copies or certificates, or any other act provided for in this Law as part of the implementation procedure of this Law.

44. Staff members designated by decision of the Minister of Commerce and Industry shall have the right to carry out inspections and exercise control to verify the application of this Law. Such staff members may take any of the measures assigned to them by the Regulations.
