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Egypt

Trademark Disputes

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This country-specific Q&A provides an overview of trademark disputes laws and regulations applicable in Egypt.

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Egypt: Trademark Disputes

1. To represent a client before Court in respect of a potential trademark infringement matter, do you require a Power of Attorney – and if so, what are the execution formalities required by your courts?

The execution of a Power of Attorney (PoA) is required for the purpose of representing clients, whether domestic or international.

Notarization and legalization requirements vary depending on the jurisdiction of the client. In the case of local clients, all relevant documents must be duly notarized before the competent Egyptian Notary Public. For clients located abroad, all documents submitted before the courts, including the Power of Attorney, must be duly notarized and legalized through the Egyptian Consulate in the client's country of residence/execution.

2. Is it a requirement in your jurisdiction to send a cease and desist letter to a potential infringer before commencing proceedings for infringement? What are the consequences for a trademark owner who chooses not to send a pre-action letter?

No, the issuance of a Cease and Desist letter is not mandatory; however, it is recommended as it serves to establish that any continued use of the trademark by the notified party, following receipt of such notice, constitutes use in bad faith.

3. In your jurisdiction, is there a risk that a pre-action letter could give rise to claim against the trademark owner for unjustified threats? What steps should a trademark owner take to ensure any cease and desist letter does not expose the trademark owner to any liability.

A pre-action letter should not, by its nature, give rise to unjustified threats. Notwithstanding the foregoing, the inclusion of any non-factual information, or the provision of excessive detail that may alert the notified party to the specific actions contemplated, could adversely affect the prospects of success of the claim.

4. Is it mandatory for the parties to have attempted mediation or other alternative dispute resolution proceedings prior to commencing infringement proceedings? If so, what is the minimum expectation?

No, it is not mandatory to pursue amicable mediation prior to commencing infringement proceedings.

5. Are claims for trademark infringements heard before a general commercial Court or a specialist Court focused on Intellectual Property disputes? Are trademark infringement claims decided by a judge or by a jury?

The Egyptian Economic court have jurisdiction over trademark infringement cases, and specialized court Intellectual Property experts are consulted.

6. Is there a time limit for commencing trademark infringement proceedings once the facts giving rise to the infringement are known to the trademark owner. After how long would such a claim be time-barred? What action would a trademark owner have to know to give rise to such a claim being time-barred (for example, is it knowing that a mark in question is in use or is it knowing that a trade mark application has been filed and/or registered?)

Pursuant to Egyptian Intellectual Property Law No. 82 of 2002, any use or registration of a trademark by a third party may be challenged at any time where bad faith can be established, in accordance with Article 65.

Under this provision, a person who registers a trademark and continuously uses it for a period of five (5) years from the date of registration shall be presumed to be the lawful owner of the mark, unless a prior user establishes earlier use of the same or a confusingly similar mark. A prior user is entitled to challenge the validity of the registration within the five-year period following registration.

Notwithstanding the foregoing, where it is proven that the registration was obtained in bad faith, such registration

may be challenged at any time, irrespective of the lapse of the five-year period.

7. In your jurisdiction does the law protect unregistered trademarks of any kind, including by way of passing off, unfair competition or protection of trade dress. What are the criteria for their subsistence?

Yes, the protection of unregistered trademarks is recognized under Egyptian law, provided that the owner has established continuous and bona fide use of the mark in Egypt for a period exceeding five (5) years, thereby acquiring a degree of legal protection based on prior use.

With respect to trade dress, protection in Egypt generally extends to the distinctive elements of a product's presentation, such as labels, get-up, and other identifying features that serve to distinguish the source of the goods. However, the protection of the physical packaging itself is typically secured through registration as an industrial design, rather than through trademark protection.

8. In your jurisdiction will the Court hear claims for registered trademark infringement in parallel with claims for passing off, unfair competition, infringement of trade dress or other misleading advertising, or does a claimant need to bring such claims in a separate cause of action?

The court considers each claim independently, as the legal grounds and evidentiary requirements for each differ. Infringement of rights in a registered trademark constitutes a criminal offence, whereas unfair competition is a civil matter primarily concerned with the remediation of damages arising from such conduct.

9. In your jurisdiction, do your Courts share jurisdiction with your Trade Mark Office, such that parties need to seek to seize the forum they prefer first in time, or does the Court take precedence and intervene to stay or transfer any live Registry proceedings (for example relating to invalidity or revocation of registered trade mark) which may overlap with an issued infringement claim and related counterclaim?

The Egyptian Intellectual Property Authority (EGIPA) does not intervene in trademark-related court proceedings.

The adjudication of such disputes falls exclusively within the jurisdiction of the competent courts, which render final judgments on the matter. Upon issuance of a court decision, EGIPA's role is limited to implementing and enforcing the judgment, including making the necessary updates to the trademark register in accordance with the court's ruling.

10. Where the defendant has a counterclaim for invalidity or cancellation of the registered trademark being asserted against it (either on the basis of earlier rights or as a result of non-use by the trademark proprietor), does the counterclaim become part of the infringement action, so that both issues are heard by the same Court within a single action, with the Court making a determination at its conclusion, or are the validity issues bifurcated and heard in separate parallel proceedings? If in your jurisdiction validity issues are bifurcated, what are the practical consequences of this from a timing perspective? For example, does this mean that a Court will stay the infringement claim and proceed with the validity attack first to avoid finding a trademark infringed, only to have a separate Court find the trademark invalid at a later date?

In such cases, the defendant may request the suspension or postponement of the infringement proceedings pending the outcome of the cancellation action. In any event, the defendant is entitled to submit, before the competent court, the same evidence adduced in support of the cancellation action, and such evidence may be taken into consideration in the adjudication of the infringement claim.

11. In your jurisdiction, does a defendant have a defence of using a mark honestly and concurrently available to them?

Notably, once a trademark is registered, its publication is deemed to constitute constructive notice to third parties of the rights of the trademark owner. Accordingly, any defense based on alleged good faith use by an infringer is generally of limited persuasive value and is unlikely to be accepted as a strong defence.

The same principle applies where it is demonstrated that the infringing use was carried out in bad faith. Moreover,

where the trademark qualifies as a well-known (famous) mark, it benefits from broader protection under the applicable legal framework, further strengthening the owner's position against unauthorized use.

12. When considering the validity of a registered trade mark, does the Court consider whether the trade mark has been registered in bad faith? If so, what actions would indicate this bad faith?

If bad faith is established, the court may order the cancellation of the trademark registration, irrespective of any continued use of the mark or the arguments advanced by the registrant.

Bad faith is typically found where the registrant had a prior relationship with the rightful owner of the trademark, or where the mark is well-known in the relevant market such that its ownership is widely recognized by stakeholders in the industry.

13. If the main objective in commencing infringement proceedings is to secure an injunction, is a claimant required to state how much their claim is worth at the point their claim is issued?

No. The grant of an injunction is generally grounded in the necessity of preventing the continued use of the infringing trademark where the applicant can demonstrate to the competent court the existence of serious and imminent harm. Such harm may include, inter alia, financial losses, reputational damage, dilution of goodwill, or other relevant considerations.

Injunctions are typically issued as interim or protective measures to preserve the status quo and safeguard the interests of the requesting party pending a final determination on the merits of the dispute.

14. Is it possible to seek a preliminary injunction in your jurisdiction? If so, what is the criteria a trademark owner needs to establish and is there a bond or other undertaking in damages payable to compensate the defendant if the Court finds no infringement following a substantive hearing?

Yes, Injunctions are typically issued as interim or protective measures to preserve the status quo and safeguard the interests of the requesting party pending a final determination on the merits of the dispute, and the

court shall not request compensation if no infringement has been established.

15. Is a licensee (whether exclusive or non-exclusive) of a registered trademark entitled to commence proceedings for trademark infringement? Does the trademark proprietor need to be joined as a party to the proceedings, and does it have an effect whether the licensee is registered before the local Trademark Registry?

Where a license agreement has been duly registered with the competent authorities, the licensee may be entitled to initiate legal proceedings in their own name, asserting claims based on the infringement of the rights granted under the license. In such circumstances, the licensee's standing to sue is generally recognized to the extent of the rights conferred upon them by the registered agreement, subject to any limitations or conditions stipulated therein, including any requirements to join the licensor or to obtain prior authorization, where applicable.

16. Where the claim for trademark infringement is premised on similarity between the defendant's mark and the trademark owner's registered mark, does the proprietor need to demonstrate that confusion has occurred or simply that there is a risk of confusion? What is the minimum standard required to secure a finding of infringement?

The claim is typically based on the similarity between the trademarks and the likelihood of confusion among consumers. The claimant is not required to prove that actual confusion has occurred; it is sufficient to demonstrate that such likelihood of confusion exists.

17. In your jurisdiction is it possible to rely on post-sale confusion as a means of securing a finding of trade mark infringement?

This is more particularly relevant in unfair competition claims, as the essence of such claims lies in establishing similarity between the trademarks and the resulting damages arising from unauthorized use. In all cases, evidence of actual confusion may be relied upon as supporting evidence; however, the primary basis of the claim remains the similarity between the marks and the likelihood of confusion among consumers.

18. In your jurisdiction what type of disclosure or discovery is typically ordered by the Court in respect of trademark infringement actions from both parties?

The claimant is required to adduce clear and convincing evidence demonstrating that the allegedly infringing trademark constitutes an imitation of the original mark, and that such imitation was carried out in bad faith.

On the other hand, the defendant typically seeks to rebut the claim by establishing prior rights in the trademark, or by demonstrating that the shared elements between the marks are generic or descriptive in nature and therefore not subject to exclusive appropriation by any party. Additionally, the defendant may argue that the claimant's trademark has not been actively used in commerce, thereby challenging the strength or enforceability of the claimant's rights.

19. What type of expert evidence is permitted by the Court in your jurisdiction? Does the Court accept consumer surveys and are there specific rules about how consumer surveys are conducted. Do the parties need to request prior permission from the Court to adduce survey evidence?

Usually the court appoints a trademark expert to assess the similarity between disputed trademarks, independent consumer surveys may be submitted as supporting evidence, but surveys and documentation issued by governmental authorities are more likely to be considered.

20. Does evidence submitted by your client in trademark infringement proceedings have to be accompanied with a statement of truth or other similar declaration? Which party is typically responsible for signing the statement of truth (or similar), the entity itself or the entity's representatives?

No, statement of truth is not required, however, any document which fulfils the legalization and attestation requirements shall be examined by court.

21. In your jurisdiction is it possible for a claimant to seek summary judgment and/or

strike out of an infringement claim? What are the legal criteria for a Court to grant summary judgment?

Yes, it is permissible for a claimant to seek summary judgment. The competent judge will assess such a request and may grant appropriate interim measures and injunctions where warranted. In cases where summary judgment is not granted in respect of the claim as a whole, the court may nevertheless issue interim orders to preserve the rights of the parties pending a full determination of the dispute on the merits.

22. How long does it typically take to reach judgment in a trademark infringement action from issue of the claim, through to first instance decision? What is the lower and upper range of legal costs for such an action?

The average timeline for a trademark dispute is 12-24 months from the date of filing; the court fees do not exceed USD\$500 while the attorney fees depend on the law firm handling the dispute.

23. Following a first instance decision, is it possible for either party to appeal the decision? What are the grounds upon which an appeal can be lodged? Is it necessary to request permission to appeal, or are appeals automatically permissible? If either party file an appeal, is the enforcement of the first instance decision stayed pending the outcome of the appeal?

Yes, either party may appeal a first-instance judgment without the need for prior permission. In such circumstances, the enforcement of the first-instance decision is generally suspended until a final and conclusive ruling is rendered by the appellate court.

24. If the parties have been involved in a dispute before the local Trademark Office, what relevance does this have on later infringement proceedings? For example where trademark owner (A) may have already sought to oppose the registration of a third party (B's) mark in proceedings before the local Trade Mark Office, is the trademark owner estopped from seeking invalidity of a registered trade mark where its

opposition failed where the invalidity action is based on the same grounds as the unsuccessful opposition?

In circumstances where a dispute arises in the context of opposition proceedings against a pending trademark application before the competent Trademarks Authority, the decision rendered by the Authority is subject to appeal before the competent court. Upon such appeal, the court exercises full judicial discretion and determines the matter independently, based on its own assessment of the facts and evidence, including the documents submitted and any expert reports presented, without being bound by the reasoning of the Authority.

Conversely, where a cancellation action is initiated independently of any prior or concurrent opposition proceedings, the defendant may seek to rely on a prior opposition decision issued by the Trademarks Authority as persuasive evidence, particularly to support an argument that the Authority did not find a likelihood of confusion or similarity between the marks in question. However, such a decision does not have binding effect on the court, which retains unfettered discretion to assess the merits of the case and reach its own conclusion.

25. In your jurisdiction, does the Court consider both liability and quantum within the same proceeding, or will any damages be assessed after the Court has reached a decision on liability? How are damages for trademark infringement proceedings typically assessed in your jurisdiction?

Damages are most commonly pursued in the context of unfair competition claims, as such claims are inherently directed at compensating harm resulting from unlawful competitive practices, including trademark infringement. Egyptian Trade Law No. 17 of 1999 provides that any conduct contrary to established commercial customs and practices constitutes unfair competition. This encompasses, in particular, infringement of trademarks, trade names, patents, or trade secrets, the inducement of employees to disclose confidential information or to terminate their employment, as well as any acts likely to cause confusion with a business or its products, or to undermine its reputation.

A party found to have engaged in unfair competition shall be liable to compensate for the damages arising therefrom. In addition to awarding damages, the court

may order the cessation or removal of the infringing conduct and may further require the publication of a summary of the judgment at the expense of the liable party.

By contrast, claims brought on the basis of infringement of trademark rights under Egyptian Intellectual Property Law No. 82 of 2002, particularly pursuant to Article 113, are primarily penal in nature and are limited to the sanctions expressly prescribed therein. Such sanctions include imprisonment for a term of not less than two months and a fine ranging from EGP 5,000 to EGP 20,000, or the imposition of either penalty.

26. In addition to an injunction and damages, what other remedies are available in your jurisdiction?

Unfair competition claims entitle the trademark owner to seek the publication of the court's judgment in a daily newspaper, as well as to claim compensation for any reputational harm suffered as a result of the infringing conduct.

27. Following a decision on the merits, is the winner entitled to recover all or a portion of its legal costs incurred in bringing or defending the proceedings. If legal costs are recoverable, what is the procedure involved and how does the Court assess the level of legal costs which should be reimbursed by the losing party.

Yes; however, recoverable legal costs are generally limited to court fees—which typically do not exceed USD 250—and attorney's fees, which are likewise modest and usually do not exceed USD 50.

28. Once the Court has issued a judgment, how long typically does the losing party have to comply with the Court's judgment including any final injunction issued? What are the consequences for failing to comply and how would the winning party seek enforcement of its judgement.

The court's decision shall be enforceable immediately upon issuance. Any continued use thereafter shall constitute an infringement, exposing the perpetrator to damages and further legal liability.

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