

TRADEMARK PROTECTION UNDER REGISTRATION SYSTEM IN MYANMAR

Zin Mar Wai¹

Abstract

Intellectual Property Rights (IPRs) play a key role in supporting a developing, market-oriented economy. This paper explores Myanmar's transition from a declaration-based trademark system to a modern first-to-file registration framework under the 2019 Trademark Law. The reform is essential for aligning with international standards, including the TRIPS Agreement and the Paris Convention. Although the new law provides a framework for substantive examination, there is many legal and administrative challenges in its practical implementation faces. This study examines transitional issues such as the appointment of representatives or agents, determining effective filing dates, particularly for pre-existing marks, and streamlining registration procedures. This paper indicate that successful implementation depends not only on legal provisions but also on strengthening public and administrative awareness and establishing clear, efficient administrative rules to address practical obstacles and ensure effective, nationwide trademark protection in Myanmar.

Keywords: Trademark, Protection and Intellectual Property.

Introduction

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of others.² A trademark protects brand names and logos used on goods and services. Trademarks also guarantee the quality of the goods bearing the mark and, through advertising, help create and maintain a demand for the product. Under the Trademark Law 2019, the term of a registered mark shall be 10 years from the submission date of the registration application. The renewal for a further 10-years period will require prescribed renewal fees.³

The term 'trademark' includes any word, name, symbols or device or any combination thereof.

- (1) used by a person, or
- (2) which a person has a bona fide intention to use in commerce.⁴

In *Gaw Kan Lye v. Saw Kyone Saing*, trade mark is meant that the mark must be capable of distinguishing a particular person's goods from somebody else's by indicating that it was manufactured by that particular person, and not simply any manufacture of the type of goods.⁵

A trademark is an image, logo, group of words, or some combination of these things, that is used to distinguish the product of one manufacturer from another.

The function of a trademark is to indicate the origin of goods or services. The definition of a Trademark refers to the use of a mark for the purpose of indicating 'a connection in the

¹ Department of Law, Bago University.

² WIPO, (2020) *What is intellectual property*, 2nd edition, Switzerland, Geneva, p.12.

³ <https://cyber.harvard.edu/metaschool/fisher/domain/tm.htm>.

⁴ ABA Defending Liberty Pursuing Justice, (2009) *What is a Trademark*, 3rd edition, Washington, D.C, United State, p-5.

⁵ 1939, Y.L.R, p-488.

course of trade' between the goods or services and the purpose of denoting quality would be inadequate use.⁶

The function of trademarks in the modern economy are dictated by the sheer size of the market and the distancing of suppliers from customers. Distinctive marks are indispensable tools for the identification of goods or services. Moreover, in a society increasingly obsessed with style, image, and celebrity, brand names are invaluable marketing tools, and businesses invest significantly in the development, marketing, and protection of their brands and marks.⁷

The primary function of a trademark is to indicate origin. However, trademarks also serve to guarantee the quality of the goods bearing the mark and, through advertising, serve to create and maintain a demand for the product.⁸

Trademarks play a vital role in shaping successful businesses and fostering trust in the marketplace because they identify and differentiate goods or services, build brand recognition and reputation, protect consumers from confusion, provide marketing and advertising tools, offer a competitive advantage, and function as valuable intellectual property assets.⁹

A trademark serves the purpose of identifying the source or the origin of goods. Trademark performs the following four functions

- It identifies the product and its origin.
- It proposes to guarantee its quality.
- It advertises the product. The trademark represents the product.
- It creates an image of the product in the minds of the public particularly the consumers or the prospective consumers of such goods.¹⁰

Therefore, the function of trademark refers to the part of the mark that informs consumers about product characteristics. And then, trademarks help consumer to take rational decisions about the purchase of a product or service.

Materials and Methods

A qualitative method is used in this research. Analytical research methodology is also used. Data is gathered from all trademark-related legislation and international conventions. Additionally, certain information is gathered by looking through cases, papers, books, and websites.

Findings

A representative needs to correctly fill in the required information in the registration forms (TM1 and TM2). A representative will fill TM1 and TM2. TM1 must be completed with details about the goods and services of the trademark owner. In TM2, it is required to indicate

⁶ WIPO, (1988) *Background Reading Material on Intellectual Property*, Switzerland, Geneva, p-163.

⁷ Amanda Michaels and Andrew Norrjs, (2014) *A Practical Guide to Trade Mark Law*, 5th edition, Oxford, United Kingdom, p-7.

⁸ John A. Marzall, (March 15 1950) *General Information concerning Trade-Marks*, Chicago, United States, p-1.

⁹ <http://uollb.com>.

¹⁰ <https://www.advocatekhoj.com>.

that a representative is acting as a representative for the trademark owner. If a representative fails to submit the required data and application fees for registration on time, the trademark owner cannot get a filing date promptly. As a result, a dispute may arise between the owner and the representative. Previously, there was no protection for the same mark on the different products in Myanmar. After the Trademark Law 2019 comes into force, the owner of the mark is protected by the same mark on the different products. Myanmar's current status regarding the Madrid System poses a significant challenge for domestic businesses, requiring separate applications in each foreign jurisdiction and creating unnecessary costs and administrative burdens. Acceding to both the Madrid Agreement and Protocol would allow trademark owners to secure protection in all member countries through a single International Registration (IR), synchronizing procedures and saving time and resources.

Trademark Protection under Registration System

The new Trademark Law revamps the current trademark registration and protection policy in the country. The trademarks registered under the old system are to be re-filled. A "first-to-file" system will be adopted under the new law for trademark registration and protection, unlike the "first-to-use" system followed earlier. Trademark Registration in Myanmar under the soft-opening period has commenced from October 01, 2020. The soft opening period is expected to last for a period of six (6) months i.e. till March 31, 2021, thereby allowing existing trademark holders to re-file applications for their marks(s).¹¹

In order to enjoy the rights of a registered mark under Trademark Law, any applicant may apply to the Registrar for the registration of a mark in accordance with the prescribed regulations. The applicant for the registration of a mark:

- (a) may write the registration application in Myanmar or English.
- (b) must translate the Myanmar Language application into English or Vice versa if the Registrar requests so.
- (c) must write a statement that the translation under subsection (b) is true and correct and sign it.¹²

The applicant for the registration of a mark shall:

- (a) include the following in the application:
 - (1) an application for registration;
 - (2) name and address of the person or legally formed organization applying for registration;
 - (3) name citizenship scrutiny card number, and address of the agent or representative if the applicant entrusts an agent or representative with this matter.
 - (4) a clear and complete description of the mark;
 - (5) name and type of goods and /or services for which a request for registration is made and the category of international mark classification to which it belongs.¹³

¹¹ <https://www.khuranaandkhurana.com>.

¹² Section 15 and 16 of the Trademark Law, 2019.

¹³ Section 17 (a) of the Trademark Law, 2019.

If the trademark owner submits an application by himself or herself, he or she should use TM1 form. If the trademark owner asks his representative to apply for registration, his representation should fill TM2 form.

A dossier of trademark registration in Myanmar includes the following documents:

Trademark registration declaration TM2: The trademark registration declaration must be completed accurately and fully, including the following information:

- Name and address of the applicant
- Trademark type
- Trademarks (including description and sample)
- List of goods or services
- Trademark Use Statement in Myanmar
- Power of attorney (if the applicant is through a representative organization)

The trademark template should be clear and visible, including colors if the trademark is colored.

A copy of the applicant's identity card or passport (if the applicant is a foreigner): This copy must be notarized.

The trademark registration fee in Myanmar varies according to the type of trademark and the number of categories of goods or services.

In addition to the requirements in subsection (a), the following must be attached to the application if necessary;

- (1) if the application is made for a legally forward organization, the registration number, type and country of said organization;
- (2) if the applicant requests the right of priority, an application for the right of priority together with sufficient evidence proving that he has the right of priority, and description;
- (3) if the applicant requests the right of priority for trade exhibitions, an application for the right of priority for trade exhibitions together with sufficient evidence proving he has the right of priority for trade exhibitions, and description;
- (4) if the mark is registered at the document's registration office, documentary evidence proving such registration;
- (5) other requirements stipulated by the Agency and the Department from time to time.¹⁴

The date on which the Department has received a complete application under subsection (a) of Section 17 and the stipulated fee is deemed as the date of submission of the application for registration in the Union.¹⁵

(a) An applicant for the registration of a mark;

- (1) may, after paying the prescribed fee, apply to the Registration if he wishes to amend the application, translation, and documentary evidence due to text

¹⁴ Section 17 (b) of the Trademark Law, 2019.

¹⁵ Section 18 of the Trademark Law, 2019.

errors or other errors which may be corrected, before the Registrar of an application or before the Agency marks a decision on the appeal case against the decision of the Registrar.

- (2) may apply for the withdrawal of the application for the registration of a mark.
- (3) may, after paying the prescribed fee, request the Registrar for amendment by separating any application which includes multiple goods or services into more than one new application or to limit or decrease, without increasing, the submitted list of goods or services.

- (b) the date of submission of the separate registration applications made under item (3) of subsection (a) shall be the date of submission of the original application.¹⁶

In order to register a mark, the applicant;

- (a) may request, if the following conditions are met for the registration of a mark when the failure to comply within the stipulated period of time results in the loss of rights connected to the relevant mark application;
 - (1) submitting a request within 60 days from the date of withdrawal due to the failure to comply within the stipulated period;
 - (2) attaching all explanations, information or requirements with regards to the failure to comply within the stipulated period;
 - (3) describing sufficient reasons for the failure to comply within the stipulated period in the request;
 - (4) paying the prescribed fee;
- (b) If a request to restore the rights related to the request under subsection (a) was made during the period of appeal, the Register must suspend the request under subsection (a).¹⁷

An owner of a registered mark may;

- (a) after paying the prescribed fee to the Department, request the Registrar to issue a certified copy of the registration certificate of the mark in cases of damage or loss of the original.
- (b) after paying the prescribed fee, request the Registrar to revise writing errors and other errors which can be corrected under Trademark Law, as well as nationality and address, in the registration records.¹⁸

Myanmar needs to be a signatory to both the Madrid Agreement and the Madrid Protocol in order to use the Madrid System. Myanmar will have the same impact as if it had registered in every country covered by the Madrid Treaty if it files an International Registration (IR) in WIPO. Because there is no need to submit a separate application in each nation, time and money will be saved. Myanmar needs to sign the Paris Convention as well. Priority in Myanmar can also be claimed by an applicant who has already registered their mark in a Paris Convention country or submitted an overseas application.

Article 6 of the Paris Convention, 1883 provides that the conditions for the filing and registration of trademark shall be determined in each country of the Union by its domestic legislation. However, an application for the registration of a mark filed by a national of a country

¹⁶ Section 21 of the Trademark Law, 2019.

¹⁷ Section 24 of the Trademark Law, 2019.

¹⁸ Section 29 of the Trademark Law, 2019.

of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin. A mark duly registration in a country of the Union shall be regarded as independent of mark registered in the other countries of the Union, including the country of origin.¹⁹

Article 19 of the TRIPS Agreement provides that if use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reason based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use. When subject to the control of its owner, use of a trademark by another person shall be recognized, as use of the trademark for the purpose of maintaining the registration.²⁰

If there is no opposition to the application for mark registration, or if the oppose withdraws the opposition, or if the opposition is rejected, the Registration Officer shall notify the applicant to pay the registration fee within 60 days from the notice. If the payment is not made within the specified time limit, the application shall be deemed abandoned. Otherwise, the Registration Officer shall record the registration and issue a mark registration certificate to the applicant.²¹

Therefore, the establishment of a comprehensive trademark registration and protection system under the New Trademark Law allows the trademark owners or brand owners to have their intellectual property rights when conducting businesses in Myanmar.

The term of a registered mark shall be 10 years from the submission date of the registration application. After this period, the applicant may renew the term of registration for 10 years at a time.²²

If the owner of a mark wishes to renew the term of mark registration, he must carry out according to the following:

- (a) the renewal of the term of registration must be the term by paying the prescribed fees.
- (b) After the expiration of the term of registration, the renewal application can be made within the grace period of six months. If the renewal application is submitted within this period, the applicant must pay the prescribed registration fee and overdue fee.²³

The renewal term is effective starting from the date of expiration of the previous term. Examine the application for the renewal of the term of registration and grant the renewal for a term of 10 years if the application meets the criteria for renewal and make a public announcement in a manner that is consistent with stipulations. Suspend the registration of the

¹⁹ Articles 6(1), (2) and (3) of the Paris Convention for the Protection of Intellectual Property Rights, 1883.

²⁰ Articles 19 (1) and (2) of the Agreement on Trade-Related Aspects of Industrial Property Rights, 1994.

²¹ <https://www.lincolnmyanmar.com>.

²² Section 34 of the Trademark Law, 2019.

²³ Section 35 of the Trademark Law, 2019.

registered mark if the owner of the registered mark has not paid the renewal fees within the grace period of six months.²⁴

Initial registration and each renewal of registration, of a trademark shall be for a term of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.²⁵

Therefore, Trademark duration is limited up to 10 years. After that, it can renew within 6 months prior to the expiration of the registration. And then, without using mark after registration will have to be used for the specified product or services within three years from the registration date.

Practices for the Trademark Protection under Registration in Myanmar

The Trademark Law, 2019 was passed by the Parliament of the Republic of Union of Myanmar on 30th January 2019. It will become effective when the President announces its effective date. It adopts the “first to file” principle of trademark protection. The Ministry of Commerce (MOC) and the Department of Intellectual Property (DIP) are the main government offices in charge of trademark registration. The trademarks already registered before the effective date of the Trademark Law 2019 will not be automatically recognized and protected under the Trademark Law 2019. The Department of Intellectual Property (DIP) will announce the Soft Opening Period (SOP) for owners of the registered trademarks to re-file them. The Soft Opening Period (SOP) will last for at least 6 months plus possibly 6 additional months.²⁶

On 1 April 2023, the Ministry of Commerce (MOC) released Announcement No. 1/2023, which follows Order No. 63/2023, for the second phase registration, and on the 26th of the same month, the new trademark registration system, launched under the supervision of the Department of Intellectual Property (DIP), began accepting registrations. During this phase, only existing trademark registrations may be applied for either by a mark’s owner, in person or by his/her agent, at the Department of Intellectual Property DIP’s head office (Nay Pyi Taw) or the branch office (Yangon), or through the online electronic trademark filing. The Department of Intellectual Property (DIP) plans to issue notifications and announcements with relation to the trademark registration, based on the situation of the electronic filing system and requirements of the applicants in order to facilitate the application process.²⁷

In conjunction with the 5 April Announcement and discussions with the Department of intellectual property in Myanmar, the key takeaways are as follows:

Implementation of the new Trademark Law in Myanmar

The implementation of the new trademark registration system entails the following phases:

Phase I (1 October 2020 to 31 March 2023): During Phase I of the soft opening period, only Registered/Used Marks are eligible for filing. All trademark applications filed during this period will be given a "common filing date," which is likely to be the first day of the grand opening (to be confirmed).

²⁴ Section 36(a), (b) and (d) of the Trademark Law, 2019.

²⁵ Article 18, Agreement on Trade – Related Aspects of Intellectual property Rights, 1994.

²⁶ <https://www.lawplusltd.com/2020/08/tm-regis-use-and-enforcement-in-myanmar/>

²⁷ <https://www.charltonsmyanmar.com/trademark-registration-in-myanmar//z>

Given that the Trademark Rules were still in the draft stage during Phase I, applicants were unable to submit the TM-2 Form (Appointment of Representative) or make payment of the official fee for Phase I applications.

Phase II (1 April 2023 to 25 April 2023): We are presently in Phase II. During Phase II of the "soft opening period," the new trademark registration system will still accommodate Registered/Used Marks **secured prior to 1 April 2023**.

All trademark applications filed during this period will also be given a "common filing date," which is likely to be the first day of the grand opening (to be confirmed).

It is mandatory to submit the notarized TM-2 Form (Appointment of Representative) and the official fee payment at the time of filing the Phase II application under the new electronic system.

Phase III (from 26 April 2023): The grand opening of the new trademark registration system will take place during Phase III. All applications for New Marks will bear the filing dates of the applications, i.e., the date on which the MIPD receives the complete application (including the notarized TM-2 Form and stipulated official fee).

Common filing date

Phase I and Phase II applications will be given a "common filing date." Based on our unofficial discussions with the MIPD, the "common filing date" has yet to be determined. It is, however, likely that the "common filing date" will be the first day of the grand opening of the new trademark registration system, i.e., 26 April 2023.

Submission of TM-2 Form (Appointment of Representative) and payment of official fees

For Phase I applications, applicants may proceed to submit the notarized TM-2 Forms and make payment of the outstanding official fees between now and 31 May 2023.

For Phase II applications, the notarized TM-2 Form and official fee payment must be submitted on the date of filing between 1 April 2023 and 25 April 2023. Therefore, the last day for lodging any Phase II application is 25 April 2023.

If the TM-2 Form and official fee payment are not submitted during the stipulated timelines above, the relevant Phase I or Phase II applications will not be given the "common filing date."

In cases of late submission (after 31 May 2023) of the notarized TM-2 Form and official fee payment, the relevant Phase I applications will instead bear the filing dates on which the MIPD receives the complete application (i.e., the notarized TM-2 Form and stipulated official fee) instead.

New Marks

Applications for New Marks will be accepted starting from the grand opening on 26 April 2023.

In respect to Phase I applications, trademark practitioners and rights owners were previously of the impression that the notarized TM-2 Form (Appointment of Representative) and official fee payment must be submitted by 25 April 2023, i.e., a day before the date of the grand opening of the trademark registration system.

The 5 April Announcement was thus well received by trademark practitioners and rights owners, given that there is now significantly more time (up till 31 May 2023) to submit the notarized TM-2 Form and official fee payment for Phase I applications.

Phase II applicants will need to hasten their applications, as the last day for filing the applications is 25 April 2023.²⁸

Per Section 18 of the Trademark Law of Myanmar, the date of submission of a complete application, along with the prescribed fee, is deemed as the filing date of the trademark application in Myanmar.

Sections 31 to 33 address the right of priority, which grants applicants a six-month period to apply for registration in Myanmar following an initial application in a Member State of the Paris Convention or the World Trade Organization.²⁹

For filing of used trademark and filing requirements, trademarks already used in Myanmar without registration can also be filed during the Soft opening period. The filing requirements include a notarized Power of Attorney (POA) from the applicant to a Myanmar representative (if the applicant is not a Myanmar citizen); a scanned copy of business license of the applicant; a copy of advertisements of the used trademark; a specimen of the used trademark in the 'jpg' format; a list of goods/services and the classes under the Nice Classification; the name, home or office address, email address and telephone number of the applicant. The Department of intellectual property may order submission of other documents during the application examination stage.

For filing of new trademarks and meeting filing requirements, trademarks not already registered in Myanmar before the effective date of the Trademark Law, 2019 can be filed with the Department of Intellectual Property after the Soft opening period. The filing requirements are the name, address, telephone number and email address of the applicant; a notarized Power of Attorney from the applicant to a Myanmar representative if the applicant is not a Myanmar citizen; a specimen of the trademark in the 'jpg' format; a complete and clear description of the trademark; and a list of goods/services and their classes under the Nice Classification.³⁰

The Nice Agreement is an international classification of goods and services that is used for the registration of marks.

There are 45 classes: for example, computers and electronic goods are classified under Class 9; mineral water, juices and soda are classified under Class 32; clothing, headgear and footwear come under Class 25.³¹

Section 23 of the Trademark Law of Myanmar outlines a comprehensive and structured process for the examination of trademark applications. The Examiner will examine the application to determine if it meets the provisions of Section 13 and includes the necessary information as per Section 17. If necessary, revisions are required, the applicant will be notified, and failure to comply within 30 days may result in application withdrawal. It is noted that no

²⁸ <https://insightplus.bakermckenzie.com/bm/intellectual-property/myanmar-trademark-updates-grand-opening-of-the-trademark-registration-system-on-26-april-2023>

²⁹ <https://www.charltonsmyanmar.com/trademark-registration-in-myanmar/>

³⁰ <https://www.lawplusltd.com/2020/08/tm-regis-use-and-enforcement-in-myanmar/>

³¹ European Commission, (2020) *Guide to Trade Mark protection in South-East Asia*, Publications Office of the European Union, Luxembourg, p-8.

explicit timeline is provided for completing a substantive examination for a trademark application in Myanmar.

In India, there was a case registration matter in which the petitioner denied the receiving the information of Registration by email. But if the registration department informed the applicant (petitioner) by email, whether he actually knew or not, the registration department would deem that he knew. It is the starting time of registration in Myanmar and similar case, *Ramya S. Moorthy v. Registrar of Trade Marks and Others case*, will happen in future. So, that case should be studied. The petitioner approached the Madras High Court challenging the wrongful abandonment of its applications by the Trademarks office (TMO) on 28th April 2023 in the case of *Ramya S. Moorthy v. Registrar of Trade Marks and Others (W.P. (IPD). Nos. 3 & 4 of 2023)*. The petitioner's applications were abandoned by the Trademarks office (TMO) as it failed to file the counter statements (CS) within two months' statutory period. As per TMO's records, the notices of opposition (NOP) were transmitted by email to the petitioner on 19th January 2023. The petitioner contended that CS could not be filed as the NOP was never served upon them. The deadline to file the CS commences only upon receipt of the actual document. The TMO countered that the service of NOP by e-mail is deemed to be proper service upon dispatch and relied upon the internal document to establish dispatch of the NOP to the petitioner on 19th January 23 and the status was reflected as "success". The interesting issue before the court was if the time to file the CS commences from the date of transmission of the document sent by TMO or receipt of email by the petitioner? The court finally decided that the time for filing CS would only run from the date of receipt of the e-mail and the document of transmission of the NOP relied upon by the TMO does not qualify as evidence of receipt by the petitioner. The court quashed the abandonment orders passed by TMO and restored the two applications allowing the petitioner to file the counter statements.³²

Section 13 of the Trademark Law of Myanmar highlights the characteristics of a mark that constitute ***absolute grounds for refusal***. Marks lacking distinctiveness or containing indications of goods or services' type, quality, origin, or other characteristics may be ineligible for registration. Additionally, marks that may be detrimental to public order, reputation, beliefs, or the Union's traditions or that copy or imitate certain protected symbols and marks are also subject to refusal.

Exceptions: However, the Trademark Law provides exceptions for certain circumstances. If the mark's distinctiveness is known among consumers due to prior use or if the applicant is exclusively using the mark within the commercial area of Myanmar in good faith, the grounds for refusal may not apply.

Section 14 of the Trademark Law of Myanmar addresses ***relative grounds for refusal***, which may render a mark ineligible for registration. Such grounds include marks that mislead consumers by being identical or similar to already registered marks or marks for which registration has been applied beforehand for similar goods and services. Marks that infringe upon others' intellectual property rights or harm the individual rights of any person or legally formed organization may also face refusal.³³

Before Trademark Law comes into force, under the Registration Act: (a) the owner of a mark registered at the Office of the Registration of Deeds or the owners of the actual use of a

³² <https://www.legal500.com/developments/thought-leadership/a-round-up-of-trademark-cases-of-2023/>

³³ <https://kenfoxlaw.com/trademark-registration-in-myanmar-under-new-trademark-law-10-things-to-know>

mark in the channel of commerce of the State although they are not registered, shall apply to register under this Law if they want to enjoy the rights of a registered mark; (b) the rights of priority use shall be enjoyed for a mark registered or unregistered at the Office of the Registration of Deeds which is the mark of the actual use in the channels of commerce of the State during a prescribed period in respect of goods or services.³⁴

Myanmar's 2019 Trademark Law clearly provides in Section 93 that to secure trademark protection rights, the owner of the mark must register it. Once registered, the mark's owner gains the exclusive legal right to stop anyone else from using the same or a confusingly similar mark. Registration also makes it possible for the owner to license his trademark, giving others permission to use it. Importantly, any use of the mark without the owner's permission can lead to both civil and criminal prosecution.

Finally, owners of a well-known mark gain a substantial business advantage under the 2019 Law, as registration extends protection not only to identical or similar goods and services but also to those that are completely different.

Therefore, if the owner of the mark wants to enjoy rights relating to their marks, they need to register their marks because the Trademark Law 2019 is the first to file system.

In the past, before the Grand opening period, there was a soft opening period, during which a grace period was given. Now, it is a Grand Opening period, new trademarks are being accepted by the Intellectual Property Department registration. If old trademarks submitted registration in soft opening period, they would get registration earlier than new trademarks.

Whoever commits any of the following acts on the commercial purposes without the consent of the right holder shall, on conviction, be punished with imprisonment for a term not exceeding three years or with a fine not exceeding five million kyats, or with both: counterfeiting a mark;

- (i) applying a counterfeit mark to goods or using it in connection with services;
- (ii) possessing any materials or implements, the predominant use of which is likely to be to counterfeit a mark or applying a counterfeit mark to goods.³⁵

Whoever commits any of the following acts on the commercial purposes shall, on conviction, be punished with imprisonment for a term not exceeding two years or with a fine not exceeding five million kyats, or with both:

- (i) dealing or possessing in counterfeit mark goods;
- (ii) importing into or exporting from the State, counterfeit mark goods.³⁶

Whoever commits any act of section 87, after a prior conviction for the same offence, shall be punished with imprisonment for a term from a minimum of three years to a maximum of three years to a maximum of ten years, and shall also be liable to a fine not exceeding ten million kyats.³⁷

Whoever uses a sign of flag or emblem which is particularly protected under international treaties to which the State is a contracting party as a mark for the commercial purposes shall, on

³⁴ Section 93 of the Trademark Law 2019.

³⁵ Section 87 (a) of the Trademark Law 2019.

³⁶ Section 87 (b) of the Trademark Law 2019.

³⁷ Section 88 of the Trademark Law 2019.

conviction, be punished with imprisonment for a term not exceeding three years or with a fine not exceeding five million kyats or with both.³⁸

Whoever removes, destroys, deforms or adds the registered mark with intention to adversely affect the owner shall, on conviction, be punished with imprisonment for a term not exceeding one year or with a fine not exceeding three million kyats or with both.³⁹

Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a term not exceeding one year or with a fine not exceeding two million kyats or with both:

- (a) irregular issue or causing to issue the certificate of a registered mark;
- (b) irregular entering or causing to enter dishonestly in the register;
- (c) violation of the prohibition of Section 52.⁴⁰

More foreign investments can be obtained through the enforcement of trademark law; new employment opportunities may arise through the development of human resources; high productivity can be improved through the transfer of advanced technologies; and numerous benefits, including an increase in living standards due to the emergence of innovations in the industrial sectors, can be obtained by the equitable sharing of benefits between creators and users.

In Myanmar, civil enforcement of trademark rights is currently confined to a single court, the Kyauktada District Court in Yangon Region. This centralization can result in substantial delays and protracted proceedings, as the court must handle all trademark infringement cases nationwide. The limited judicial capacity, coupled with procedural formalities, poses practical challenges for rights holders seeking timely and effective remedies. Consequently, this situation underscores the need for broader judicial accessibility and procedures to enhance the efficiency of trademark enforcement in Myanmar. Moreover, Myanmar's limited technological infrastructure can lead to considerable delays in the identification and verification of trademarks.

To sum up, by properly registering trademark, the economy of our country will definitely grow, and foreign investments will continue to increase. Encouraging sustainable economic growth in our own and other nations is goal 8 of the UN Sustainable Development Agenda. This paper is written in line with goal 8 of the UN Sustainable Development Agenda. By increasingly protecting trademark owners, the innovation of trademarks will emerge and our country can build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation in line with goal 9 of the United Nations.

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³⁸ Section 89 of the Trademark Law 2019.

³⁹ Section 90 of the Trademark Law 2019.

⁴⁰ Section 91 of the Trademark Law, 2019.

References

International Conventions

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Morocco on 15 April 1994.

Paris Convention for the Protection of Industrial Property, 1883.

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Acts and Laws

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Annex 1

Trademark Application Form 1 (TM1 Form)



Ref.

အမှတ်တံဆိပ်မှတ်ပုံတင် လျှောက်ထားခြင်း
 APPLICATION FOR REGISTRATION OF MARK

TM-1

သို့

မှတ်ပုံတင်အရာရှိ
 မူပိုင်ခွင့်ဦးစီးဌာန
 စီးပွားရေးနှင့်ကူးသန်းရောင်းဝယ်ရေးဝန်ကြီးဌာန

- ဤလျှောက်လွှာပါ ဖော်ပြချက်များသည် အမှတ်တံဆိပ် မှတ်ပုံတင်ပေးရန် အတွက်တောင်းဆိုချက်ဖြစ်ပါသည်။
 (This is a request for registration of the mark reproduced in this form.)

ရုံးသုံးအတွက်သာ (For Office Use Only):

1 လျှောက်ထားသူ (APPLICANT)

☐ လျှောက်ထားသူတစ်ဦးထက်ပိုပါကအကွက်ထဲတွင် အမှတ်အသားပြုပြီးနောက်ထပ် စာရွက်အသုံးပြုပါ။
 [If there is more than one applicant tick off this box and use an additional sheet]:

☐ လူပုဂ္ဂိုလ် (Natural Person) ☐ တရားဝင်ဖွဲ့စည်းထားသောအဖွဲ့အစည်း (Legal Entity)

* အမည် (Name):

နိုင်ငံသားစိစစ်ရေးကတ်ပြားအမှတ်/နိုင်ငံကူးလက်မှတ်အမှတ်/အဖွဲ့အစည်း(ကုမ္ပဏီ)မှတ်ပုံတင်အမှတ် (NRC No. /Passport No/ Organization (Company)Registration No):

* လိပ်စာ အပြည့်အစုံ (Full Address):

နိုင်ငံ (Country)

* တယ်လီဖုန်းနံပါတ် (Telephone Number):

အီးမေးလ်လိပ်စာ (Email Address):

လျှောက်ထားသူသည် လူပုဂ္ဂိုလ်ဖြစ်လျှင် အောက်ပါတို့ကို ဖော်ပြပါ -

နိုင်ငံသားစံယူထားသည့် နိုင်ငံအမည် (State of nationality) :

အမြဲတမ်းနေထိုင်ရာ နိုင်ငံအမည် (State of domicile):

ကူးသန်းရောင်းဝယ်ရေး(သို့မဟုတ်)စီးပွားရေးလုပ်ငန်းတည်ထောင်ထားသည့် နိုင်ငံအမည် (State of the industrial or commercial establishment) :

Source: Department of Intellectual Property in Myanmar (<https://ipd.gov.mm>)

Annex 2

Trademark Application Form 2 (TM2 Form)



သို့

မှတ်ပုံတင်အရာရှိ
မူပိုင်ခွင့်ဦးစီးဌာန
စီးပွားရေးနှင့်ကူးသန်းရောင်းဝယ်ရေးဝန်ကြီးဌာန

Ref. _____

ကိုယ်စားလှယ်ခန့်အပ်လွှာ
(APPOINTMENT OF REPRESENTATIVE)

TM - 2

၁	လျှောက်ထားသူ/ ကန့်ကွက်သူ/ အခွင့်အရေးရရှိသူ/ အကျိုးသက်ဆိုင်သူ (Applicant/ Opposer/ Right Holder/ Any Interested Person)
	အမည် _____ (Name) နေရပ်လိပ်စာ _____ (Address) တယ်လီဖုန်းနံပါတ် _____ (Telephone number)
၂	ကိုယ်စားလှယ် (Representative)
	အမည် _____ (Name) နိုင်ငံသားစိစစ်ရေးကတ်ပြားအမှတ် _____ (Number of National Scrutiny) တယ်လီဖုန်းနံပါတ် နှင့် အီးမေးလ်လိပ်စာ _____ (Telephone number and Email address) ☐ ကိုယ်စားလှယ်တစ်ဦးထက်ပိုပါက အပိုစာရွက်ဖြင့် ပူးတွဲဖော်ပြပါ။ (Note: If there is more than one representative, describe attached additional sheets. ပူးတွဲပါ ကိုယ်စားလှယ်များကိုလည်း ဤတောင်းဆိုချက်ပါ အမှတ်တံဆိပ်အတွက် ခန့်အပ်ထားသည့် တာဝန်များအတိုင်း ဆောင်ရွက်ခွင့်ပြုပါသည်။ (Representatives in the attachment is permitted to act as the appointed functions for the mark in this request.)
၃	ကိုယ်စားလှယ်၏လုပ်ငန်း (Business of Representative)
	လုပ်ငန်းအမည် _____ (Business Name) လုပ်ငန်းဆောင်ရွက်သည့် လိပ်စာအပြည့်အစုံ _____ (Business Address)

Source: Department of Intellectual Property in Myanmar (<https://ipd.gov.mm>)