

Workshop on Measures for Accession to, and

Effective Use of the Madrid System, Tokyo

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Current Status on Accession to the Madrid System

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Presentation Outlines

- +Introduction**
- +Existing Relevant Laws in Myanmar**
- +New IP laws(draft)**
- +Protection of Trade Mark Rights in Myanmar**
- +Remedies for Infringement**
- +Conclusion**

Myanmar

- **situated in South East Asia**
- **Neighbour countries- India, China, Thailand, Laos, Bangladesh**
- **located between 09 degree 32 minutes North & 28 degree 31 minutes north**
- **longitudes 92 degree 10 minutes East and 101 degree 11 minutes east.**
- **land area - 676,577 sq km**
- **over 2090 km from north to south & over 925 km east to west**
- **2832 km long coastline on the Indian Ocean**
- **old capital city -Yangon, new capital city - Nay Pyi Taw**



Introduction

Nowadays, the IP related matters are getting more and more important day by day; especially, as it is quickly appearing the globalization.

The IP related matters are becoming more extensive and more important in foreign trade, foreign investment and the fields of cooperation of science and technology.

Myanmar and International Organizations

- **World Trade Organization (WTO) – 16 Nov 1994**
- **ASEAN - 23 July 1997**
- **WIPO - 15 May 2001**

*Agreement on Trade-Related Aspects of Intellectual
Property Rights
(TRIPS Agreement),
1994*

*ASEAN Framework Agreement on Intellectual
Property Co-operation, 15 Dec 1995*

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Relevant Laws Related to IP in Myanmar

1. The Myanmar Copyright Act, 1914:
 2. The Myanmar Merchandise Marks Act, 1889:
 3. The Myanmar Patents and Designs (Emergency Provision) Acts, 1945:
 4. The Registration Act; 1908:
 5. The Penal Code; 1860:
 6. The Sea Customs Act, 1878:
 7. The Land Customs Act; 1924:
 8. The Television and Video Law; 1996:
 9. The Computer Science Development Law, 1996:
 10. National Drug Law, 1996:
 11. Traditional Drug Law, 1996:
 12. Motion Picture Law, 1996:
 13. The Specific Relief Act, 1877:
 14. The Code of Criminal Procedure, 1898:
 15. The Code of Civil Procedure, 1808:
 16. Electronic Transactions Laws, 2004:
 17. Science and Technology Law, 1994:
- At the early of 19th century, relevant laws in Myanmar seem to be impressive and had timely developed to a substantial extent.
 - At present, out mode and not in harmony with present situations at home and abroad due to lack of modification in accordance with the dynamism of the global economic trends.

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Current Status of Madrid System in Myanmar

- No specific law for **Madrid System**
- **Existing laws** relating to **Madrid System** do not cope with the current economic trend and developments in the field of IP
- Need to be **reviewed and redrafted** the existing laws in order to ensure compliance with international and inter-governmental obligations of Myanmar.
- Ministry of **Science and Technology**, Ministry of **Commerce** and **Office of the Attorney General** have to work together to emerge the comprehensive, transparent and also effective protection of IPRs to be in line with the International conventions and agreements including TRIPS agreement.

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Preparation of Draft Intellectual Property Laws

Ministry of Science and Technology coordinated with the responsible persons from **Attorney General Office** and drew up the following **Draft Myanmar Intellectual Property Laws**

- (1) **Patents Law (Draft)**
- (2) **Trademarks and Service Marks Law (Draft)**
- (3) **Industrial Designs Law (Draft)**
- (4) **Copyright Law (Draft)**

Protection of Trade Mark Rights in Myanmar

- **Trademark -purpose of guiding him in his decision to buy**
- **Decision on the expected characteristics or other properties of the goods (size, weight, colour, fragrance, taste, durability, degree of efficiency in the operations in which the goods are used, etc).**
- **No specific statutory law on trademark rights, dependment upon the general principles of Common Law**
- **A trademark as “a mark used for denoting, that goods are manufactured or marked by a particular person.” According to this definition, even words can constitute a trademark. (Penal Code section 478)**
- **A very wide sense although there being no Trademarks Act**
- **distinctive so as to distinguish the goods of the proprietor of a trademark from those of other persons (In Section 478 of the Penal Code)**
- **Distinguishing a particular person’s good from somebody else’s not a quality attributed to the particular article.**
- **Penal Code and some civil laws for protection of the rights of proprietor of the trademark with effective remedies**
- **many manufacturers usually register the entire label attached on the goods, although within that label they may have a particular device which may be called a trademark.**
- **the manufacture may use a particular colour combination on his goods may be prosecuted or sued or both actions may be taken against him.**

Trademark Registration

- **Direction 13 , under section 18 (I) of the Registration Act**
- **A trademark may be registered with the Office of Registration of Deeds by means of a declaration in daily newspapers, stating that any fraudulent imitation or unauthorized use of or infringement of the said trademark will be dealt with according to law.**
- **not conclusive proof of the ownership or user and the ability to produce a registered document may be of some help in a criminal or civil proceeding.**

Trademark Renewal

- **By re-registration once every three years after first registration**
- **By republication once every three years after first publication**
- **By the way of both re-registration and republication**

Amendment of Trademark Registration

- **For name change and address change of the applicant,**
- **mentioning the previous registration number and date**
 - **Declaration of Amendment of Trademark Ownership**
 - **Requisite documents- Special power of attorney (POA) , duly notarized, authenticated and endorsed by the Myanmar Embassy/ Myanmar Consul/ Vice Consul / Representative of the Government of the Union of Myanmar**

Remedies for Infringement

- According to a ruling in 1939 of the late High Court of Yangon
- No civil action for Infringement of Trademark Rights
- Only by an action for passing-off
- Under section 54 of the Specific Relief Act, which clearly authorizes the courts in Myanmar to grant perpetual injunctions in infringement suits.
- The relief obtainable in these actions – injunctions, damages , other ancillary relief
- Action against anyone for the following offenses:
 - Using a false trademark
 - Counterdeiting a trademark
 - Making or possessing any instrument for counterfeiting a trademark
 - Selling goods marked with a counterfeit trademark -Punishable with imprisonment from one to three years or with fine or with both.

Conclusion

- Existing laws relating to intellectual property are obsolete and also do not cope with the current trends and developments in the field of intellectual property.
- To be in line with the economic system, the State Legislature
- 4 IP laws naming Patent, Industrial Design, Trademarks and Copyright under the process for legislation
- Still studying to be better understanding this system
- Need to draw the rules and regulations concerning with the drafted IP Laws and to have some technical assistance for that (sample regulations, reference materials, appropriate software programs, training, expert mission, etc., as well as the financial assistance.)
- In the future, more contact and close cooperation between Myanmar and WIPO as well as JPO

Thank You