

TUNISIA

Trade Marks (Register) Decree

Decree No. 2001-1603 of July 11, 2001, establishing the procedures for registration and objection to registration of factory, trade and service marks, and the procedures for entry in the National Register of Marks

ENTRY INTO FORCE: July 20, 2001

TABLE OF CONTENTS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

1.

An application for registration of a mark should necessarily be accompanied by a file containing the following documents and information:

(1) a request for registration of the mark, draft using a form established by the body responsible for industrial property.

The application must specify.

- the identity of the applicant and his address,
- the model of the mark, consisting of a graphic representation thereof in three copies,
- the goods or service to which the mark applies as well as the class to which the goods and services belong,
- where appropriate, an indication that the applicant claims the right of priority attached to a previous deposit abroad,

(2) proof of payment of the prescribed fees,

(3) the power of attorney, where this is established,

(4) justification for use where the distinctive character of the sign registered as a mark has been acquired through use,

(5) where the applicant is a foreigner who is neither domiciled nor has his registered office on the national territory, and subject to international conventions, proof that he has lawfully registered the mark in the country of his domicile or where his registered office is based, and provided that country grants reciprocal protection Tunisian marks. A single deposit may relate to one mark only.

2.

On receipt of a deposit, the body responsible for industrial property shall indicate the deposit date and number on the registration application. All subsequent correspondence or filings of documents which do not state the registration application number or which are not accompanied, where appropriate. By proof of payment of the prescribed fee, shall be declared inadmissible.

3.

The objection provided for by Article 11 of the above Law on the Protection of Factory, Trade and Service Marks shall be submitted in writing.

The objection raised shall include:

(1) a request for the entry of an objection in the National Register of Marks in two copies. The request shall include the following information:

- the identity of the party raising the objection and the information allowing the existence, nature, origin and scope of his rights to be established;

- references relating to the registration application against which the objection is raised and an indication of the goods or services covered by the objection;

(2) the following documents:

- an explanation of the means on which the objection is based;
- the power of attorney, where appropriate.

4.

the objection shall be raised according to the following procedure:

(1) the objection shall be notified without delay to the holder of the registration application. A prescribed period shall be given for that person to submit his observations and, where appropriate, established a power of attorney. The prescribed period may not be less than 45 days;

(2) where he fails to submit his observations or, as necessary, established a power of attorney lawfully within the prescribed deadline, the holder of the registration application shall be considered to have acquiesced in the allegations made by the party raising the objection and therefore to have withdrawn the registration application;

(3) where the holder of the registration application submits his observations, the body responsible for industrial property themselves at his office on a date which he shall set, with a view to achieving reconciliation between them;

(4) The body responsible for industrial property shall propose an amicable solution once he has studied the case and heard both parties.

Where the amicable solution is accepted by both parties, the agreement shall be recorded in an official report signed by both parties and the legal representatives of the body responsible for industrial property. Details of the follow-up action taken in relation to the registration application shall be recorded in the official report.

Where one of the parties rejects the amicable solution and the party raising the objection provides proof, within two month of the recording of non-conciliation made by the legal representative of the body responsible for industrial property, that he has made a request to the competent court, challenging the mark registration application, the body responsible for industrial property shall decide to suspend the registration procedure for the mark in question.

5.

The holder of the registration application may, in the observations he submits, invite the party raising the objection to produce documents establishing that the loss of the rights on which the objection is based

is not incurred as a result of failure to use those rights.
The body responsible for industrial property shall grant a period of the one month for the party raising the objection to produce the documents.

6.

The objection procedure shall be terminated where:

- (1) the party raising the objection has lost the capacity to act or has not provided, within the period provided for in Article 5 of this Decree, a document established that the party has not been deprived of his rights;
- (2) the objection has become pointless following either an agreement between parties, or the withdrawal or rejection of the application for the registration against which the objection was raised;
- (3) change in names, legal status or address of the applicant, as well as rectifications of material errors affecting entry in the Register.

7.

For each deposit, the following shall be entered in the National Register of Marks, hereinafter the Register.

- (1) the identity of the applicant and references to the deposit, as well as subsequent acts affecting its existence or scope;
- (2) the acts leading to any change in ownership of a mark, or the enjoyment of the right attached thereto and, where the ownership of the mark is claimed, the objection to its registration or corresponding assignment,
- (3) changes in names, legal status or address of the applicant, as well as rectification of material errors affecting entries in the Register.

8.

The information referred to in Article 7(1) of this Decree shall be entered at the initiative of the body responsible for industrial property or, where the judgment is final and relates to cancellation or disentanglement, at the request of one of the parties.

9.

The act referred to in Article 7(2) of this Decree, amending the ownership of a mark or the enjoyment of the rights attached thereto, such as the transfer, granting the right of use, transfer of the security or renunciation thereof, seizure, validation and lifting of seizure, shall be entered in the Register at the request of one of the parties to the act.

Where an objection is raised to the registration of the mark, an entry in the Register shall be made at the request of the party raising the

objection.

10.

Changes to name, address, legal status and rectification of material errors shall be entered in the Register at the request of the holder of the registration application or owner of the mark.

However, where these changes and rectifications relate to a previously registered act, the request may be made by any party to the act.

11.

An application for entry in the Register shall include:

- a written request for registration in two copies;
- any document justifying the registration;
- proof of payment of the prescribed fee;
- power of attorney, where appropriate.

12.

The Minister of Industry shall be responsible for enforcing this Decree which shall be published in the Official Gazette of the Republic of Tunisia.