

## Protection of IP Israel

### I. TRADE MARKS

#### I.1 INTRODUCTION

Trade marks in Israel are protected by the 1938 Trade Mark Ordinance.

#### I.2 REGISTERED TRADE MARKS

The Trade Mark Ordinance protects registered trade marks. In addition, “well known” marks can also be protected under this statute, whether or not such marks are registered in Israel.

Any person or body corporate may register as a trade mark a sign which is capable of distinguishing goods or services.

The Commissioner of Patents, Designs and Trademarks has the discretion to refuse registration for a variety of reasons, including if the mark:

- suggests a connection to the President of the State or comprises an official emblem of the State;
- contains a picture of an individual which that person has not consented to;
- has a religious meaning;
- contains a geographical location without justification;
- is misleading generally or promotes unfair competition; or
- is identical to an earlier trade mark which is registered in relation to identical goods or services.

Registration of a trade mark confers on the proprietor an exclusive right to use the mark in relation to the goods or services for which it is registered (and for different goods, under certain conditions, if it is a well known mark). It also grants the right to bring an action for trade mark infringement against third parties who use an identical or similar mark in connection with identical or similar goods or services without consent where there is a likelihood of confusion on the part of the relevant public.

Several supreme courts of the last two years have recognised that 3D shapes and products packing can be registered as trade marks. Trade mark registrations last for an initial period of 10 years from the day of the application and can be renewed for periods of 14 years without limitation.

### **1.3 UNREGISTERED TRADE MARKS**

Unregistered trade marks, which are not well known marks, can be protected at common law by means of a passing off action.

In order to succeed with an action for passing off, the proprietor of the unregistered trade mark must show that he has goodwill or reputation in the mark and that there has been a misrepresentation by the defendant to the public which is likely to cause confusion.

## **2. PATENTS**

### **2.1 INTRODUCTION**

The Israeli Law governing patents was enacted in 1967. It has been amended several times, most notably in 1999 to ensure compliance with the TRIPS Agreement.

Israel is party to most of the conventions governing the protection of inventions, including the Paris Convention and the Patent Co-operation Treaty (PCT).

An inventor of a product or process which is new, useful and capable of industrial or agricultural application may apply for a patent.

A patent application is filed at the office of the Registrar of Patents, Designs and Trade Marks in Jerusalem, which may be done with the help of a lawyer or patent attorney.

Where a patent application is also filed by the inventor in another convention country, the date of the foreign application is deemed to be the date of the filed application in Israel, if the applications are made within 12 months of each other. An opposition to the grant of a patent may be filed within three months from the date of publication of the application in the Official Gazette.

The grounds upon which a patent may be revoked by the Registrar are similar to those upon which an application may be refused, including a lack of novelty.

Patents are protected for 20 years from their filing date, provided their renewal fees are paid in time. Certain exploitation rights are reserved in favour of persons who, prior to the application date, have exploited the invention in Israel in good faith.

### **2.2 DISTANCE SELLING AND E-COMMERCE**

The Israeli Consumer Protection Law 1981 sets out the law on distance selling.

The seller is obliged to provide the consumer with full details concerning the proposed deal, including the seller's identity, address and identification card number or registered company number.

The seller must also advise the consumer of how the deal can be cancelled. In any event, the consumer is always entitled to cancel the purchase within 14 days. This is calculated either from

the date of the purchase or from the date of receipt of all the details concerning the deal whichever is latest.

The law concerning distance selling does not apply to perishable goods, hotel reservations or to goods which can be reproduced once the consumer has opened their packaging.

### **2.3 COPYRIGHT**

Copyright in Israel is governed by the Copyright Law 2007 and the Copyright Ordinance.

Copyright provides the copyright owner with the sole right to produce or reproduce a work of literature, music, drama or art, or any substantial part thereof, in public in any material form.

Copyright is an automatic right in Israel. As a result, various practices have developed in order to record when the work was created, including the author sending himself a copy of his copyright work by registered mail (provided the envelope remains unopened), depositing of a copy of the work with a lawyer with an affidavit, or registering the work with the Library of Congress in the U.S.

The right lasts for the life of the author plus 50 years from the beginning of the first year after the author's death.

Any person who performs an act exclusively reserved to the copyright owner without consent infringes copyright. Such acts include not only performance, production or reproduction of a copyright work, but also sales and distribution of an infringing product.

Where there is infringement, the copyright owner is entitled to an injunction, an interlocutory remedy and damages. There is an amount fixed by law for liquidated damages without having to prove actual damage.

The defences to a claim for copyright infringement reflect the defences under UK law. They include a "fair use" defence where use is for the purposes of research and study and the copying or photographing of a work displayed to the public.

The Copyright Ordinance also provides protection for computer software, which is afforded the same protection as a literary work (excluding moral right), and recognises a derivative composition/creation (which is a new creation based on an earlier one). The Ordinance determines that a moral right is a personal right and is not transferable.

### **2.4 DESIGN RIGHT**

Design rights are protected by the Patents and Designs Ordinance.

Registered designs protect only the external aspect of the protected item as against a precise copy. There is no protection of the "pith and marrow" of an item or against a similar or nearly identical copy.

Designs are granted protection for a period of five years from the date of application, and are renewable for two additional five year periods.

## 2.5 IP PECULIAR TO ISRAEL

In addition to the above intellectual property rights, specific additional laws exist to protect names of origin and geographical names (known abroad as “Appellation Controlée”). There is also protection for developers of agricultural strains.

Another peculiarity in Israeli law is that a claim of unjust enrichment may be brought as a cause of action in its own right as a means of relief , even if no other protection is available.

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