

# Protecting your Trade Mark in Myanmar

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Blessed with an abundance of natural resources like gemstones, oil and natural gas, and a population estimated at 60 million (second largest in South East Asia), the Republic of the Union of Myanmar (historically known as Burma) is widely seen as a land of vast opportunity and potential for entrepreneurs and multinational companies.

Once a British colony, Myanmar law has its roots in the common law. Sadly, these laws, including its intellectual property laws, are often criticised for failing to keep pace with legal and economic changes for much of the nineteenth and twentieth century. For example, Myanmar presently has no specific legislation covering the registration and protection of intellectual property rights. However, as the country marches with the times, it has also recently refuelled its efforts to modernise its intellectual property laws in a bid to attract and sustain an influx of foreign investment.

Pursuant to its obligations under the Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS) and ASEAN Framework Agreement of Intellectual Property Cooperation 1995, and continuing a process that had begun in 1998 when Myanmar first joined the World Intellectual Property Organization (WIPO), Myanmar's Ministry of Science and Technology, Ministry of Commerce, and Office of the Attorney General have been collaborating with WIPO to draft Myanmar's first intellectual property laws, including laws for the protection of trademarks, copyright and industrial designs.

In particular, Myanmar's draft trademark law, released earlier this year for comments, is widely anticipated to be the first intellectual property law to come into force. The new trademark law is expected to bring Myanmar's trademark protection regime in line with the practice in other countries with developed trademark protection regimes.

Presently, trademark owners in Myanmar follow an established practice of affirming a declaration in a prescribed form that they are the owner of their trademarks, registering their declarations with the Yangon Registration Office of the Settlement and Land Records and publishing a cautionary notice in the press, to warn third parties of their rights in these trademarks. This established practice, while considered helpful to establish the trademark owner's rights in their marks during enforcement proceedings, is not considered conclusive evidence of ownership and does not by itself create a property right for the owner in their trademarks. This practice also does not include any substantive examination of the trademarks.

Myanmar's proposed new trademark law, however, will include:

- the implementation of a trademark registration system under which the person who files the earliest application for the protection of a trademark will be allowed to register the mark;
- the establishment of the Myanmar Intellectual Property Office (MIPO) to undertake the role of accepting, examining and registering applications for trademark registration;
- an opposition procedure whereby third parties will have the opportunity to oppose the registration of new

trademarks after the new trademarks are examined by MIPO and published for opposition;

- the automatic and continued protection of trademarks “registered” under the present declaration and cautionary notice regime (Old Marks) for a period of three years within the effective date of the new trademark law; and
- the requirement for the owners of Old Marks to file new applications to register the marks with the MIPO (who will then conduct an examination on the registrability of the marks) within three years of the effective date of the new trademark law in order to extend the protection of these marks beyond the initial three year protection period.

How should businesses respond to the proposed new trade marks law? It would be prudent for investors and those who have an interest in the Myanmar market to seek immediate protection of their trademarks via the present declaration and cautionary notice regime before the new trademark law comes into force. These proprietors would then be able to rely on the transition provisions of the proposed new Trade Mark Act and enjoy trademark law protection in the period immediately after the new law comes into effect. It would otherwise be a pity for genuine trademark owners to “miss the boat” and find themselves exposed and vulnerable to third parties usurping their trademarks.

## Your Key Contacts



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