

**REVIEW OF LEGISLATION**

Replies from Kuwait to questions posed by the United States

Addendum

By means of a communication from the Permanent Mission of Kuwait dated 17 June 2001, the Secretariat has received copies of the following responses to questions posed by the United States, which were circulated in document IP/C/W/215/Add.1 .

---

C. TRADEMARKS

9. *Please describe in detail the subject-matter that can comprise a trademark under Kuwait's trademark law and cite to the relevant provisions of law.*

A trademark is any object made of a distinctive shape, whether of words, signatures, letters, figures, designs symbols, addresses, stamps, pictures, carves or any other mark or partial or total of a mark, if it is used or intended to be used in distinguishing goods or products for the purpose of indicating that they are belonging to the owner of the said trademark by the reason of their manufacture, selection, trading or display for sale. It is protected by commercial law.

10. *Please describe in detail the procedure that must be followed to register a trademark in Kuwait, citing the relevant provisions of the trademark law and describe the rights that the owner of a registered mark acquires with registration.*

Please see annex 1.

11. *Please explain in detail how Kuwait's trademark and other laws provide for the protection of well-known trademarks and service marks, citing the relevant provisions of law.*

Well-known marks are protected under Article 62 of Law No. 1/ 2001 (see annex 2). Service marks are protected under Article 3 of the Ministerial Act No. 8 / 1995, also considered in Article 61 of Law No. 1 / 2001 (see annex 3)

12. *Please describe in detail any limitations or special requirements that apply to trademark rights under Kuwait's laws and indicate how those limitations take account of the legitimate interests of the owner of the trademark and of third parties.*

[No response received.]

13. *Please indicate the length of the initial term of protection for a registered trademark under Kuwait's trademark law and describe the conditions for renewing the registration and the period of the renewal. Please cite to the relevant provisions of Kuwait's law.*

An application of renewal must be submitted to the elapse of ten years during the last year of protection (Article 77 of Law No. 68 / 1980 and Article 77, para. 2 of Law No. 1 / 2001) (see annex 4).

D. GEOGRAPHICAL INDICATIONS

14. *Please describe in detail how and under what laws geographical indications are protected in Kuwait and cite to the relevant provisions of law.*

Geographical indications are protected under Article 62 of Law No. 1 / 2001 (see annex 2).

15. *Does the law of Kuwait regarding geographical indications provide for any of the exceptions to protection of geographical indications contained in Article 24 of the TRIPS Agreement, and, if so, please describe the way in which the exception is applied and cite to the relevant provisions of law.*

Please see annex 2.

E. INDUSTRIAL DESIGNS

16. *Please describe in detail the way in which industrial designs, including textile designs, are protected under Kuwait's laws and cite to the relevant provisions of law.*

Please see annex 5.

F. PATENTS

17. *Please explain whether or not inventions within the categories specified below are eligible to be patented under Colombian law if they are otherwise novel, involve an inventive step, and are industrially applicable:*

- (a) *process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program;*
- (b) *product inventions consisting of elements of a computer-implemented invention including:*
  - (i) *machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; or*
  - (ii) *a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;*
- (c) *process inventions that facilitate the conduct of business;*
- (d) *a micro-organism.*

[No response received.]

18. *Please identify any exceptions to the rights conferred by a patent in Kuwait and indicate the manner in which the law of Kuwait ensures that such exceptions do not unreasonably conflict with a*

*normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.*

[No response received.]

19. *Please describe any provisions for compulsory licensing of patents in Kuwait's law and explain how Kuwait ensures that each of the conditions in Article 31 of the TRIPS Agreement is met in relation to any compulsory licences. Please cite to the relevant provisions of law.*

Law No. 4 / 1962, Article 29 states:

"Where the invention is not utilized in Kuwait within three years from the date of granting of the patent, or where the owner is unable to utilize it adequately to meet the needs of the country, or where the utilization of the invention has been stopped for a minimum period of two consecutive years, the Trademarks Control Office may grant a compulsory licence for the utilization of the invention to any person to whom the patent owner has refused to transfer the right of utilization or has made such transfer conditional upon the fulfilment of exorbitant financial terms.

The compulsory licence shall be granted on condition that the applicant is able to utilize the invention effectively, and the patent owner shall be entitled to a suitable compensation. The Trademarks Control Office shall forward a copy of the application to the patent owner who shall submit to the Control Office, within the period specified in the regulations, a written reply to the application. Where the reply is not received within the prescribed period, the Trademarks Control Office shall issue its decision regarding the acceptance or the rejection of the application.

The Control Office may make its acceptance subject to such conditions as it may deem necessary and its decision shall be challengeable before the court within a period of thirty days from the date of its notification to the person concerned."

20.-22. [No responses received.]

23. *Please describe in detail the manner in which plant varieties are protected under Kuwait's laws and cite to the relevant provisions.*

Please see annex 6.

## **ANNEX 1**

### Article 66

Any application for a Trade Mark Registration shall be submitted to the Department of the Trade Mark Registration, in conformity with the formalities and conditions provided for in the implementing Regulations of this Register.

### Article 3 of Ministerial Act No. 8 / 1995

The application for registration shall incorporate the following particulars:

- a. The name of the applicant and his surname, occupation and trade name, if any. If the applicant is a company, the name of the company, its address, the place of its registered office and its objects shall be stated.
- b. The nationality of the applicant and his place of business.
- c. The mark required to be registered.
- d. Statement of the goods, products or services for which registration of the mark is required along with the number of class of goods related thereto.
- e. The territory where the business or the exploitation project the goods or products of which are distinguished or are to be distinguished by the mark is situated.
- f. If the application is made by an agent, his name, surname and address should be stated.
- g. Elected domicile of the applicant in the State of Kuwait to which all correspondence and documents pertinent to registration should be sent.
- h. The signature, seal or thumb-print of the party concerned or that thereunto by him authorized. If the applicant is a company or a society, the papers shall be signed by that entitled in accordance with its memorandum of association and articles of association to sign on its behalf.

**ANNEX 2**Article 62 of Law No. 1/ 2001

[Shall not be trade mark, nor shall be registered as such, a mark that:

1. does not distinguish the products or services of any firm from those of other firms;
2. is contrary to public order or public morality;
3. is likely to mislead the public or commercial circles, especially as to the geographic origin of the products or services concerned, or as to their nature of characteristics;
4. corresponds to an honorary emblem, a flag, or other emblem, a name, an abbreviated name, initials, an official sign or acknowledge emblem of any state, inter-governmental organization or an organization established by an international agreement; or is an imitation thereof of a component part, unless authorized by the competent authorities of that state or organization;
5. is identical, or similar to the point of confusion, with another mark or trade name well-known in the State of Kuwait, or amounts to a translation thereto, in respect to identical or similar goods and services of another firm; or denotes goods or services which, although not identical or similar, its use is likely to suggest a connection between the mark and another well-known mark or trade name in a manner that might prejudice the owner of the [that] mark;
6. is identical with the mark of another owner that has been registered or applied for prior to the application for the registration of the mark concerned, as to the date of submission or that of priority concerning the same goods or services or concerning closely related goods or services, or is similar to an extent that might be misleading or confusing.]

### ANNEX 3

#### Article 61 of Law No. 1 / 2001

[A trademark is anything which takes a distinctive form, including words, signatures, letters, numbers, drawings, symbols, titles, seals, pictures, engravings, graphic components or colour composition; any other mark perceptible by sight, sound or smell; or any other mark or a collection thereof, if such are used or intended to be used to distinguish goods, products or services in order to indicate that they belong to the owner of the mark because he manufactures them, selects them, trades in them or displays them for sale.]

#### Article 3 of Ministerial Act No. 8 / 1995

The application for registration shall incorporate the following particulars:

- a. The name of the applicant and his surname, occupation and trade name, if any. If the applicant is a company, the name of the company, its address, the place of its registered office and its objects shall be stated.
- b. The nationality of the applicant and his place of business.
- c. The mark required to be registered.
- d. Statement of the goods, products or services for which registration of the mark is required along with the number of class of goods related thereto.
- e. The territory where the business or the exploitation project the goods or products of which are distinguished or are to be distinguished by the mark is situated.
- f. If the application is made by an agent, his name, surname and address should be stated.
- g. Elected domicile of the applicant in the State of Kuwait to which all correspondence and documents pertinent to registration should be sent.
- h. The signature, seal or thumb-print of the party concerned or that thereunto by him authorized. If the applicant is a company or a society, the papers shall be signed by that entitled in accordance with its memorandum of association and articles of association to sign on its behalf.

**ANNEX 4**Article 77 of Law No. 68 / 1980

1. The Protection Period of the Mark resulting from its registration is ten years, and the person entitled to it shall have the right to secure the continuation of such protection for any new periods if he applies for renewal within the last year under the formalities and the conditions provided for in Article 66 hereof. Within the month following the expiry of the protection period, the registrar shall notify the owner of the Mark in writing of the expiration of its protection period, at the address recorded in the Register. If the owner of the Mark fails to submit an application for renewal within a lapse of three months following the expiry date of the protection period, the Registrar shall on his own accord cancel the Mark from the Register.

Article 77, para. 2 of Law No. 1 / 2001

[2. Within the month following the termination of the period of protection, the Registrar shall notify the owner of the mark in writing that the period of its protection has ended; such notification being sent to him at the address entered in the Register. Should six months pass following the date of the end of the period of protection without the owner of the mark presenting an application for renewal, the Registrar shall automatically delete the mark from the Register.]

## **ANNEX 5**

### **PART TWO**

#### **DESIGNS AND INDUSTRIAL MODELS**

(Article 35)

For the purpose of the application of this Law, any arrangement of lines or any type of figure, whether coloured or uncoloured, designed for use, in industrial production by a mechanical, manual or chemical process shall be considered a design or industrial model.



## ANNEX 6

Article 2. – A patent of invention shall not be granted in respect of the following:

1. inventions, the exploitation of which is against morality or public policy [*public order*];
  2. discoveries, theories, mathematical methods and computer programs;
  3. schemes, rules or methods for doing business, performing purely mental acts or playing games;
  4. plant varieties, animal species, or processes used for the production of plants or animals, other than microbiological processes and the products of such processes;
  5. methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body; with the exception of products for use in any of those methods.
-