

CRIMINAL LIABILITY FOR TRADEMARK INFRINGEMENT

A Collaborative International Study





INTRODUCTION

This paper provides an overview of criminal liability for trademark infringement for many countries around the globe. This collaborative study was started in July of 2020 and was coordinated by Scott Johnston, Anneliese Mayer, and Kelsey Covert of Merchant & Gould P.C.

It is imperative that we note the collaborative nature of this study. We received immense amounts of information from our colleagues from firms in countries around the globe. We are incredibly grateful for the assistance and valuable time of our international colleagues; without their generous assistance, this paper would not have been possible.

For each country included in this paper, the main question answered was: "Is there criminal liability for trademark infringement in a particular country?" If the answer to that is "yes," this paper also includes information regarding: "what is the law or rule that lists that criminal liability"; "what are the elements of the crime or how is the crime defined"; "what is a typical sentence for the crime"; and any other relevant information.

The scope of these questions for this paper centered around trademark-related claims (including trademark infringement, trademark counterfeiting, and unfair competition).

The goal was to include as many countries as possible in this report. If a country is not listed, it does not mean that it does not have criminal liability for trademark infringement; a country not listed is simply one that we could not find or gather the information from for any number of reasons.

In addition to the substantive information, each country's section also includes the name and contact information of our international colleagues who assisted us with this work and provided information to us. In some situations, we received information from more than one colleague. In those situations, the colleagues are listed in alphabetical order, and the order does not imply or suggest the quality or quantity of information supplied by each colleague.



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ARGENTINA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Mark Law No. 22362.

<https://www.miranda-argentina.com/wp-content/uploads/2016/12/ARGENTINA-TRADEMARK-LAW.pdf>

Chapter III. Offenses. Section 1. Arts from 31 to 37.

Precautionary Measures. Arts. From 38 to 41.

What are the Elements of the Crime/How is the Crime Defined?

Offenses. Punishable acts and proceedings.

- a) anyone who forges or fraudulently copies a registered trademark or designation;
- b) anyone who uses a registered mark or designation that is forged or fraudulently copied trademark or belongs to a third party without said party's authorization;
- c) anyone who offers for sale or sells a registered trademark or designation that is forged or fraudulently copied or belongs to a third party without said party's authorization;
- d) anyone who offers for sale, sells or otherwise markets goods or services with a forged or fraudulently copied registered trademark.

What is the typical Sentence for the Crime?

Penalties. A penalty of imprisonment for a term of three (3) months to two (2) years, with the possible addition of a fine of four thousand (\$ 4.000) to one hundred thousand (\$100.000) pesos

The National Executive Power shall adjust the amount of the aforementioned fine annually, as the circumstances may require.

The injured party, whatever the channel chosen, may request

- a) The confiscation and sale of the goods and other elements with the infringing trademarks;
- b) The destruction of the trademarks and trade names in infringement and of all the elements which carry them if they cannot be detached from the latter. The judge, at the request of the party, shall order the publication of the sentence at the cost of the infringer if the latter had been sentenced or defeated in litigation

Other relevant information:

- a) In the civil actions which are brought to obtain the cessation of the use of a trademark or of a trade name, the plaintiff may demand from the defendant real guarantee, in the event that the latter were not to interrupt the use put in question. The judge shall establish this guarantee in accordance with the apparent right of the parties and may demand counter guarantees. If real guarantee were not supplied, the plaintiff may request the suspension of the production and the attachment of the objects in infringement, granting, in the event it were requested, sufficient guarantee.



- b) The right to all claims by civil litigation prescribes after three (3) years shall have elapsed after the commission of the infringement or after one (1) year to elapse as from the day in which the owner of the trademark had knowledge of the act.
- c) Trademark owners can pursue infringement actions before the Federal Criminal Courts under the criminal provisions of the Trademark Law or before Federal Civil and Commercial Courts. Even though the criminal actions have a great impact on the infringer in Argentina the owners and lawyers typically choose the civil action. These Courts have more experience in this matter and make a deep analysis of the cases. Additionally, the injunctions and preliminary measures are delivered fast.
- d) Regarding Unfair Competition: It is ruled by Emergency Decree No. 274/2019
- Offenses: Art 10 of the Decree includes a list of acts that would constitute unfair competition, such as: acts of deception and confusion, violation of rules, abuse of economic dependence, improper obtainment of commercial conditions, sale below cost, improper exploitation of reputation of third parties; acts of unfair imitation capable of generating confusion regarding the origin of the goods; comparative advertising, among others.
 - Sanctions: a) a warning b) fines can reach up to 10 million Mobile Units. This value is currently around of AR\$ 20 per unit and is annually updated, based on the Consumer Price Index, c) suspension of the National Register of State Providers for up to 5-year term, d) loss of concessions, special tax or credit regimes that they enjoy e) the closing of facilities
- e) The Argentine Customs has a Trademark Alert System (TAS) in place, which provides registered owners with information about any imported goods bearing their marks before they are released to the market. When a trademark is recorded with the TAS, any request for importation of goods identified with such marks that is not filed by a registered importer is automatically blocked. If the trademark holder objects to their release and the importer fails to demonstrate the products are genuine, the products are held at customs pending destruction. Destruction proceedings take approximately one year.
- f) Argentina has adopted the principle of international exhaustion, whereby the parallel importation of genuine goods is not considered a trademark infringement.

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ARMENIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code, Article 197

<https://www.aipa.am/en/CriminalCode/>

What are the Elements of the Crime/How is the Crime Defined?

An illegal use of a trademark, service mark, trade name or an appellation of origin shall entail criminal liability for the infringer if it has caused a major damage. "Major damage" is defined as damage in excess of 200,000 AMD.

What is the typical Sentence for the Crime?

A 500,000–1,000,000 AMD fine or an imprisonment of up to three months.

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AUSTRALIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Marks Act 1995

<https://www.legislation.gov.au/Details/C2017C00046>

What are the Elements of the Crime/How is the Crime Defined?

Part 14:

120 When is a registered trade mark infringed?

(1) A person infringes a registered trade mark if the person uses as a trade mark a sign that is substantially identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered.

(2) A person infringes a registered trade mark if the person uses as a trade mark a sign that is substantially identical with, or deceptively similar to, the trade mark in relation to:

(a) goods of the same description as that of goods (registered goods) in respect of which the trade mark is registered; or

(b) services that are closely related to registered goods; or

(c) services of the same description as that of services (registered services) in respect of which the trade mark is registered; or

(d) goods that are closely related to registered services.

(3) A person infringes a registered trade mark if:

(a) the trade mark is well known in Australia; and

(b) the person uses as a trade mark a sign that is substantially identical with, or deceptively similar to, the trade mark in relation to:

(i) goods (unrelated goods) that are not of the same description as that of the goods in respect of which the trade mark is registered (registered goods) or are not closely related to services in respect of which the trade mark is registered (registered services); or

(ii) services (unrelated services) that are not of the same description as that of the registered services or are not closely related to registered goods; and

(c) because the trade mark is well known, the sign would be likely to be taken as indicating a connection between the unrelated goods or services and the registered owner of the trade mark; and

(d) for that reason, the interests of the registered owner are likely to be adversely affected.

121 Infringement of trade mark by breach of certain restrictions

(1) This section applies to a registered trade mark if the registered owner, or an authorised user of the trade mark having power to do so, has caused to be displayed on goods (registered goods) in respect of which the trade mark is registered, or on their package, or on the container in which they are offered to the public, a notice (notice of prohibition) prohibiting any act that is under subsection (2) a prohibited act in relation to the goods.



(2) Each of the following is a prohibited act:

(a) applying the trade mark to registered goods, or using the trade mark in physical relation to them, after the state, condition, get up or packaging in which they were originally offered to the public has been altered;

(b) altering, or partially removing or obliterating, any representation of the trade mark applied to registered goods or used in physical relation to them;

(c) if the trade mark has been applied to registered goods, or used in physical relation to them, together with other matter indicating that the registered owner or authorised user has dealt with the goods—removing or obliterating, totally or in part, any representation of the trade mark without totally removing or obliterating the other matter;

(d) applying another trade mark to registered goods or using another trade mark in physical relation to them;

(e) if the trade mark has been applied to registered goods or used in physical relation to them—using on the goods, or on the packaging or container of the goods, any matter that is likely to injure the reputation of the trade mark.

145 Falsifying or removing a registered trade mark

Indictable offence

(1) A person commits an offence if:

(a) a registered trade mark has been applied to goods, or in relation to goods or services; and

(b) the goods or services are being, or are to be, dealt with or provided in the course of trade; and

(c) the person:

(i) alters or defaces the trade mark; or

(ii) makes any addition to the trade mark; or

(iii) wholly or partly removes, erases or obliterates the trade mark; and

(d) the person does so without:

(i) the permission of the registered owner, or an authorised user, of the trade mark; or

(ii) being required or authorised to do so by this Act, a direction of the Registrar or an order

of a court.

Summary offence

(2) A person commits an offence if:

(a) a registered trade mark has been applied to goods, or in relation to goods or services; and

(b) the goods or services are being, or are to be, dealt with or provided in the course of trade;

and

(c) the person:

(i) alters or defaces the trade mark; or

(ii) makes any addition to the trade mark; or

(iii) wholly or partly removes, erases or obliterates the trade mark; and

(d) the person does so without:

(i) the permission of the registered owner, or an authorised user, of the trade mark; or

(ii) being required or authorised to do so by this Act, a direction of the Registrar or an order

of a court.



(3) The fault element for paragraphs (2)(a), (b) and (d) is negligence.

146 Falsely applying a registered trade mark

Indictable offence

(1) A person commits an offence if:

- (a) the person applies a mark or sign to goods, or in relation to goods or services; and
- (b) the goods or services are being, or are to be, dealt with or provided in the course of trade; and
- (c) the mark or sign is, or is substantially identical to, the registered trade mark; and
- (d) the person applies the mark or sign without:
 - (i) the permission of the registered owner, or an authorised user, of the trade mark; or
 - (ii) being required or authorised to do so by this Act, a direction of the Registrar or an order

of a court.

Summary offence

(2) A person commits an offence if:

- (a) the person applies a mark or sign to goods, or in relation to goods or services; and
- (b) the goods or services are being, or are to be, dealt with or provided in the course of trade; and
- (c) the mark or sign is, or is substantially identical to, the registered trade mark; and
- (d) the person applies the mark or sign without:
 - (i) the permission of the registered owner, or an authorised user, of the trade mark; or
 - (ii) being required or authorised to do so by this Act, a direction of the Registrar or an order

of a court.

(3) The fault element for paragraphs (2)(b), (c) and (d) is negligence.

147 Making a die etc. for use in trade marks offence

Indictable offence

(1) A person commits an offence if:

- (a) the person makes a die, block, machine or instrument; and
- (b) the die, block, machine or instrument is likely to be used for, or in the course of, committing an offence; and
- (c) the offence is an offence against section 145 or 146.

(2) Strict liability applies to paragraph (1)(c).

Summary offence

(3) A person commits an offence if:

- (a) the person makes a die, block, machine or instrument; and
- (b) the die, block, machine or instrument is likely to be used for, or in the course of, committing an offence; and
- (c) the offence is an offence against section 145 or 146.

(4) The fault element for paragraph (3)(b) is negligence.

(5) Strict liability applies to paragraph (3)(c).

147A Drawing etc. trade marks for use in offence

Indictable offence

(1) A person commits an offence if:



(a) the person draws, or programs a computer or other device to draw, a registered trade mark or part of a registered trade mark; and

(b) the registered trade mark or part of the registered trade mark is likely to be used for, or in the course of, an offence; and

(c) the offence is an offence against section 145 or 146.

(2) Strict liability applies to paragraph (1)(c).

Summary offence

(3) A person commits an offence if:

(a) the person draws, or programs a computer or other device to draw, a registered trade mark or part of a registered trade mark; and

(b) the registered trade mark or part of the registered trade mark is likely to be used for, or in the course of, an offence; and

(c) the offence is an offence against section 145 or 146.

(4) The fault element for paragraph (3)(b) is negligence.

(5) Strict liability applies to paragraph (3)(c).

147B Possessing or disposing of things for use in trade marks offence

Indictable offence

(1) A person commits an offence if:

(a) the person possesses or disposes of:

(i) a die, block, machine or instrument; or

(ii) a computer, or other device, programmed to draw a registered trade mark or part of a registered trade mark; or

(iii) a representation of a registered trade mark or of part of a registered trade mark; and

(b) the die, block, machine, instrument, computer, device or representation is likely to be used for, or in the course of, an offence; and

(c) the offence is an offence against section 145 or 146.

(2) Strict liability applies to paragraph (1)(c).

Summary offence

(3) A person commits an offence if:

(a) the person possesses or disposes of:

(i) a die, block, machine or instrument; or

(ii) a computer, or other device, programmed to draw a registered trade mark or part of a registered trade mark; or

(iii) a representation of a registered trade mark or of part of a registered trade mark; and

(b) the die, block, machine, instrument, computer, device or representation is likely to be used for, or in the course of, an offence; and

(c) the offence is an offence against section 145 or 146.

(4) The fault element for paragraph (3)(b) is negligence.

(5) Strict liability applies to paragraph (3)(c).

148 Goods with false trade marks

Indictable offence



(1) A person commits an offence if:

(a) the person:

- (i) sells goods; or
- (ii) exposes goods for sale; or
- (iii) possesses goods for the purpose of trade or manufacture; or
- (iv) imports goods into Australia for the purpose of trade or manufacture; and

(b) any of the following applies:

- (i) there is a registered trade mark on the goods;
- (ii) there is a mark or sign on the goods that is substantially identical to a registered trade

mark;

(iii) a registered trade mark on the goods has been altered, defaced, added to, wholly or partly removed, erased or obliterated; and

(c) the registered trade mark, or mark or sign, was applied, altered, defaced, added to, wholly or partly removed, erased or obliterated, as the case requires, without:

- (i) the permission of the registered owner, or an authorised user, of the trade mark; or
- (ii) the application being required or authorised by this Act, a direction of the Registrar or an order of a court.

Summary offence

(2) A person commits an offence if:

(a) the person:

- (i) sells goods; or
- (ii) exposes goods for sale; or
- (iii) possesses goods for the purpose of trade or manufacture; or
- (iv) imports goods into Australia for the purpose of trade or manufacture; and

(b) any of the following applies:

- (i) there is a registered trade mark applied to the goods;
- (ii) there is a mark or sign applied to the goods that is substantially identical to a registered

trade mark;

(iii) a registered trade mark applied to the goods has been altered, defaced, added to, wholly or partly removed, erased or obliterated; and

(c) the registered trade mark, or mark or sign, was applied, altered, defaced, added to, wholly or partly removed, erased or obliterated, as the case requires, without:

- (i) the permission of the registered owner, or an authorised user, of the trade mark; or
- (ii) the application being required or authorised by this Act, a direction of the Registrar or an order of a court.

(3) The fault element for paragraphs (2)(b) and (c) is negligence.

150 Aiding and abetting offences

(1) If a person:

- (a) aids, abets, counsels or procures; or
- (b) is in any way, directly or indirectly, knowingly concerned in, or party to;



the doing of an act outside Australia which, if it were done in Australia, would be an offence against this Act, the person is taken to have committed that offence and is punishable accordingly.

(2) Subsection (1) does not affect the operation of section 11.2 or 11.2A of the Criminal Code.

151 False representations regarding trade marks

(1) A person must not make a representation to the effect that a trade mark is a registered trade mark unless the person knows, or has reasonable grounds to believe, that the trade mark is registered in Australia.

(2) A person must not make a representation to the effect that a part of a registered trade mark is registered as a trade mark unless the person knows, or has reasonable grounds to believe, that that part is registered as a trade mark in Australia.

(3) A person must not make a representation to the effect that a trade mark is registered in respect of goods or services unless the person knows, or has reasonable grounds to believe, that the trade mark is registered in Australia in respect of those goods or services.

(4) A person must not make a representation to the effect that the registration of a trade mark gives exclusive rights to use the trade mark in circumstances in which, having regard to conditions or limitations entered in the Register, the registration does not give those rights unless the person has reasonable grounds to believe that the registration does give those exclusive rights.

What is the typical Sentence for the Crime?

Imprisonment for 5 years or 550 penalty units, or both:

145(1), 146(1), 147(1), 147A(1), 147B(1), 148(1)

Imprisonment for 12 months or 60 penalty units, or both:

145(2), 146(2), 147(3), 147A(3), 147B(3), 148(2)

60 penalty units:

151

Other relevant information:

It is a rare for a criminal prosecution to be initiated for trademark infringement.

In Australia there is no criminal liability for patent infringement. Nor is there any criminal liability for design registration infringement. The most common area in which criminal sanctions are applied in this country are for copyright infringement. This typically is associated with pirated computer software, films and music. The relevant division is Division 5 (Section 132AA to Section 132C). Under s.132AA(d), an offence can be punishable by conviction leading to imprisonment for up to five years and a substantial money sum. (Copyright Act 1968).



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AUSTRIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Austrian Trademark Protection Act §60

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002180>

(German version)

What are the Elements of the Crime/How is the Crime Defined?

60(1) Anyone who infringes a trademark in trade shall be ordered by the court to pay a fine of up to 360 times the per diem rate. Any person who commits such an act commercially shall be sentenced to detention not exceeding 2 years.

(2) Likewise, anyone who uses without authorization a name, a company or the specific designation of a company or a trademark similar to these designations for the designation of goods or services pursuant to section 10 in a way capable of causing confusion in trade shall be punished.

(3) The proprietor or manager of an undertaking who fails to prevent a violation committed by an employee or agent in the course of activities of an undertaking pursuant to subsection 1 or 2 shall be punished.

(4) If the proprietor of the undertaking pursuant to subsection 3 is a corporation, a collective, an association or another legal entity which is not a physical person, subsection 3 shall apply to the organs if they are guilty of having committed such an omission.

(5) The criminal law provisions referred to in subsection 1 and 2 shall not apply to employees or agents who acted upon instruction of their employer or the ordering party if, due to their economic dependency, they cannot be expected to refuse to commit such acts.

What is the typical Sentence for the Crime?

60(1) Anyone who infringes a trademark in trade shall be ordered by the court to pay a fine of up to 360 times the per diem rate. Any person who commits such an act commercially shall be sentenced to detention not exceeding 2 years.

Other relevant information:

The statutes reproduced here only relate to trademark infringement; similar provisions apply to other intellectual property rights; criminal law aspects of patent infringement are provided in §159 of the Austrian Patents Act, those of design infringement in §35 of the Austrian Design Act; the Austrian Unfair Competition Act as well contains criminal law aspects, for example concerning misuse of trade secrets (§11).



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BAHRAIN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Law No.(6) of 2014 related to the Trademarks Law of the Cooperation Council of the Arab States of the Gulf

What are the Elements of the Crime/How is the Crime Defined?

Article (17)

The owner of the registered trademark shall have an exclusive right to use the mark and to prevent the other parties from using it or using any identical or similar sign if the other parties did not get the approval from him - including any geographical indication - in the context of trade to distinguish goods or services related to such goods or services for which the trademark was registered if this use would cause confusion to the public. This confusion is supposed to occur in case of the use of the same mark or a similar mark to distinguish goods or services similar to those for which the mark was registered.

Article (40)

1- In case of infringement, or to prevent an imminent infringement, on any of the rights prescribed under the provisions of this Law (Regulation), the owner may obtain an order on a petition from the Competent Court on the origin of the dispute to take measure or more of appropriate precautionary measures, including the following:

A- Conducting detailed description for the alleged infringement, and goods which are subject of these infringement, and materials, tools and equipment that have been used or will be used in any of it, and keeping relevant evidences.

B- Signing the execution on things, referred to in the preceding paragraph, and revenues resulting from the alleged infringement.

C- Preventing goods that subject of the alleged infringement from entering into the commercial channels and preventing export thereof, including imported goods immediately after customs release them.

D- Stopping or preventing occurring infringement.

2- The court may assign the petitioner to submit what he has of evidences that likely the occurrence of an infringement or an imminent infringement may occur on the right, and may assign him to provide sufficient information to enable the Competent Authority to implement the precautionary measure of identification of the goods concerned.

3- The court would decide on the petition within a period not exceeding ten days from the date of submission, with the exception of exceptional cases estimated by it.

4- The court may issue the order when required, at the request of the petitioner, without calling the other party, if delay in issuing the order may cause the irreparable harm to plaintiff, or there is a fear of the demise or destruction of evidence, in this case the other party would be notified of the matter without delay immediately after its issuance, and when necessary, the other party may be notified after implementing the order directly.



5- If the court ordered to take precautionary measure without calling the other party, the defendant after being notified of the matter may appeal it before the Competent Court within twenty days from the date of notification, and the court in this case have the right to support, modify or cancel it.

6- The court might assign the petitioner to provide a suitable bail or its equivalent guarantee that is sufficient to protect the defendant and to prevent abuse of the right, and the amount of bail, or its equivalent guarantee, shall not be big that leads unreasonably to refrain from request to take precautionary measures indicated to.

7- the owner of the right have to file a claim on the origin of the dispute within twenty days from the date of issuance of the order to take the precautionary measures, or from the date of notification of the rejection of the appeal provided for in clause (5) of this Article, as the circumstances may be, unless this order shall be cancelled at the request of the defendant.

Article (41)

1- The owner, if he affected directly by infringement on any of his rights under the provisions of this Law (Regulation), may file a claim before the Competent Court requesting a judgment for adequate compensation to redress the damage affected him as a result of the infringement, including profits earned by the defendant.

The court determines the compensation so as it deems redressing the damage, to be considered by the court the value of a good or service - that is subject of infringement - in accordance with what is determined by the plaintiff on the retail price or any other licit criterion required to apply or by experience.

2- The owner of the right, instead of a compensation claim redressing the damage including profits earned by the infringer in accordance with the provisions of the preceding paragraph, may request at any time and before the deciding on the claim to judge in his favor an adequate compensation if it is proved that the infringement was by using the trademark in the intention a limitation of commodity or was in any other manner.

3- The Competent Court when considering the claims relating to the rights prescribed under the provisions of this Law (Regulation) would order the following:

A- Seizing goods which are suspected to be involving an infringement, and seizing any materials or tools related thereto, and any documentary evidence relating to the infringement.

B- Obligating the infringer to stop the infringement, including preventing the export of goods that involve the infringement of any of the rights prescribed under the provisions of this Law (Regulation) and preventing the entry of imported thereof into the commercial channels after customs release immediately.

C- Obligating the infringer to submit to the Competent Court or to the owner what he has information on all those persons or entities that are contributed in any aspect of the infringement, and on the methods of production and distribution channels of such goods or services, including the identity of all those who participated in the production or distribution of goods or services and determining his own distribution channels.

4- The Competent Court, at the request of the owner, may order to destroy goods which proves that they are imitated, except in exceptional cases, without compensation of any kind to the defendant, and it may order without delay to destroy the materials and tools used in the manufacture or production of imitated goods without compensation of any kind to the defendant, and the court in exceptional cases that it



estimates, may order to depose such goods outside the commercial channels so as to prevent the possibility of other infringements.

It may, instead of destroying the goods, materials and tools used in the manufacture or production of imitated goods, order to dispose them outside the commercial channels, unless if the destruction of goods results in unacceptable harm to public health or environment.

5- Removal of trademark that placed improperly on the imitated goods may not be considered as a good reason to release them to the commercial channels.

6- The Competent Court estimates the costs and fees for who are assigned of experts and specialists to conduct task for the claim, in a manner commensurate with the size and nature of the task assigned thereto, and without precluding in unreasonable way to not use such measures

What is the typical Sentence for the Crime?

Article (42)

A- Without prejudice to any greater penalty imposed by another law, a sentence of imprisonment for a period not less than one month and not exceeding three years and a fine not less than five thousand Saudi Riyal and not exceeding one million Saudi Riyal or the equivalent in other Gulf Cooperation Council (GCC) currencies; or both, shall be imposed on any person convicted of the following offences:

- 1- Misrepresenting or imitating a registered mark in accordance of this Law (Regulation) so as to mislead or confuse the public, or using in bad faith any misrepresented or imitated mark.
- 2- Identifying his goods or services in bad faith with a mark owned by others.

B- Without prejudice to any greater penalty stipulated by another Law, a sentence of imprisonment for a period not less than one month and not exceeding one year and a fine not less than one thousand Saudi Riyal and not exceeding one hundred thousand Saudi Riyal or the equivalent in other Gulf Cooperation Council (GCC) currencies, or both, shall be imposed on any person convicted of the following offences:

- 1- Knowingly selling, offering for sale or trading, or possessing with the intention of trading any goods bearing false or imitated marks; or unlawfully uses such marks or offers services under this mark.
- 2- Uses a non-registered mark in cases provided for in clauses (from "2" to "11") of Article (3).
- 3- Unlawfully inscribes upon his mark, papers or commercial documents anything that might lead to the belief that he has obtained registration of the mark.
- 4- Deliberately and in bad faith fails to indicate his registered trademark on goods or services which distinguished them.
- 5- Knowingly possesses tools or material intended to be used in the imitation or fraud of registered or famous trademarks.

Other relevant information:

Unfair Competition is not applicable in Bahrain, however there is a Consumer Protection Law. The possible enforcement actions against counterfeit products in Bahrain are as follows:

1- At a preliminary stage, a market search is conducted (investigation) to identify the name and the location (exact address) of the infringer, in addition to taking photos and buying samples of the counterfeit product, supported by a purchasing invoice to be used as evidence against the infringer at the court.



2- Second, following the market search, it is advisable to go through the option of serving a cease and desist letter, warning the infringers of the necessity for ending all the unjust malicious conducts and cease the infringement.

3- If, due to the cease and desist letter, the infringer accepts to end the infringement, a draft of written undertaking is then submitted. Once the infringer complies with the conditions set in the Cease and Desist letter, he will then have to sign a written undertaking not to manufacture, deal with, or import any counterfeit products and to destroy and remove the counterfeit trademarks under supervision.

4- If, however, the infringer refuses to comply with the Cease and Desist letter, a civil or criminal action can be initiated.

- The civil action is filed before the Court via an Introductory Memorandum.
- The criminal action commences by filing an administrative complaint at the Trademark Office.
- The Trademark Office will inspect and seize the products at the opponent's premises and file a criminal action at the Public Prosecutor to start Criminal procedures at the court in order to issue a verdict to destroy the infringing products.
- The criminal action takes around 18 - 24 months to issue verdict against the infringer, therefore, it is recommended to file a civil action before the court to stop the infringement and destroy the products, usually it takes between 8 – 12 months at the first instant court. Note that the verdict issued can be appealed before the Court Of Appeal and the decision might take around 2- 4 months, and the Court Of Appeal verdict can be appealed before the Court Of Cassation, noting that the latter is the highest court and its verdict is final.

Note that the evidences about the infringing goods or activities do not require any notarization or legalization.

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973 17550003



BELARUS

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 201 "Infringement of Copyright, Related Rights and Industrial Property Rights" of Chapter 23 "Crimes against constitutional human and civil rights and freedoms" of the Criminal Code of Belarus:

<https://xn---ctbcgfviccvibf9bq8k.xn--90ais/statya-201>

What are the Elements of the Crime/How is the Crime Defined?

- §1 Assumption of authorship or forced co-authorship, as well as disclosure without author's or applicant's permission of the nature of the invention, utility model, industrial design or other industrial property right subject before the official publication of information about them, committed within one year after imposing of an administrative penalty for the same infringement.
- §2 Illegal distribution or other illegal use of objects of copyright, related rights or objects of industrial property right, committed within one year after the imposed administrative penalty for the same infringement or associated with the receipt of income of a large scale
- §3 Actions specified in paragraphs 1 or 2 of this article, committed repeatedly or by a group of individuals by prior agreement, or by an official using his or her official authority, or causing extensive damage.

What is the typical Sentence for the Crime?

- §1 community work, or a fine, or corrective labour for a term not exceeding two years
- §2 community work, or a fine, or restriction of liberty for up to three years, or imprisonment for up to two years
- §3 a fine, or arrest, or restriction of liberty for up to five years, or imprisonment for the same period

Other relevant information:

According to Belarusian legislation, trademarks are included in the general category "objects of industrial property rights";

The large amount of income (loss) in this article is the amount of income (loss) that exceeds the basic amount established on the day of the commission of the crime by five hundred and more times;

A criminal case may be initiated only upon request of the owner of the right, who has suffered from illegal actions related to the use of his/her intellectual property object.



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(Non-Profit)



BELGIUM

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Belgian Code of Economic Law <http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel>

What are the Elements of the Crime/How is the Crime Defined?

Art. XV.103 and XV.70 Belgian Code of Economic Law:

Penalties ranging from 1 year to 5 years of imprisonment and a fine ranging from 500 to 100.000 euros or any of these penalties shall be imposed on any person who, in the course of trade, with malicious or fraudulent intent, infringes the rights of the holder of a trademark (...) as defined by :

- a) article 2.20, paragraph 1, a), b) and c.) of the Benelux Convention on Intellectual Property of 25 February 2005 approved by the law of 22 March 2006;
- b) Article 9 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

It follows that all of the conditions below need to be fulfilled:

- Trademark counterfeiting is only a criminal offence in case of a (civil) trademark infringement. The elements of (civil) trademark infringement are prescribed by EU and Benelux trademark laws. For this the law refers to article 9 European Trademark regulation <https://eurlex.europa.eu/legalcontent/EN/TXT/?qid=1506417891296&uri=CELEX:32017R1001> and article 2.20 Benelux Treaty on Intellectual Property Rights [https://www.ie-forum.nl/backoffice/uploads/file/IEForum/Andere%20stukken/BCIP%20\(translation%20BVIE\).pdf](https://www.ie-forum.nl/backoffice/uploads/file/IEForum/Andere%20stukken/BCIP%20(translation%20BVIE).pdf), with exclusion of article 2.20.1.d of the Benelux Treaty on Intellectual Property Rights, which refers to the use of a trademark other than those of distinguishing the goods or services (e.g. the use of a trademark for parody purposes).
- The trademark infringement has to take place in the course of trade.
- Trademark infringement can only be sanctioned under criminal law if a special intent is demonstrated. Trademark counterfeiting offences must have been committed with malicious or fraudulent intent.

What is the typical Sentence for the Crime?

The Court may order all of the sentences below; one does not exclude the other:

- The Court may order imprisonment from 1 year to 5 years and a fine from 500 to 100,000 euros (which can be doubled in the event of a repeat offence within five years of a conviction for the same offence)
- The Court may order the forfeiture and confiscation of all benefits, directly resulting from the crime.
- The Court may order the destruction of the confiscated goods, which have been found to infringe intellectual property rights.
- The court may order that the judgment has to be displayed, for a period it shall determine, both inside and outside the premises of the infringer and at his expense, or that the judgment has to be published, in whole or in part, in the press or by any other means, at the expense of the infringer.



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BOLIVIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Penal code of Bolivia

https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf

What are the Elements of the Crime/How is the Crime Defined?

- a) CRIMES AGAINST INTELLECTUAL PROPERTY. Who with profit motive, to the detriment of others, reproduce, plagiarize, distribute, publish on the screen or on television, in all or in part, a literary, artistic, musical, scientific, television or cinematographic work, or its transformation, interpretation, artistic execution through any medium, without authorization of the holders of the intellectual property rights or of their concessionaires or import, export or store copies of said works, without the aforementioned authorization.
- b) VIOLATION OF PRIVILEGE OF INVENTION. Manufacturing without authorization of the concessionaire objects or products covered by a privilege.
- c) COUNTERFEITING AND IMPROPER APPLICATION OF MARKS AND PASSWORDS.-Anyone who falsifies brands, passwords or signatures officially used to contrast weights or measures, identify any object or certify its quality, quantity or content, and which will apply them to different objects of those to which they should be applied.
- d) COMMERCIAL FRAUD. Anyone who, in a public place or open to the public, deceives the buyer by giving him one thing for another, provided that it does not result in a more serious crime.
- e) CUSTOMER DIVERSION. Whoever, using false statements, suspicions, fraudulent devices or any other means of unfair propaganda, divert customers from a commercial or industrial establishment for their own benefit or for a third party and to the detriment of the competitor, to obtain an undue advantage.

What is the typical Sentence for the Crime?

- a) be sanctioned with the penalty imprisonment from three (3) months to two (2) years and a fine of sixty (60) days.
- b) be sanctioned with imprisonment of three (3) months to two (2) years and a fine of thirty (30) to sixty (60) days.
- c) be punished with imprisonment from six months to three years.
- d) be punished with deprivation of liberty from six months to three years.
- e) the penalty of a fine of thirty to one hundred days.

Other relevant information:

Claims related to trademarks (including trademark infringement, trademark counterfeiting and unfair competition) in Bolivia are made before SENAPI offices, through the infringement action.



The penalties for crimes against intellectual property do not exceed three years, therefore, the criminal will not likely go to jail, since the penalty can be substituted by another alternative measure such as that the condemned person signs once a week in court. Nothing to prevent him from committing a crime again. Unfair competition is not classified in the penal code, but in the Internal Regulations of SENAPI's infringement actions.

Claims related to trademarks (including trademark infringement, trademark counterfeiting and unfair competition) in Bolivia are made before SENAPI offices, through the infringement action.

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BOSNIA AND HERZEGOVINA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- Criminal Code of Federation of Bosnia and Herzegovina
Official Gazette of Federation of Bosnia and Herzegovina No. 36/2003, 21/2004 - correction, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 i 75/2017
- Criminal Code of Republika Srpska
Official Gazette of Republika Srpska No. 64/2017 i 104/2018 – Constitutional Court Decision
https://www.legislationline.org/download/id/8505/file/CC_RS_am2018_eng.pdf

What are the Elements of the Crime/How is the Crime Defined?

Criminal Code of Federation of Bosnia and Herzegovina: Article 264

a) Whoever, with an aim of deceiving buyers or service users, makes use of another's company name, seal, trademark or special mark of distinction, or inserts certain features of another's mark into his company name, seal, trademark or special mark of distinction

Criminal Code of Republika Srpska: Article 260

(1) Whoever, with the intention of defrauding purchasers of goods or users of services, uses protected trade-name, mark of geographic origin, seal,, or other mark of distinction of goods and services belonging to another or inserts certain features of these marks into his own trade-name, mark of geographic origin, seal or in his own mark of distinction of goods and services

(2)Whoever purchases, produces, processes, places on market, rents or stores any large quantities of goods under paragraph 1 of this Article or who provides services with unauthorized use of trading marks belonging to another

(3) If the offender from paragraph 2 of this Article organized a network of retailers or mediators or obtained a material gain exceeding the amount of 50,000.00 KM

What is the typical Sentence for the Crime?

Whoever commits an offence under subsection a) Article 264 Criminal Code of Federation of Bosnia and Herzegovina shall be punished by imprisonment for a term not exceeding one year.

Whoever commits an offence under subsection 1) Article 260 of Criminal Code of Republika Srpska shall be punished by imprisonment for a term of between six months and three years.

Whoever commits an offence under subsection 2) Article 260 of Criminal Code of Republika Srpska shall be punished by imprisonment for a term of between one and five years.

Whoever commits an offence under subsection 3) Article 260 of Criminal Code of Republika Srpska shall be punished by imprisonment for a term of between two and ten years and by a fine.

Articles under paragraphs 1, 2 and 3 shall be forfeited.



Other relevant information:

Bosnia and Herzegovina comprises of the following 2 entities:

- Federation of Bosnia and Herzegovina
- Republika Srpska

Each entity has its own Criminal Code

Note, the text included here is for counterfeit regarding trademarks. For copyright counterfeits, see Criminal Code of Bosnia and Herzegovina, XXI CHAPTER TWENTY – ONE CRIMINAL OFFENCES OF COPYRIGHTS VIOLATION

Official Gazette of Bosnia and Herzegovina No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07

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BRAZIL

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Brazilian Industrial Property Law (Law n. 9.279/96) - Doc.01

What are the Elements of the Crime/How is the Crime Defined?

Brazilian Industrial Property Law

Article 189 - A crime is committed against the registration of a mark by he who:

I - reproduces a registered mark wholly or in part, without the authorization of the registrant, or imitates it in a

manner that may induce confusion; or

II - alters the registered mark of a third party already applied to a product placed on the market.

Article 190 - A crime is committed against the registration of a mark by he who imports, exports, sells, offers or

exhibits for sale, hides or maintains in stock:

I - a product branded with an illicitly, wholly or partially, reproduced or imitated mark of a third party; or

II - a product from his industry or commerce, held in a vessel, container or package carrying a legitimate mark of a third party.

What is the typical Sentence for the Crime?

Article 189 - Penalty - detention of 3 (three) months to 1 (one) year, or a fine.

Article 190 - Penalty - detention of 1 (one) to 3 (three) months, or a fine.

Note that trademark infringement is regarded as a less offensive crime and the penalty can be detention of 3 (three) months to 1 (one) year, or a fine; generally, the criminal cases end up in agreements.

Other relevant information:

Lawsuits on the grounds of trademark infringement are prosecuted before state courts and through private criminal prosecution brought by the rights holder. The penalty for trademark infringement ranges from imprisonment of three months to one year or a fine. Before a criminal prosecution for trademark infringement is initiated, the illegal activity must be proved. Thus, before filing a lawsuit seeking detention of the infringer, the rights holder must proceed with a preliminary criminal search and seizure action, where a court-appointed expert will seize and examine samples of the products. If infringement is confirmed, the expert's opinion is homologated by the criminal judge and the rights holder will have 30 days to file the criminal action. The law also grants enforcement authorities the discretionary power to conduct police raids against piracy and counterfeiting activities since they are regarded as criminal. Raids are usually conducted in city areas where many street peddlers or shops sell counterfeits and



suspects are taken to the police station for testimony. Following the seizure of merchandise in such raids, the products are analysed by police experts, a final report is prepared, and the rights holder and/or the public authorities are required to file the subsequent criminal actions. Police and criminal actions are effective enforcement remedies in many circumstances and the equipment and machinery used for the counterfeiting activity can also be seized and destroyed. An advantage of police raids is that they can be conducted against many infringers simultaneously, and even against infringers which have not previously been identified. Authorities have the discretionary power to conduct police raids against piracy and counterfeiting activities since they are regarded as criminal.

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55 21 2113-1919



BURUNDI

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The Industrial Property Law (Note, an official English translation is not available);
Penal Code

What are the Elements of the Crime/How is the Crime Defined?

"counterfeit" as provided by article 461 of the Industrial Property Law; which states that: "Procedures and penalties apply, in accordance with the Penal Code and the Code of Criminal Procedure, for deliberate acts of trademark infringement or counterfeit, or piracy infringing intellectual rights committed on a commercial scale. The provisions of this Title shall apply to criminal proceedings, in particular with regard to the seizure, confiscation and destruction of the goods in question and of all materials and instruments used to commit the offense."

What is the typical Sentence for the Crime?

The Penal Code and Code of Criminal Procedure outline the specific penalties for trademark counterfeit.

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CAMBODIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Law Concerning Marks, Trade Names and Acts of Unfair Competition, 2002.

What are the Elements of the Crime/How is the Crime Defined?

Trademark Law, Art. 24: Infringement of Registered Mark: An unauthorized use of a registered mark or a sign which is identical with or confusingly similar to a registered mark, in relation to any goods or services for which it has been registered.

Trademark Law, Art. 25: Infringement of Registered Well-Known Mark: Use of a sign which is identical with or confusingly similar to a well-known mark, used without the agreement of the owner of the well-known mark. The use must be in relation to goods and services identical with or similar to the goods or services for which the well-known mark has been registered (or in relation to goods and services which are not identical with or similar, but where use of the sign indicates a connection between those goods or services and the owner of the well-known mark).

Trademark Law, Art. 26: Infringement of Unregistered Well-Known Mark: Use of a sign which is identical with or confusingly similar to an unregistered well-known mark without the agreement of the owner, where the sign is used in relation to goods or services identical with or similar to the goods or services for which the mark is well-known.

What is the typical Sentence for the Crime?

Trademark Law, Art. 64: A fine from 1,000,000 to 20,000,000 Riels; imprisonment from one to five years; or both.

Trademark Law, Art. 67: The fine and imprisonment for counterfeiting may be doubled for a repeated offense.

Other relevant information:

Trademark Law, Art. 61: A counterfeit good is a good or packing for a good that bears a trademark identical to a registered trademark for that good without authorization of the owner of the trademark.

Unfair competition:

The Trademark Law, Art. 23, defines unfair competition as:

- Acts of that create confusion with the establishment; goods; or industrial, commercial or service activities of a competitor;
- False allegations that discredit the establishment; goods; or industrial, commercial or service activities of a competitor;



- Indications or allegations that are likely to mislead the public as to the nature, manufacturing process, characteristics, suitability, or the quantity of goods.

Trademark Law, Art. 65, 68: Unfair competition penalty: A fine from 5,000,000 to 10,000,000 million Riels; imprisonment from one month to one year; or both. The fine and imprisonment for unfair competition may be doubled for a repeated offense. Company managers may be subject to criminal prosecution, unless they prove that they had did not know of or consent to the unfair competition activity.

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CAMEROON

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Law No. 2016/007 of July 12, 2016, relating to the Penal Code.

<https://wipolex.wipo.int/en/legislation/details/16366>

What are the Elements of the Crime/How is the Crime Defined?

OAPI ART. 37

- (a) those who fraudulently affix on their goods or on objects traded by them a mark belonging to another;
 - (b) those who knowingly sell or offer for sale one or more goods bearing a counterfeit or fraudulently affixed mark, or those who knowingly sell, offer for sale, provide or offer to provide goods or services under such a mark;
 - (c) those who make a fraudulent imitation of a mark in such a way as to mislead the buyer or who make use of a fraudulently imitated mark;
 - (d) those who knowingly sell or offer for sale one or more goods bearing a fraudulently imitated mark or information liable to mislead the buyer as to the nature of the goods, or those who provide or offer to provide goods or services under such a mark.
- (2) The following persons shall also be punished with the penalties referred to in paragraph (1) above:
- (a) those who knowingly provide a product or render a service other than that requested of them under a registered mark;
 - (b) those who make use of a mark bearing information liable to mislead the buyer as to the nature of the goods.

What is the typical Sentence for the Crime?

PENAL CODE SECTION 330: Trademarks

- (1) Whoever forges a registered trademark shall be punished with imprisonment for from 3 (three) months to 2 (two) years and with fine of from CFAF 1 000 000 (one million) to CFAF 6 000 000 (six million).
- (2) Whoever conceals, sells, exports, imports or uses any object constituting an infringement of registered trademark shall be punished as provided for in Subsection (1) above.
- (3) In the cases provided for in Subsections (1) and (2) above, the Court shall order confiscation and delivery to the trademark owner of any object constituting an infringement of trademark.
- (4) The Court shall order publication of its judgment as provided under Section 33 of this Code.



Other relevant information:

OAPI

Cameroon a member of the African Intellectual Property Organization (OAPI), governed by the Agreement Revising the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization. <https://wipolex.wipo.int/en/text/181151>

OAPI ART. 37: Penalties for Unlawful Exploitation of a Registered Mark

(1) The following persons shall be punished by a fine of 1,000,000 to 6,000,000 CFA francs and with imprisonment for a term of three months to two years:

- (a) those who fraudulently affix on their goods or on objects traded by them a mark belonging to another;
- (b) those who knowingly sell or offer for sale one or more goods bearing a counterfeit or fraudulently affixed mark, or those who knowingly sell, offer for sale, provide or offer to provide goods or services under such a mark;
- (c) those who make a fraudulent imitation of a mark in such a way as to mislead the buyer or who make use of a fraudulently imitated mark;
- (d) those who knowingly sell or offer for sale one or more goods bearing a fraudulently imitated mark or information liable to mislead the buyer as to the nature of the goods, or those who provide or offer to provide goods or services under such a mark.

(2) The following persons shall also be punished with the penalties referred to in paragraph (1) above:

- (a) those who knowingly provide a product or render a service other than that requested of them under a registered mark;
- (b) those who make use of a mark bearing information liable to mislead the buyer as to the nature of the goods.

ART. 38: Penalties in Connection with Compulsory Marks and Prohibited Signs

The following persons shall be punished with a fine of 1,000,000 to 2,000,000 CFA francs and with imprisonment for a term of 15 days to six months, or to only one of those penalties:

- (a) those who do not affix to their goods a mark that has been declared compulsory;
- (b) those who sell or offer for sale goods that do not bear a mark declared compulsory for that type of goods;
- (c) those who violate the terms of decisions taken under Article 1 of this Annex;
- (d) those who incorporate in their marks signs that are prohibited under the provisions of this Annex.

ART. 39: Penalties Not Cumulative

(1) The penalties specified in Articles 37 and 38 of this Annex shall not be cumulative.

(2) The severest penalty alone shall be imposed for all acts prior to the first act proceeded against.

ART. 40: Penalties in the Event of Recidivism

(1) In the event of recidivism, the penalties specified in Articles 37 and 38 shall be doubled.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, the offender has been found guilty of one of the offenses specified in this Annex.

ART. 42: Deprivation of Electoral Rights



(1) Offenders may, in addition, be deprived of the right to participate in elections to professional groups such as chambers of commerce and industry and chambers of agriculture for a period not exceeding ten years.

(2) The court may order the display of the judgment in places that it shall specify and also its publication in full or in the form of extracts in the newspapers that it shall designate, all at the expense of the offender.

ART. 43: Fate of Counterfeited Marks and Goods

(1) The court may order the confiscation of goods bearing a mark recognized as being contrary to the provisions of Article 37, even in the case of acquittal, and also that of the implements or tools that served specifically for the commission of the offense.

(2) The court may order that the objects confiscated be surrendered to the owner of the mark that has been counterfeited or fraudulently affixed or imitated, regardless of the right to any further damages, that may be appropriate.

(3) In all cases the court may order the destruction of goods bearing marks recognized as being contrary to the provisions of Article 37 above.

ART. 45: Penalties in Connection with Collective Marks

The penalties provided for in Articles 37, 38, 40, 42, 43 and 44 of this Annex shall apply to collective marks for goods or services. In addition, the following persons shall be punished with the penalties provided for in Article 37 above:

(a) those who knowingly make any use of a collective mark under conditions other than those specified in the rules of use referred to in Article 34;

(b) those who sell or offer for sale goods bearing a collective mark unlawfully used under the terms of the provisions governing marks for goods or services;

(c) those who knowingly make any use at all of a mark reproducing or imitating a collective mark within a period of ten years following the date of invalidation of the said collective mark;

(d) those who, within a period of ten years from the date of invalidation of a collective mark, knowingly sell, offer for sale, provide or offer to provide goods or services under a mark reproducing or imitating the said collective mark.

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CANADA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademarks Act (R.S.C., 1985, c. T-13) § 51.01

<https://laws-lois.justice.gc.ca/eng/acts/T-13/page-12.html#docCont>

The Combating Counterfeit Products Act, S.C. 2014, c.32 given royal assent December 9, 2014. Amends the Trademarks Act to add criminal offences

https://laws-lois.justice.gc.ca/eng/annualstatutes/2014_32/FullText.html

What are the Elements of the Crime/How is the Crime Defined?

Offences: Section 51.01 - Every person commits an offence who:

- (1) sells or offers for sale or distributes on a commercial scale, any goods in association with a trademark, if that sale or distribution is or would be contrary to section 19 or 20, and the person knows that
 - (a) the trademark is identical to, or cannot be distinguished in its essential aspects from, a trademark registered for such goods; and
 - (b) the owner of that registered trademark has not consented to the sale, offering for sale, or distribution of the goods in association with the trademark.
- (2) manufactures, causes to be manufactured, possesses, imports, exports, or attempts to export any goods, for the purpose of their sale or of their distribution on a commercial scale, if that sale or distribution is or would be contrary to section 19 or 20, and the person knows that
 - (a) the goods bear a trademark that is identical to, or that cannot be distinguished in its essential aspects from, a trademark registered for such goods; and
 - (b) the owner of that registered trademark has not consented to having the goods bear the mark.
- (3) sells or advertises services in association with a trademark, if that sale or advertisement is contrary to section 19 or 20, and the person knows that
 - (a) the trademark is identical to, or cannot be distinguished in its essential aspects from, a registered trademark registered for such services; and
 - (b) the owner of the registered trademark has not consented to the sale or advertisement in association with the mark.
- (4) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any label or packaging, in any form, for the purpose of its sale or of its distribution on a commercial scale or for the purpose of the sale, distribution on a commercial scale or advertisement of goods or services in association with it, if that sale, distribution or advertisement would be contrary to section 19 or 20, and the person knows that
 - (a) the label or packaging bears a trademark is identical to, or cannot be distinguished in its essential aspects from, a registered trademark;
 - (b) the label or packaging is intended to be associated with goods or services for which that registered trademark is registered; and



(c) the owner of that registered trademark has not consented to having the label or packaging bear the trademark.

(5) sells or offers for sale, or distributes on a commercial scale, any label or packaging, in any form, if the sale, distribution or advertisement of goods or services in association with the label or packaging would be contrary to section 19 or 20 and the person knows that

(a) the label or packaging bears a trademark that is identical to, or that cannot be distinguished in its essential aspects from, a registered trademark;

(b) the label or packaging is intended to be associated with goods or services for which that registered trademark is registered;

(c) the owner of that registered trademark has not consented to having the label or packaging bear the trademark.

(5.1) In a prosecution for an offence under any of subsections (1) to (5), it is not necessary for the prosecutor to prove that the accused knew that the trademark was registered.

What is the typical Sentence for the Crime?

51.01 (6)

Every person who commits an offence under any of subsections (1) to (5) is liable

- (a) on conviction on indictment, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than five years or to both; or
- (b) on summary conviction, to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months or to both.

51.01 (8) The court before which any proceedings for an offence under this section are taken may, on a finding of guilt, order that any goods, labels, or packaging in respect of which the offence was committed, any advertising materials relating to those goods and any equipment used to manufacture those goods, labels or packaging be destroyed or otherwise disposed of.

Other relevant information:

- Proceedings by way of summary conviction for an offence under this section may be instituted no later than two years after the day on which the subject-matter of the proceedings arose.
- The court before which any proceedings for an offence under this section are taken may, on a finding of guilt, order that any goods, labels, or packaging in respect of which the offence was committed, any advertising materials relating to those goods and any equipment used to manufacture those goods, labels or packaging be destroyed or otherwise disposed of.
- The offences set out in Section 51.01 of the Trademarks Act are added to the list of offences set out in the Criminal Code for the investigation of which police may seek judicial authorization to use a wiretap.



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CHILE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

1. Industrial Property Law ("IP Law"): <https://www.bcn.cl/leychile/navegar?idNorma=250708> (in Spanish, only)
2. Criminal Law: <https://www.bcn.cl/leychile/navegar?idNorma=1984> (in Spanish, only)
3. Unfair Competition Law: <https://www.bcn.cl/leychile/navegar?idNorma=258377> (in Spanish, only)
4. Intellectual Property Law: <https://www.bcn.cl/leychile/navegar?idNorma=28933> (in Spanish, only)

What are the Elements of the Crime/How is the Crime Defined?

Offenses

I. According to article 28 of IP Law:

- (a) Those who maliciously use, for commercial purposes, a trademark identical or similar to another registered for the same goods, services or establishments or in respect of goods, services or establishments related to those protected by the registered trademark.
- (b) Those who use, for commercial purposes, a trademark that is not registered, is extinguished or has been cancelled, with the indications corresponding to, or simulating, a registered trademark.
- (c) Those who make use, for commercial purposes, of containers or packaging materials bearing a registered trademark and not being entitled to use it or not having previously erased it, unless the marked packaging intended to package products different and unrelated to those protected by the trademark.

II. According to article 190 of Criminal Law:

- (a) Those who has included on manufactured objects the name of a manufacturer that is not its author, or the commercial name of a factory that is not the real factory.
- (b) Any merchant, commission agent or seller who knowingly has offered for sale or introduce marked objects with assumed or altered names.

What is the typical Sentence for the Crime?

Penalties

I. For offenses described in article 28 of IP Law:

- (a) Penalty of fine for fiscal benefit of 25 to 1000 UTM (Chilean currency to calculate taxes).
- (b) Those who reoffend within five years from the date of an applied fine, shall be subject to another fine which cannot be less than the double of the previous one, with a maximum of 2000 UTM.

II. For offenses described in article 190 of Criminal Law: Prison from 61 days to 3 years and fines of 6 to 10 UTM (Chilean currency to calculate taxes).

Other relevant information:



Please note that the normative included in these charts is related to trademark counterfeit and infringement.

Unfair competition is regulated under a common law, which it could be applied in connection to industrial property matters depending on the case. The following list contains examples of acts that are considered as constituent of unfair competition:

(a) Any conduct that improperly takes advantage of the reputation of others, leading to confuse one's own goods, services, activities, distinctive signs, or establishments with those of a third party.

(b) The use of signs or the dissemination of facts or assertions, incorrect or false, that mislead about the nature, provenance, components, characteristics, price, mode of production, trademark, suitability, for the purposes it is intended to satisfy, quality or quantity and, in general, on the advantages actually provided by the goods or services offered, own or others.

(b) All incorrect or false information or assertions about the goods, services, activities, distinctive signs, establishments, or business relationships of a third party, which are likely to undermine its reputation in the market. Expressions aimed at discrediting or ridiculing them without objective reference are also illegal.

Please note that unfair competition actions could be punished with the payment of a fine that ranges from 2 to 1000 UTM.

For copyright counterfeits, please see articles 79 and 81 of Intellectual Property Law.

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CHINA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- Trademark Law (<https://www.ccpit-patent.com.cn/node/1148/1155>) Article 67
- Criminal Law of the People's Republic of China (2017 Amendment Version) Article 213-215
- Interpretation of the Supreme People's Court and the Supreme People's Procuratorate of the Issues concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights

What are the Elements of the Crime/How is the Crime Defined?

- (1) Using an identical trademark on the same merchandise without permission of its registered owner;
- (2) Knowingly selling merchandise under a faked trademark;
- (3) Forging or manufacturing without authority or selling or manufacturing without authority other's registered trademarks or identifications;

What is the typical Sentence for the Crime?

- (1) (a) if the case is of a serious nature, shall be punished with imprisonment or criminal detention of less than three years, with a fine, or a separately imposed fine;
(b) for cases of a more serious nature, shall be punished with imprisonment of over three years and less than seven years, and with fine.
- (2) (a) with a relatively large sales volume shall be punished with imprisonment or criminal detention of less than three years, with a fine or a separately imposed fine;
(b) in cases involving a large sales volume, shall be punished with imprisonment of more than three years but less than seven years, and with fine
- (3) (a) for cases of a serious nature, shall be punished with imprisonment or criminal detention, or restriction for less than three years, with a fine or a separately imposed fine;
(b) for cases of a especially serious nature, shall be punished with imprisonment of over three years and less than seven years, and with fine.
- (4) For a crime of infringement of intellectual property rights, the people's court shall impose a fine according to law by taking into consideration such comprehensive circumstances as the illegal proceeds of crime, amount of illegal turnover, damages to the right holder and degree of social danger. The amount of the fine shall usually be the amount of illegal income up to five times the amount of illegal income, or 50% of the amount of illegal turnover up to the amount of illegal turnover.

Other relevant information:

Note that this Law also includes Administrative penalties (fines) for trademark infringement, see Article 60.

In 2019, local courts heard 4,982 cases relating to infringement of registered trademarks (a 21% increase from the previous year). The numbers of cases regarding counterfeiting of registered trademarks, sales of



goods bearing counterfeit registered trademarks, and illegal manufacturing or sale of goods bearing illegally produced registered trademarks also rose (between 15% and 39% increase from the previous year). This reflects a focus in China to better defend intellectual property from criminal infringement through more rigorous adjudication.

Note, the following decision updated the Trademark Law in 2019.

http://www.chinalaw.gov.cn/Department/content/2019-04/24/592_233748.html

Note, the PRC Anti-Unfair Competition Law is also implicated in the Trademark Law (Article 58), and the Product Quality Law is related as well.

Unfair competition crime is mainly regulated in Articles 219, 221, 222, etc. of the Criminal Law.

Copyright infringement crime is mainly regulated in Articles 217, 218 of the Criminal Law.

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86 10 6641 5678



COLOMBIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Colombian Criminal Code - Section 306

http://www.secretariassenado.gov.co/senado/basedoc/ley_0599_2000_pr012.html#306

What are the Elements of the Crime/How is the Crime Defined?

The Colombian Criminal Code sanctions every violation against trademarks, copyright and patents. These violations are considered crimes.

Section 306 establishes the following specifically regarding trademarks:

ARTICLE 306. USURPATION OF INDUSTRIAL PROPERTY RIGHTS AND BREEDERS 'RIGHTS OF VEGETABLE VARIETIES. The one who, fraudulently, uses a trade name, banner, trademark, invention patent, model of utility, industrial design, or usurps plant variety breeder rights, legally protected or similarly confused with a legally protected one

What is the typical Sentence for the Crime?

The Colombian Criminal Code foresees the following penalties:

- Prison from four (4) to eight (8) years.
- Fine of USD 8000 to USD 430.000 aprox. (a fine of twenty-six point sixty-six (26.66) to one thousand five hundred (1,500) current legal monthly minimum wages)

Other relevant information:

- a) Bad faith or clear intention to violate the IP rights of the defendant shall be proved in a criminal action.
- b) Unfair Competition action.

- Law 256 also has specific definitions and prohibitions regarding the following conducts: Clientele deviation, confusion, deceiving, denigration of other's products, Imitation, taking unfair advantage of the prestige of the sign, Violation of trade and industrial secrets
- Preliminary injunctions may be requested before, along with the complaint or during the procedures.

- c) Trademark Infringement action:

According to Decision 486 of the Andean Community, the owner of trademark registration may file a civil action against the infringement of a trademark registration. Preliminary measures are available before, along or during the procedures. Strong evidence of confusion must be filed along with the complaint.

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COSTA RICA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

LAW NO. 8039 ON PROCEDURES FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

<https://www.wipo.int/edocs/lexdocs/laws/en/cr/cr022en.pdf>

What are the Elements of the Crime/How is the Crime Defined?

Offenses related to intellectual property rights arising from trademarks and distinctive signs:

Article 44. Trademark counterfeiting

Whoever falsifies an already registered trademark or distinctive sign in such a way as to cause damage to the exclusive rights conferred by the registration of the trademark or distinctive sign

Article 45. Sale, storage and distribution of fraudulent goods

Whoever sells, offers for sale, stores, distributes, holds, imports or exports fraudulent goods, including their packaging, wrapping, containers or papers, which contain or incorporate an already registered trademark, in such a way as to cause injury to the exclusive rights conferred by the registration of the trademark or distinctive sign

Article 46. Sale, acquisition or offering of designs or copies that are identical to an already registered trademark

Whoever sells, offers for sale or acquires designs or copies of trademarks that are identical to a registered trademark, separately from the goods for which they are intended, in such a way as to cause injury to the exclusive rights conferred by registration of the trademark or distinctive sign registered

Article 47. Fraudulent identification as a distributor

Any person who identifies himself on the market as an authorized distributor for a given company whose trade name is registered, without being so in reality, in such a way as to cause injury to the exclusive rights conferred by the registration of the duly registered trade name

Article 48. Fraudulent use of geographical indications or appellations of origin

Any person who uses or cancels geographical indications or appellations of origin likely to mislead the public as to the origin, identity, manufacturer or dealer for a good, in such a way as to cause injury to the intellectual property rights arising from the use, identification or enjoyment of a geographical indication or appellation of origin



What is the typical Sentence for the Crime?

Article 44. Trademark counterfeiting

[S]hall be punished as follows:

- (a) by a fine of five to 20 base salaries, where the value of the genuine goods that are the subject of the claim does not exceed five base salaries;
- (b) by six months to two years' imprisonment or a fine of 20 to 80 base salaries, where the value of the genuine goods that are the subject of the claim is between five and 20 base salaries;
- (c) by one to four years' imprisonment or a fine of 80 to 200 base salaries, where the value of the genuine goods that are the subject of the claim is between 20 and 50 base salaries;
- (d) by three to five years' imprisonment or a fine of 200 to 500 base salaries, where the value of the genuine goods that are the subject of the claim exceeds 50 base salaries. For the purposes of this Article and its interpretation, and for the following articles which also refer to registered trademarks or distinctive signs, the concepts laid down in Law No. 7978 of January 6, 2000 on Trademarks and Distinctive Signs shall be used. (as amended by Article 1(e) of Law No. 8656 of July 18, 2008)

Article 45. Sale, storage and distribution of fraudulent goods

[S]hall be punished as follows:

- (a) by a fine of five to 20 base salaries, where the value of the genuine goods that are the subject of the claim does not exceed five base salaries;
- (b) by six months to two years' imprisonment or a fine of 20 to 80 base salaries, where the value of the genuine goods that are the subject of the claim is between five and 20 base salaries;
- (c) by one to four years' imprisonment or a fine of 80 to 200 base salaries, where the value of the genuine goods that are the subject of the infringement is between 20 and 50 base salaries;
- (d) by three to five years' imprisonment or a fine of 200 to 500 base salaries, where the value of the genuine goods that are the subject of the infringement exceeds 50 base salaries. (as amended by Article 1(e) of Law No. 8656 of July 18, 2008)

Article 46. Sale, acquisition or offering of designs or copies that are identical to an already registered trademark

[S]hall be punished as follows:

- (a) by a fine of five to 20 base salaries, where the amount of the injury does not exceed five base salaries;
- (b) by six months to two years' imprisonment or a fine of 20 to 80 base salaries, where the amount of the injury is between five and 20 base salaries;
- (c) by one to four years' imprisonment or a fine of 80 to 200 base salaries, where the amount of the injury is between 20 and 50 base salaries;
- (d) by three to five years' imprisonment or a fine of 200 to 500 base salaries, where the amount of the injury exceeds 50 base salaries. (as amended by Article 1(e) of Law No. 8656 of July 18, 2008)

Article 47. Fraudulent identification as a distributor

[S]hall be punished as follows:

- (a) by a fine of five to 20 base salaries, where the amount of the injury does not exceed five base salaries;
- (b) by six months to two years' imprisonment or a fine of 20 to 80 base salaries, where the amount of the injury is between five and 20 base salaries;



(c) by one to four years' imprisonment or a fine of 80 to 200 base salaries, where the amount of the injury is between 20 and 50 base salaries; (d) by three to five years' imprisonment or a fine of 200 to 500 base salaries, where the amount of the injury exceeds 50 base salaries. (as amended by Article 1(e) of Law No. 8656 of July 18, 2008)

Article 48. Fraudulent use of geographical indications or appellations of origin
[S]hall be punished as follows:

- (a) by a fine of five to 20 base salaries, where the amount of the injury does not exceed five base salaries;
- (b) by six months to two years' imprisonment or a fine of 20 to 80 base salaries, where the amount of the injury is between five and 20 base salaries;
- (c) by one to four years' imprisonment or a fine of 80 to 200 base salaries, where the amount of the injury is between 20 and 50 base salaries;
- (d) by three to five years' imprisonment or a fine of 200 to 500 base salaries, where the amount of the injury exceeds 50 base salaries. (as amended by Article 1(e) of Law No. 8656 of July 18, 2008)

Other relevant information:

Articles 44 to 48 of the Law No. 8039 are related to trademarks. Articles 51 to 63 are related to copyrights.

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CUBA

Criminal Liability for Trademark-Related Offenses?

No

Applicable Statute, Law, or Rule:

Decree Law 203 on Trademarks and Other Distinctive Signs

What are the Elements of the Crime/How is the Crime Defined?

N/A

What is the typical Sentence for the Crime?

N/A

Other relevant information:

The trademark law of Cuba only refers to civil liability for intellectual property infringements.

The cost to initiate a civil process for infringement of Rights is 2000.00 USD (Presentation of Claim in court). Presenting civil processes requires Power of Attorney, which must be legalized and notarized before the Cuban consulate of the country where the owner is located and legalized and notarized in Cuba.

TITLE III: EXCLUSIVE RIGHT

CHAPTER 1: CONTENT OF THE RIGHT CONFERRED BY THE REGISTER

Article 40.- the registration of the trademark confers its owner the exclusive right to use it in the economic traffic.

Article 41. For the effects of what has been settled in the previous Article, a use of a sign in the economic traffic will be considered as such in the following acts, among others:

- a) introduce in commerce, sell, offer for sale or distribute products or services designed with the trademark;
- b) import, export, store or transport products designed with the trademark;
- c) use the trademark in publicity, in publications, in commercial documents or in written or oral communications.

Article 42.- The trademark registration confers its owner the right of preventing thirds to carry out the following acts:

- a) apply or place the trademark on products or services distinguished by this, on products linked to services for which it has been registered, or on encases, wrapping, packing or conditioning of such products, especially when this causes a risk of confusion or association;
- b) avoid or modify the trademark with commercial goals after having been applied or placed by the owner or authorized person on the products referred in the above paragraph;



- c) produce labels, encases, wrappings, packing or other materials reproducing or containing the trademark, also commercializing or storing such materials;
- d) refill or reuse with commercial goals encases, wrappings or packing carrying the trademark;
- e) use in the economic traffic, an identical or similar sign to the trademark for products or services identical or similar when such use could cause confusion or association risk with the owner of the register, thus having understood that dealing with the use of an identical sign for identical products or services, the possibility of confusion will be assumed;
- f) use in the economic traffic of an identical or similar sign to the trademark for identical or similar products or services when such a use could cause the owner of the registration an unfair economic or commercial damage because of a dilution of the distinctive force or the commercial or publicity value of the trademark, or unfair use of the trademark or owner's prestige.
- g) Publicly using an identical or similar sign of the trademark, even for commercial goals, when it could cause a dilution of the distinctive force or commercial or publicity value of the trademark, or an unfair use of its prestige.

Article 43.-

1. The exclusive right conferred by the registration of a trademark does not authorize its owner to ban a third of making use in the economic traffic:

- a) on behalf of its name or address, if it were identical or similar to the registered trademark;
- b) of indications dealing with the specie, quality, quantity, destination, value, geographical origin, the time of the product's production or the lending or service, or other characteristics of these, or of any descriptive term;
- c) of the trademark when it be necessary to indicate destination, availability, use, application or compatibility of a product or service, mainly in the case of accessories or loose parts.

2. In all cases mentioned in the previous Article, it is precise the use to be made in good faith, according to the loyal practices in industrial or commercial fields and not constituting a use on behalf a trademark.

Article 44.- The owner of a registered trademark could exert all actions that the present Decree-Law or other norms authorize versus third sides that, without consent, use the registered trademark contravening rights, granted by this Decree-Law.

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CYPRUS

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- The Law on Copyright and Related Rights of 1976 (L. 59/1976, as amended)
- The Trademark Law (Cap. 268, as amended)
- The Commercial Descriptions Law (L. 5/1987)
- The Law on the Control of the Movement of Goods that Violate Intellectual Property Rights (L. 61(I)/2018)

What are the Elements of the Crime/How is the Crime Defined?

The Trademark Law

53. False TM registration recordal or drafting of document falsely appearing to be copy of recordal in the registry or presentation of evidence of such a document.

53A. No compliance with a Court prohibition order prohibiting the repetition of a TM infringement in the future.

54. Any representation of:

- (a) a TM not registered which appears to be registered; or
- (b) a part of a registered TM which is not a separately registered part and which appears to have been separately registered;
- (c) of a TM which appears registered in respect of any goods or services not registered;
- (d) a TM, the registration of which appears to grant exclusive right of use thereof under any circumstances while the registration of such TM (taking into account the limitations filed in the registry) does not grant such a right.

The Commercial Descriptions Law

3(1). (a) The placing of inaccurate commercial description on goods or

(b) the supply or offer of supply of goods on which inaccurate commercial description has been placed.

4(1). Commercial description is a direct or indirect indication, regardless of how it is provided, of any of the following items related to goods or parts thereof, that is:

- (m) any goods or part thereof which are the subject of an existing TM and include the use of any number, word, digit, mark or combination thereof which is generally perceived as indication of such item.

16. The violation or the omission to comply with section 3 above.

18. Incitement or assistance in the performance in the territory of another country of an act related to goods, which act if performed in the territory of the Republic, would constitute violation of section 3 of this Law, is guilty of an offense if the relevant inaccurate commercial description constitute an indication, or anything that may be perceived as an indication, that the goods or parts thereof have been manufactured, created, processed or repaired in the Republic.

The Law on the Control of the Movement of Goods that Violate Intellectual Property Rights



12(1)(a) The submission of a declaration for goods release in free circulation, for exportation or re-exportation in accordance with the Union Customs Code, or

(b) the importation or exportation of goods from the customs territory of the Republic, (c) the placing of goods under special regimes in accordance with the Union Customs Code, which infringe intellectual property rights.

12(2)(b) Any person who commits any of the acts prescribed in section 12(1) without knowing that the goods infringe intellectual property rights.

15(1). Possession or in any way engagement in the transfer, transport, storage, housing, storage or concealment of any goods or trade of any goods that infringe intellectual property rights

What is the typical Sentence for the Crime?

Trademark Law

53. Imprisonment up to a year or fine up to €1.707,24 (equivalent to CYP 1.000,00) or both sentences.

53A. Fine up to €59.753,47 (equivalent to CYP 35.000,00) or imprisonment up to 3 years or both sentences.

54. Fine up to €213,40 (equivalent to CYP 125,00).

The Commercial Descriptions Law

16. Fine up to €1.281,45 (equivalent to CYP 750,00) or to imprisonment up to 12 months or both sentences.

In case of a second or subsequent conviction: Fine up to €1.707,24 (equivalent to CYP 1.000,00) or imprisonment up to 2 years, or both sentences.

18. Same with section 16 above.

The Law on the Control of the Movement of Goods that Violate Intellectual Property Rights

12(2)(a). Fine up to €30.000,00 or imprisonment up to 3 years or both sentences. In case of a second or subsequent conviction:

Fine up to €50.000,00 or imprisonment up to 5 years, or both sentences.

Fine up to €15.000,00. Fine up to €50.000,00 or imprisonment up to 5 years or both sentences.

Other relevant information:

The Law on Copyright and Related Rights of 1976

14(1). If any person knowingly

(a) makes for sale or hire any infringing copy in which copyright or related rights subsists which is protected by this Law or

(b) sells or lets for hire or advertises the sale or hire, or by way of trade exposes or offers for sale of hire any such copy; or

(c) obtain possession or distributes such copies either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any such copy, or

(e) exports from and / or imports into the Republic for sale or hire any such copy.

14(2). Any person who knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists.

14(3). Any person who knowingly causes or permits a scientific, literary, artistic, musical work or film to be performed in public thereby infringing a copyright which subsists in such work



14C(1). Any person who knowingly performs any of the following:

- (a) Unauthorized removal or alteration of any information of electronic form on the status of rights;
- (b) distributing, importing for distribution, broadcasting, presenting to the public or making available to the public pieces of works or other object protected under this Law, without permission, from which the electronic information on the status of rights has been removed or altered without permission, if the person knows or has good reason to know that by doing so he is inciting, permitting, facilitating or concealing the infringement of the author's rights or other related rights thereof, as provided for by Law, or of the right of specific nature of the database creator.

The Law on Copyright and Related Rights of 1976 (Penalties)

14(1) Fine up to €80.000,00 or imprisonment up to 3 years or both sentences. In case of a second or subsequent conviction: Fine up to €100.000,00 or imprisonment up to 4 years or both sentences.

14(2) Fine up to €80.000,00 or imprisonment up to 3 years or both sentences. In case of a second or subsequent conviction: Fine up to €100.000,00 or imprisonment up to 4 years or both sentences.

14(3) Fine up to €51.217,26 (equivalent to CYP 30.000,00) or imprisonment up to 3 years or both sentences. In case of a second or subsequent conviction: Fine up to €59.753,47 (equivalent to CYP 35.000,00) or imprisonment up to 4 years or both sentences.

14(C)1. Fine up to €51.217,26 (equivalent to CYP 30.000,00) or imprisonment up to 3 years or both sentences. In case of a second or subsequent conviction: Fine up to €59.753,47 (equivalent to CYP 35.000,00) or imprisonment up to 3 years or both sentences.

The Commercial Descriptions Law

17. In case the actor of such criminal offence is a legal person and such criminal offence has been committed with the consent or tolerance, or it is due to the negligence of any managing director, director, secretary or other similar officer of such legal person, or any person who appeared to be acting in any such capacity, such person and such legal person are guilty of such criminal offence and subject to the penalties provided for by this Law.

General Note: The sums statutorily provided in CYP have been converted to Euro based on the irrevocably fixed exchange rate at the time the Republic joined the Euro Area on 1 January 2008.

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CZECHIA (THE CZECH REPUBLIC)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code No. 40/2009 Coll., Section 268.

What are the Elements of the Crime/How is the Crime Defined?

Criminal Offenses against Industrial rights and Copyright Section 268 Infringement of Trademark Rights and Rights to other Marks

(1) Whoever sends to circulation products or offers services illegally labelled by a trademark, exclusive right to which belongs to another person, or by a trademark confusable with such a trademark, or whoever offers, mediates, manufactures, imports, exports or otherwise obtains or handles for him-/herself or for another for this purpose, or offers or arranges such a service, shall be sentenced to imprisonment for up to two years or to confiscation of a thing or other asset value.

(2) The same penalty shall be imposed to anyone who for the purpose of achieving economical profit illegally uses a trade name or any mark confusable with it or who sends to circulation products or services illegally marked by a mark of origin or geographical mark or by a mark confusable with it, or who for this purpose offers, mediates, manufactures, imports, exports or otherwise handles for him-/herself or for another such products or services.

What is the typical Sentence for the Crime?

The sentence depends on severity of the trademark infringement. The severity of the violation is assessed on the basis of the profit acquired by the infringer. In the most severe case offender shall be sentenced to imprisonment for three to eight years.

Criminal Offenses against Industrial rights and Copyright Section 268 Infringement of Trademark Rights and Rights to other Marks

(3) An offender shall be sentenced to imprisonment for six months to five years, to a pecuniary penalty or to confiscation of a thing or another asset value, if he/she

- a) gains for him-/herself or for another substantial profit by the act referred to in Sub-section (1) or (2),
- b) commits such an act in considerable extent.

(4) An offender shall be sentenced to imprisonment for three to eight years, if he/she

- a) gains for him-/herself or for another extensive profit by the act referred to in Sub-section (1) or (2),
- b) commits such an act in large extent.

In cases of minor violation of trademark rights, e.g. a first-time vendor of counterfeit goods, when lower amounts of goods have been seized, the Court usually issue a conditional sentence of imprisonment. In such cases the sentence of imprisonment would apply only if the infringer would violate conditions set by the court, which typically include an obligation to refrain from the infringing conduct.



Other relevant information:

Violation of copyright is covered by a separate Section of the Criminal Code. It is covered by Section 270 concerning Infringement of Copyright, Rights Related to Copyright and Rights to Databases and by Section 271 concerning Counterfeiting and Imitation of Work of Creative Art. Violation of IP rights to patent rights, designs and utility models are covered by Section 269 of the Criminal Code.

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DOMINICAN REPUBLIC

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Industrial Property Law 20-00 of 14 April 2000 and modified by the Law 424-06 (adoption of the DR-CAFTA) lists criminal liability for trademark and patent infringement. Article 166.1 defines the acts that are susceptible to criminal liability and the sanctions applicable.

Article 174 establishes general preliminary injunctions and paragraph II established border measures available in criminal actions related to industrial property infringement.

What are the Elements of the Crime/How is the Crime Defined?

The crimes are defined in article 166.1 and indicate that whoever intentionally commits the following acts will be criminally liable:

- a) Without the consent of the title holder of a distinctive sign, use in commerce an identical sign or a registered trademark, or a identical copy or a fraudulent imitation of that trademark, in relation to the goods and/or services that it distinguishes, or to related goods and/ or services.
- b) without the consent of the owner of a distinctive sign, perform the following actions as regards a trade name, a label, or an emblem
 - Use in commerce an identical distinctive sign for an identical or related business.
 - Use a similar distinctive sign in commerce when it is likely to create confusion.
- c) Use in commerce, in relation to a product or service, a false geographical indication or that is likely to deceive the public about the origin of that product or service or about the identity of the producer, manufacturer or merchant of the product or service
- d) Use in commerce, in relation to a product, a false or misleading designation of origin or the imitation of a designation of origin, even when the true origin of the product is indicated, a tradition of the designation of origin is used or use the appellation of origin accompanied by expressions such as "type", "gender", "manner", "seizure" and other similar qualifications.
- e) Continue to use an unregistered trademark similar to a degree of confusion to another registered one or after the administrative sanction imposed becomes final and definitive;
- f) Offer for sale or put on the market the products or provide the services with the trademark referred to in the previous infringement
- g) Import or export counterfeit goods

What is the typical Sentence for the Crime?

The law provides that whoever commits offense under article 166.1 shall be imprisoned fined with 6 months to 3 years and a fine of 50 to 1000 monthly minimum wages. In cases of counterfeiting of regulated products (i.e drugs; beverages; foods; tobacco), Public Administration Offices can also apply sanctions such as the destruction of infringing products; administrative forfeiture.

Note: The majority of cases due to trademark infringement are settled before a final sentence.



Other relevant information:

The responsibility for the crime described before extends to those who order or arrange for its performance, to the legal representatives of legal persons and to all those who, knowing the illegality of the event, take part in it, facilitate it or cover it up.

Per the Industrial Property law, infringements may be pursued in the local market through civil action (on which damages and compensations are able to be obtained) or through criminal actions (which would entail sanctions such as prison and fines and where the Public Prosecutor intervenes for preliminary injunctions and investigations). The latter is the usual path in the majority of the cases due to the criminal sanctions.

In the event of alleged trademark falsification, any person may file criminal charges and the State may carry out investigations or take other enforcement measures ex officio, without having a formal complaint from a private party or title holder, at least for the purpose to preserve evidence and prevent the continuation of infringing activity under article 167.

Unfair competition is also regulated by the Industrial Property Law 20-00 of 14 April 2000 and modified by the Law 424-06 (adoption of the DR-CAFTA) lists criminal liability for trademark and patent infringement. Articles 176 to 184. Unfair competition action prescribes after four (4) years, counted from the last time the unfair act was committed and can only be pursued through civil action.

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ECUADOR

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Integral Organic Criminal Code, amended in Sept. 2015

What are the Elements of the Crime/How is the Crime Defined?

Manufacture or trade, in commercial sale, of goods bearing a trademark that may not be distinguished from a valid registered trademark or a notorious trademark or that may not be distinguished on its essential aspects from a valid registered trademark or a notorious trademark.

What is the typical Sentence for the Crime?

Fines from US\$ 22.000 to US\$ 118.000

Other relevant information:

The USTR has been objecting to the reduced protection to intellectual property rights in Ecuador, especially in connection with failure to establish appropriate criminal sanctions. The National Assembly has not acted on this matter in spite of actions taken by the local IP practitioners.

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EGYPT

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Egyptian Law No. 82 of Year 2002 for Law No. 82 of 2002 on the Protection of Intellectual Property Rights: Articles 113 and 114 of the said Law regulate trademark counterfeiting and the use of false or misleading information as to the origin, nature or essential qualities of the product

<http://www.egypo.gov.eg/PDFs/law2002e.pdf>

What are the Elements of the Crime/How is the Crime Defined?

The following acts are a punishable crime under articles 113 and 11 of the Egyptian IP Law No. 82 of Year 2002;

Article 113: [A]ny person who:

- (1) Counterfeits a trademark registered in accordance with the law or imitates it in a manner, which is likely to mislead the public;
- (2) Fraudulently uses counterfeit or imitated trademarks;
- (3) Fraudulently affixes to his products a trademark belonging to a third party;
- (4) Knowingly sells, offers for sale or distributes, or acquires for the purpose of sale, products bearing a counterfeit or imitated mark, or on which the mark was unlawfully affixed.

Article 114: [A]ny person who:

- (1) affixes a false trade indication to his products, on or inside his shops or warehouses, on signboards, packaging, invoices, correspondence, advertisements or any other means used for offering the products to the public;
- (2) fraudulently places on his marks or commercial documents an indication that leads to believe that such mark has been registered;
- (3) uses a mark that has not been registered, in the cases provided for in paragraphs 2, 3, 5, 7 and 8 of Article 67;
- (4) mentions medals, diplomas, awards or other honorary distinctions of any kind whatsoever, in relation to the products in respect of which such distinctions do not apply, or in relation to the persons or commercial names who did not acquire them;
- (5) participates with others in exhibiting products and uses for his own private products the distinctions granted to the jointly exhibited products, unless he indicates in a clear manner the source and nature of such distinctions;
- (6) affixes on the products of his own trade, in a place especially reputed for the production of a certain product, geographical indications in such a manner as to mislead the public to believe that those products were produced in that place;



(7) uses any means for the designation or exhibition of products in a manner that may mislead the public as to the production of those goods in a geographical place especially reputed rather than the real place of origin of such products;

(8) manufactures a product in a place especially reputed for its production and who affixes a geographical indication on similar products he produces in other places in such a way as to suggest that such goods were produced in the said place.

What is the typical Sentence for the Crime?

Article 113

Without prejudice to any more severe punishment under any other law, shall be punishable by imprisonment for a period of not less than two months and by a fine of not less than 5,000 pounds and not more than 20,000 pounds, or by either punishment, [...]

In case of repetition, the offence shall be punishable by imprisonment for a term of not less than two months and by a fine of not less than 10,000 pounds and not more than 50,000 pounds.

In all cases, the court shall order the confiscation of the infringing products, the revenue and the returns of such products as well as the implements used in the infringement.

The court may, when issuing a condemnation, order the closure of the enterprise used to commit his infringement, for a period not exceeding six months. In the event of repetition, the enterprise shall imperatively be closed down.

Article 114

Without prejudice to any more severe punishment under any other law, shall be punishable by imprisonment for a period of not less than one month and by a fine of not less than 2,000 pounds and not more than 10,000 pounds or by either punishment, [...]

In case of repetition, such an offence shall be punishable by imprisonment for a period of not less than one month and by a fine of not less than 4,000 pounds and not more than 20,000 pounds.

Other relevant information:

A trademark registration in Egypt is a pre-requisite for initiating the Criminal Action.

The Egyptian legal system provides the holder of IPRs with three types of judicial protection: Civil protection, Criminal protection and Provisional protection. Civil Action represented in Unfair Competition Lawsuit, the latter action is governed by article 66 of the Egyptian Commercial Code No. 17 of Year 1999, which stipulates:

"1. All act contravening the customs and norms observed in commercial dealing, shall be considered an Unfair Competition. In that shall be included in particular, infringing a third party's trademarks, his commercial name, the letters patent, or his industrial secrets which he possesses the right to invest, and instigating the workers in his trading store to divulge his secrets, or quit working for him, and also all act or claim that results in causing confusion to the trading store or his products, or in weakening the confidence in its - owner or those in charge of its management, or in his products.

2. All illegal competition shall force its perpetrator to compensate the harm ensuing therefrom. The court shall, in addition to the compensation, have the power to pronounce a ruling ordering the removal of the harm and the publication of a summary of the sentence at the expense of the judgment debtor in a daily newspaper".



The Provisional protection of IPRs by means of injunctions, is regulated under articles 33, 115, 135, 179 and 204 of the Egyptian IP Law No. 82 of Year 2002; Article 115 is concerned with trademark injunction and the same is read as follows:⁹

"The president of the competent court considering the merits of the case may, upon a request by an interested party, and on petition, order one or more appropriate conservatory measures, and in particular:

- (1) Establish the infringement of a protected right.
- (2) Draw up an exhaustive inventory and detailed description of all the machines and implements used or may have been used in the infringement, as well as the products, goods, signboards of shops, packaging, invoices, correspondence, advertisements or the like, on which the mark or the geographical indication, subject of the offence, might have been affixed, as well as the products imported, on their arrival.
- (3) Order the seizure of the articles stated in item (2).

In all cases, the President of the court may order the assignment of one or more experts to assist the bailiff in charge of the execution. He may order the requesting party to provide an appropriate security.

The requesting shall submit the merits of the case to the competent court, within 15 days of issuing the order, failing which such order shall cease to have effect."

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EL SALVADOR

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code Arts. 226, 227 and 229

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>

Trademark Law and Intellectual Property Law

<https://tramites.gob.sv/media/LEY%20DE%20MARCAS%20Y%20OTROS%20SIGNOS%20DISTINTIVOS.pdf>

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/E1DD5109-FA02-4C6A-A172-877422621863.pdf>

https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_072912050_archivo_documento_legislativo.pdf

What are the Elements of the Crime/How is the Crime Defined?

Art. 226. The one who on a commercial scale will reproduce, plagiarize, distribute to wholesale or communicate publicly, in all or in part, a literary or artistic work or its transformation or an interpretation or artistic performance of any kind of sort by any source without the authorization of the owner of the corresponding intellectual property rights or their assignments, you will be sanctioned with a prison of two to four years.

Art.226, second paragraph. The same penalty will be incurred by one who on a commercial scale will import, export or store examples of such works or productions or executions without the referred authorization.

Art. 227-A. shall be sanctioned with a prison of two to four years, the one who in order to achieve a commercial advantage or private financial gain: a) avoid, without authorization of the owner, any effective technological measure that the control to a protected work, interpretation, performance or phonogram or other subject matter for protection; b) manufacture, import, distribute, offer to the public, provide or traffic devices, products or components; or offer or provide services to the public, as long as the devices, products or components, or the services: 1) are promoted, publicity or marketed for the purpose of avoiding an effective technological measure; 2) they have only a limited purpose or use of commercial importance different from that of avoiding an effective technological measure; or, 3) are designed, produced or executed mainly in order to allow or facilitate the evasion of any effective technological measure.

Art.229. The one that for industrial or commercial purposes, and without the consent of the owner, reproduces, imitates, modifies or in any other way uses marks, trade name, expression, slogan or any other commercial distinctive, infringing a registered intellectual property right, will be sanctioned with a prison of two to four years. The same penalty will include who, knowingly, exports, imports, possesses for their



marketing or puts in the trade, products or services, marks or distinctive signs that, according to the above mentioned, is a violation of the exclusive rights of the owner.

What is the typical Sentence for the Crime?

Penalties.

Art. 226: 2 to 4 years

Art. 226: 2 to 4 years

Art. 227-A: 2 to 4 years

Art. 229: 2 to 4 years

Other relevant information:

Civil Actions:

Art. 90 of our Trademark Act:

An action for infringement of the rights protected in accordance with this Law may take one or more of the following actions:

- (a) Seizure of the infringing goods, including the wrapping, packaging, labels, printed or advertising matter or other materials resulting from the infringement, and the main instruments and materials used to commit the infringement as well as the relevant documentary evidence to the infringement;
- (b) The prohibition of the import, export or transit of the goods, materials or means referred to in letter a);
- (c) The destruction of the products subject to the infringement.
- (d) The destruction of the materials and implements that have been used in the manufacture or creation of the infringing products, without any compensation for the offender or, exceptional circumstances, without compensation some disposed outside the commercial channels, in a way that the risk of future infractions is minimized. To consider the requests for such destruction, the competent court will take in consideration, among other factors, the seriousness of the infringement, as well as the interest of third parties, owner of real state rights, of possession, or a contractual or guaranteed interest.
- (e) The cessation of the acts constituting the infringement;
- (f) Compensation for the damages and harm suffered; and,
- (g) Publication of the sentence handed down against the infringer and notification thereof, at the latter's expense, to all interested parties.

Unfair Competition: Trademark Act articles from 88 to 99 and Article 100.

Article 101, paragraph 2: The following, among others shall constitute acts of unfair competition:

- (a) acts capable of creating confusion or a risk of association as to the goods, services, firm or establishments of a competitor;
- (b) the use or spreading of false assertions or allegations capable of denigrating or discrediting the goods, services, firm or establishments of a competitor;
- (c) the use or spreading of indications or allegations, or the omission of true information, when this is liable to be misleading as to the origin, nature, method of manufacture, suitability for use or consumption, quantity or other characteristics of one's own goods or services or those of a competitor;



- (d) use of a good marketed by a third party to mould, trace, copy or slavishly reproduce this good in some other way with a view to exploiting for commercial purposes the results of the competitor's strength or prestige;
- (e) use as a trademark of a sign whose registration is prohibited under Article 8 (g), (h), (i), (j), (k), (l), (m), (n), or (o) of this Law;
- (f) use of a sign in business whose registration is prohibited under Article 9 of this Law; and,
- (g) use of the appearance, packages, containers, wrapping or decoration of goods and establishments when these are characteristic and liable to create confusion with those of a competitor.

Consequences for infringing companies are the liquidation and dissolution of the company for committing illegal actions according to Art.349 Commercial Code) "The company that, being legally organized, executes illicit acts, will be declared dissolved and will be liquidated immediately. The dissolution action is the responsibility of any interested party or the Public Ministry. The Judge shall decree it ex officio upon having knowledge of the illicit activity".

For copyright counterfeit, the crime is governed in the Criminal Code.

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ESWATINI

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Section 58 of the Trade Marks Act No.6 of 1981

<https://www.wipo.int/edocs/lexdocs/laws/en/sz/sz004en.pdf>

What are the Elements of the Crime/How is the Crime Defined?

The crimes relate mainly to falsification of records or making false representations to the Registrar.

56. (1) Any person shall be guilty of an offence if he knowingly makes a representation

(a) with respect to a trade mark not being a registered trade mark to the effect that it is a registered trade mark;

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark to the effect that it is so registered;

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not registered; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered in the Register} the registration does not give that right.

What is the typical Sentence for the Crime?

A fine of E2000.00 or imprisonment for a period of 6 months or both.

Other relevant information:

This Act is from 1981 and has not been recently updated.

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ETHIOPIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004;
Trademark Registration and Protection Proclamation No. 501/2006

What are the Elements of the Crime/How is the Crime Defined?

I. The Criminal Code:

Article 720.-

Infringement of Marks, Declarations of Origin, Designs or Models.

1. Whoever intentionally:

- a. infringes, imitates or passes off, in such manner as to deceive the public, another's mark or distinctive signs or declarations of origin on any produce or goods or their packing, whether commercial, industrial or agricultural; or
- b. sells or offers for sale, imports or exports, distributes or places on the market produce or goods under a mark which he knows to be infringed, imitated, passed off or improperly affixed; or
- c. refuses to declare the origin of produce or goods in his possession under such marks, shall be punishable with rigorous imprisonment not exceeding ten years.

2. Whoever unlawfully so acts with respect to intellectual property rights, particularly industrial designs or models, or patented inventions or processes, duly registered and protected by existing laws or agreements, national or international, shall be liable to the same punishments.

3. Where the act mentioned under sub-article (1) or (2) is committed negligently, the punishment shall be simple imprisonment not exceeding five years.

II. The Trademark Registration and Protection Proclamation No. 501/2006:

Article 41. Criminal Sanctions

1. Unless heavier penalty is provided for under the Criminal Code, whoever intentionally violates a right protected under this Proclamation shall be punished with rigorous imprisonment of a term of not less than 5 years and not more than 10 years.

2. Unless heavier penalty is provided for under the Criminal Code, whoever, by gross negligence violates a right protected under this Proclamation shall be punished with rigorous imprisonment of a term not less than 1 year and not more than 5 years.

3. The penalty, where appropriate, shall include seizure, forfeiture and destruction of the infringing goods and of any materials and implements used in the commission of the offense.

What is the typical Sentence for the Crime?

I. The Criminal Code:

Violations

under Article 720 (1) shall be punishable with rigorous imprisonment not exceeding ten years. Article 720

(3) Where the act mentioned under sub-article (1) or (2) is committed negligently, the punishment shall be simple imprisonment not exceeding five years.



II. The Trademark Registration and Protection Proclamation No. 501/2006:
Sanctions

Article 41. Criminal

1. Unless heavier penalty is provided for under the Criminal Code, whoever intentionally violates a right protected under this Proclamation shall be punished with rigorous imprisonment of a term of not less than five (5) years and not more than ten (10) years,
2. Unless heavier penalty is provided for under the Criminal Code, whoever, by gross negligence violates a right protected under this Proclamation shall be punished with rigorous imprisonment of a term not less than one (1) year and not more than five (5) years.
3. The penalty, where appropriate, shall include seizure, forfeiture and destruction of the infringing goods and of any materials and implements use in the commission of the offense.

Other relevant information:

The rights protected under the Trademark Registration and Protection Proclamation No. 501/2006 include:
Article 26 Rights Conferred by Registration

1. The owner of a registered trademark shall have the right to use or authorize any other person to use the trademark in relation to any goods or services for which it has been registered.
2. Registration of a trade mark shall confer upon its owner the right to preclude others from the following:
 - a. any use of a trademark or a sign resembling it in such a way as to be likely to mislead the public for goods or services in respect of which the trademark is registered, or for other goods or services in connection with which the use of the mark or sign is likely to mislead the public,
 - b. any use of a trademark, or a sign resembling it, without just cause and in conditions likely to be prejudicial to his interests and;
 - c. other similar acts

These provisions only apply to infringements related to trademarks; for infringements related to Copyright and Neighboring Rights other laws like the Copyright and Neighboring Rights Protection Proclamation no. 410/2004 (as amended) and The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004 applies; For unfair competition the Trade Competition and Consumer Protection Proclamation No. 813/2013, together with other legislations, applies.

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FIJI

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade-Marks Act 1933

Merchandise Act 1933

What are the Elements of the Crime/How is the Crime Defined?

Merchandise Act 1933

This legislation is in relation to fraudulent marking of merchandise.

It provides that any person who forges any trade-mark, falsely applies to goods any trade-marks so nearly resembling a trade-mark as to deceive, makes any machine or instrument for forging a trade-mark, disposes of any such machine or instrument, applies false description of goods is guilty of an offence unless they prove they acted without intent to defraud.

What is the typical Sentence for the Crime?

Trade-Marks Act 1933

This legislation is limited to civil remedies that are available to the aggrieved party.

Merchandise Act 1933

Any person found guilty of an offence is liable to imprisonment for a term not exceeding 2 years or to a fine or to both and to forfeit to State all machines, articles, instruments used to commit the offence.

Other relevant information:

Patents Act 1879

There are no provisions for criminal infringement proceedings in this legislation.

Copyright Act 1999

This legislation provides for criminal liability for making or dealing with infringing objects. Any person other than those with copyright license who makes for sale or hire, imports into Fiji for commerce, possesses in course of business with view to committing any act infringing the copyright, in the course of business sells or lets for hire, distributes infringing material commits an offence. Further, any person who makes object specifically designed or adapted for making copies of copyright work or has such an object in possession commits an offence. A person who commits an offence is liable on conviction from fine from \$5,000 to \$100,000 and to imprisonment for 12 to 24 months.

Similarly, the Act provides for criminal liability for making, dealing with, using or copying illicit recordings. A person who commits an offence is liable on conviction from fine from \$5,000 to \$50,000 and to imprisonment of up to 3 months.



There is provision in the CA that imposes liability on officer including director of body corporate or company if it is proved that the offence took place with his or her authority.

The Court has powers to order disposal of infringing copies.

United Kingdom Designs (Protection) Act 1936

This legislation is limited to civil remedies that are available to the aggrieved party.

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FINLAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- The Criminal Code of Finland 39/1889: Chapter 49 Section 2
- The Finnish Trademarks Act 544/2019: Section 74
- The Criminal Code of Finland 39/1889: Chapter 30 Section 2
 - https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf
- The Finnish Unfair Business Practices Act 1061/1978: Section 9
 - https://www.finlex.fi/fi/laki/kaannokset/1978/en19781061_20020461.pdf

What are the Elements of the Crime/How is the Crime Defined?

Intellectual property offence (Ch. 49 Sec. 2)

A person who in violation of the Trademarks Act (544/2019), the Patents Act (550/1967), the Registered Designs Act (221/1971), the Act on the Protection of Semiconductor Topographies (32/1991), the Utility Models Act (800/1991), the Plant Variety Rights Act (1279/2009), the Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark or the Council Regulation (EC) No 6/2002 on Community designs, and in a manner conducive to causing considerable financial loss to a person holding a right, breaches:

- (1) the exclusive right to a trademark protected by sections 3 to 9 of the Trademarks Act by using, without the consent of the trademark proprietor or in violation of the proprietor's prohibition or by other equivalent means, a mark that is same, similar, creates a risk of confusion or cannot be distinguished from the proprietor's mark in its essential aspects,
- (2) the exclusive right to an EU trade mark protected by Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark by using, without the consent of the EU trademark proprietor or in violation of the proprietor's prohibition or by other equivalent means, a mark, a sign or an indication that is same, similar, creates a risk of confusion or cannot be distinguished from the proprietor's mark in its essential aspects,
- (3) the exclusive right to a community design protected by Council Regulation (EC) No 6/2002 on the Community designs by exploiting the design without the consent of the proprietor of the Community design or by other equivalent means,
- (4) the exclusive right conferred by a patent,
- (5) the right to a design protected by sections 1, 5, 5a to 5c, and 6 of the Registered Designs Act, by exploiting the design without the consent of the design right owner or by other equivalent means,
- (6) the right to a semiconductor topography,
- (7) the right to a utility model, or
- (8) a plant variety right

Anyone who deliberately infringes the exclusive right to a trademark protected by sections 3 to 9 or the exclusive right to an EU trademark protected by the EU Trade Mark Regulation by using, without the



consent of the proprietor of the trademark or EU trademark or in violation of the proprietor's prohibition or by other equivalent means, a mark, sign or indication that is same, similar, creates a risk of confusion or cannot be distinguished from the proprietor's mark in its essential aspects, shall be sentenced, unless the act is punishable as an intellectual property offence within the meaning of Chapter 49, Section 2 of The Criminal Code of Finland (39/1889), to a fine for a violation of trademark rights.

Prosecution for a violation of trademark rights shall be brought by the Public Prosecutor only at the instigation of the aggrieved party. In the case of an infringement of a right based on a registered trademark, penalty may be imposed only if the infringement occurred after the date of registration.

What is the typical Sentence for the Crime?

Intellectual property offence (Ch. 49 Sec. 2)

[S]hall be sentenced for an intellectual property offence to a fine or to imprisonment for at most two years.

Punishable only as an intentional act (Ch. 3 Sec. 5) Violation of trademark rights (Sec. 74)

Whoever commits an intellectual property offence pursuant to Chapter 49 Section 2 of the Criminal Code of Finland shall be sentenced to a fine or to imprisonment for at most two years. Typical sentence is fine.

Furthermore, reasonable compensation is always ordered in cases of trademark infringement pursuant to the Finnish trademarks Act Section 69 (calculated typically on the basis of a license fee). Additionally, damages may be imposed pursuant to the Finnish trademarks Act Section 69 and the Finnish Tort Liability Act 412/1974 if the act is committed deliberately or negligently. Whoever violates trademark rights pursuant to Section 74 of the Finnish Trademarks Act shall be sentenced to a fine.

Furthermore, reasonable compensation is always ordered in cases of trademark infringement pursuant to the Finnish trademarks Act Section 69 (calculated typically on the basis of a license fee). Additionally, damages may be imposed pursuant to the Finnish trademarks Act Section 69 and the Finnish Tort Liability Act 412/1974 if the act is committed deliberately or negligently.

Additionally, damages may be imposed pursuant to the Finnish Tort Liability Act 412/1974. Whoever violates the competition rules relating to business practices pursuant to Section 9 of the Finnish Unfair Business Practices Act shall be sentenced to a fine.

Additionally, damages may be imposed pursuant to the Finnish Tort Liability Act 412/1974.

Other relevant information:

Unfair competition offence (Ch. 30 Sec. 2)

A person who in business uses a false or misleading expression concerning his or her own business or the business of another and in this way causes loss to the business of another shall be sentenced for an unfair competition offence to a fine or to imprisonment for at most one year.

Punishable only as an intentional act (Ch. 3 Sec. 5).

Provisions on corporate criminal liability in Chapter 9 apply to unfair competition offences (Ch. 30 Sec. 13) Violation of the competition rules relating to business practices (Sec. 9)

Whoever violates deliberately or out of gross negligence the provisions of sections 2 or 3 shall be sentenced to a fine for a violation of the competition rules relating to business practices, unless a more severe sentence is provided for elsewhere in law for the act or omission.



Whoever deliberately violates the provisions of section 2 (1) commits an offence referred to in section 2 of chapter 30 of the Penal Code and shall be sentenced for an infringement of the competition rules relating to business practices in accordance with the Penal Code.

Whoever commits an unfair competition offence pursuant to Chapter 30 Section 2 of the Criminal Code of Finland shall be sentenced to a fine or to imprisonment for at most one year. Typical sentence is fine.

The provision regarding intellectual property offence is applicable, inter alia, in situations concerning trademark infringements and trademark counterfeiting.

For copyright counterfeits, see Section 56a of the Finnish Copyright Act 404/1961 and Chapter 49 Section 1 of the Criminal Code of Finland. Provisions regarding corporate criminal liability in Chapter 9 of The Criminal Code of Finland apply.

The Finnish Copyright Act 404/1961, Section 56a:

https://finlex.fi/fi/laki/kaannokset/1961/en19610404_20150608.pdf

The Criminal Code of Finland, Chapter 49 Section 1:

https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf

In practice, prosecution is not usually brought in cases of trademark infringement. However, cases of trademark counterfeiting and copyright infringements have been handled in criminal proceedings. The provision regarding violation of trademark rights is applicable, inter alia, in situations concerning trademark infringements and trademark counterfeiting.

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FRANCE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Articles L716-8-9 to L716-13 of the French Intellectual Property Code,
Intellectual Property Code, Book VII

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069414&dateTexte=20060302>

What are the Elements of the Crime/How is the Crime Defined?

The article L716-9 punishes various acts constituting acts of counterfeiting:

« the fact for any person, in preparation for selling, supplying, offering for sale or renting goods presented under a counterfeiting trademark:

- a) To import, export, re-export or trans-ship goods presented under an infringing trademark;
- (b) To produce industrially goods bearing an infringing mark;
- (c) to give instructions or orders for the commission of the acts referred to in (a) and (b) »

The article L716-10 also punishes acts constituting of acts of counterfeiting:

« (a) Without lawful excuse, to import or export goods presented under an infringing mark;

(b) Offering for sale or selling goods bearing an infringing mark;

(c) Reproducing, imitating, using, affixing, removing, altering or modifying a trademark, collective mark or guarantee mark in violation of the rights conferred by its registration and the prohibitions deriving therefrom. The infringement provided for under the conditions laid down in this c) shall not be constituted where a prescription aid software program makes it possible, if the prescriber so decides, to prescribe under an international non-proprietary name in accordance with the rules of good practice laid down in Article L. 161-38 of the Social Security Code;

(d) To knowingly deliver a product or provide a service other than that requested of him under a registered trademark »

What is the typical Sentence for the Crime?

There are different sanctions and penalties:

- 4 years of imprisonment and a 400 000€ fine for the acts of infringement referred to in article L716-9
- 3 years of imprisonment and a 300 000€ fine for the acts of infringement referred to in article L716-10.

Article L716-10 also explains that when the offences have been committed in an organized gang or on an online public communication network or where the facts relate to dangerous goods for the health or safety of humans or animals, the penalties are increased to seven years' imprisonment and a 750 000€ fine.

Another sentence is the total or partial, permanent or temporary closure, for a period not exceeding five years, of the establishment used to commit the offence (article L716-11-1).



Article L716-10 also explains that when the offences have been committed in an organized gang or on an online public communication network or where the facts relate to dangerous goods for the health or safety of humans or animals, the penalties are increased to seven years' imprisonment and a 750 000€ fine.

Another sentence is the total or partial, permanent or temporary closure, for a period not exceeding five years, of the establishment used to commit the offence (article L716-11-1). When a counterfeiting infraction is proved, the Police may seize products that have been illicitly manufactured, imported, held, offered for sale, delivered or supplied and equipment specially installed for the purpose of such act (article L716-8-9). There are special sentences concerning legal entities (article L716-11-2 : « Legal entities declared criminally liable, under the conditions provided for in Article 121-2 of the Penal Code, for the offences defined in Articles L. 716-9 to L. 716-11 shall incur, in addition to the fine in accordance with the procedures provided for in Article 131-38 of the Penal Code, the penalties provided for in Article 131-39 of the same Code.

The prohibition referred to in 2° of Article 131-39 of the same Code relates to the activity in the exercise of which or on the occasion of which the offence was committed.

Legal persons declared criminally liable may also be ordered, at their own expense, to remove from the channels of commerce objects deemed to be infringing and anything that served or was intended to serve to commit the offence.

The court may order the destruction at the expense of the convicted person or the handing over to the injured party of the objects and things withdrawn from commercial channels or confiscated, without prejudice to any damages. ») In case of recidivism, the sentences are doubled (article L716-12). Finally, there are other sentences (article L716-13) : « Natural persons guilty of one of the offences provided for in Articles L. 716-9 and L. 716-10 may be ordered, at their own expense, to remove from commercial channels objects deemed to be counterfeit and anything that has served or was intended to serve to commit the offence.

The court may order the destruction at the expense of the convicted person or the handing over to the injured party of the objects and things withdrawn from commercial channels or confiscated, without prejudice to any damages.

It may also order, at the expense of the convicted person, the posting of the judgment or the publication of the judgment pronouncing the sentence, under the conditions laid down in Article 131-35 of the Penal Code. »

Other relevant information:

Articles L716-8-9 to L716-13 of the French Intellectual property law are for counterfeiting regarding trademarks only. For copyright counterfeits, see article L335-3 of the French Intellectual property law that is applicable. For patents, see article L615-1 of the French Intellectual property law. Concerning unfair competition, there is no criminal liability, only civil liability (article 1240 of the French civil law that states : « Any act of man, which causes damage to another, obliges the one through whose fault he has managed to repair it. »).



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GEORGIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 196 of Criminal Code of Georgia - <https://matsne.gov.ge/en/document/view/16426?publication=209>

What are the Elements of the Crime/How is the Crime Defined?

1. Illegal manufacturing or use of another person's trade (service) marks, designations of origin or geographical indications in large quantities, as well as production or introduction into civil circulation of goods illegally marked with another person's trade (service) marks, designation of origin or geographical indications or with the registered company name, which has resulted in considerable damage
2. False indication of a warning mark along with a non-registered trade (service) mark, designation of origin or geographical indication
3. The act provided for by paragraph 1 or 2 of this article which has been committed:
 - a) repeatedly;
 - b) by a person convicted for this kind of offence;
 - c) by a group of persons with the preliminary agreement

What is the typical Sentence for the Crime?

1. Illegal manufacturing or use of another person's trade (service) marks, designations of origin or geographical indications in large quantities, as well as production or introduction into civil circulation of goods illegally marked with another person's trade (service) marks, designation of origin or geographical indications or with the registered company name, which has resulted in considerable damage,
shall be punished by a fine, or corrective labour for up to two years or with imprisonment for the same term.
2. False indication of a warning mark along with a non-registered trade (service) mark, designation of origin or geographical indication, –
shall be punished by a fine or community service from 120 to 180 hours and/or with corrective labour for up to one year or with imprisonment for a term of two to three years.
3. The act provided for by paragraph 1 or 2 of this article which has been committed:
 - a) repeatedly;
 - b) by a person convicted for this kind of offence;
 - c) by a group of persons with the preliminary agreement,shall be punished by a fine or imprisonment for a term of three to five years.



Other relevant information:

The illegal manufacturing of another person's trade (service) mark, designation of origin or geographical indication of goods is considered to be in large quantities if their total quantity is over 1 000, and an offence shall be deemed to have resulted in considerable damage if the cost of the goods manufactured or introduced into civil circulation and illegally marked with another person's trade (service) marks, designation of origin, geographical indication or registered company name exceeds GEL 5 000.

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GERMANY

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

§§ 143 ff of the German Trade Mark Act (Markengesetz)

https://www.gesetze-im-internet.de/englisch_markeng/englisch_markeng.html#p0832

What are the Elements of the Crime/How is the Crime Defined?

§ 143 German Trademark Act

(1) Any person who, in trade, unlawfully

1. uses a sign contrary to section 14 (2) no. 1 or 2;
 2. uses a sign contrary to section 14 (2) no. 3 with the intention of taking advantage of or impairing the distinctive character or the repute of a trade mark which has a reputation;
 3. affixes a sign contrary to section 14 (4) no. 1 or offers, puts on the market, stocks, imports or exports contrary to section 14 (4) no. 2 or 3 a wrapping or packaging or a means of identification, in so far as to third parties the use of the sign
 - a) would be prohibited in accordance with section 14 (2) no. 1 or 2; or
 - b) would be prohibited to third parties in accordance with section 14 (2) no. 3 and the act is carried out with the intention of facilitating the taking advantage of or impairment of the distinctive character or the repute of a trade mark which has a reputation;
 4. uses a designation or a sign contrary to section 15 (2); or
 5. uses a designation or a sign contrary to section 15 (3) with the intention of exploiting or impairing the distinctive character or the repute of a commercial designation which has a reputation
- shall be liable to imprisonment of up to three years or a fine.

(2) If the offender acts on a commercial basis or as a member of a gang formed for the purpose of the continued commission of such offences in cases coming under subsection (1), the penalty shall be imprisonment for between three months to five years.

(3) An attempt shall be punishable.

What is the typical Sentence for the Crime?

The sentence for a criminal trademark offence depends on if the offender acted on a commercial basis (§ 143 (2)) or not (§ 143 (1)). In the second case, i.e. for a "simple" criminal trademark offence, the offender is liable to imprisonment of up to three years or a monetary fine. In practice, sentences of imprisonment are rare. Almost all cases of criminal non-commercial activity typically end up with a monetary fine whose amount depends on the financial circumstances.

In cases of a qualification of the offence, i.e. the perpetrator acts on a commercial basis or as a member of a gang formed for the continued commission of trademark infringements, the offender is liable to imprisonment and such imprisonment shall be between three months and five years. A monetary fine is no longer possible. Typical sentences are 6 to 12 months of imprisonment, usually put on probation in case of



first offences. In case of repetition and server commercial trademark piracy, penalties of up to 3 years of imprisonment are also conceivable.

Other relevant information:

Germany's Act Against Unfair Competition is also implicated in several provisions of this Act.

Note: The criminal offences listed in section 143 (1) make a referral to specific trademark infringing acts which are defined by civil law in the sections 14 and 15 of the Trademark Act.

Note, text included here is for infringement of German trademarks and business designations. For the infringement of European Union trademarks, § 143a of the German Trademark Act provides that the provisions for German trademarks shall apply mutatis mutandis. Criminal prosecution of trademark rights is rare in Germany. The few cases handled by German criminal courts relate to commercial counterfeit case in form of organized crime.

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GHANA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Section 26 of Trademarks Act 2004 (Act 664)

What are the Elements of the Crime/How is the Crime Defined?

Offences relating to trademarks and trade descriptions

- (1) "A person shall not
 - (a) apply a false trade description to goods; or
 - (b) falsely apply to goods a trademark or mark so nearly resembling a trademark as to be likely to deceive; or
 - (c.) forge a trademark; or
 - (d) use an article or instrument to forge a trademark; or
 - (e) possess an article to forge a trademark; or
 - (f) cause the infringement of a mark under this subsection.
- (2) A person shall not sell or possess for sale or expose or for any purpose of trade or manufacture goods or things
 - (a) to which a forged trademark or false trade description is applies, or
 - (b) to which a trademark or a mark so nearly resembling a trademark as to be likely to deceive is applied."

What is the typical Sentence for the Crime?

Section 26

- (3) "a person who contravenes subsection (1) and (2) commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units (GHS 6,000) or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.
- (4) Where a person is convicted of an offence under this section the goods and things of any kind by means of or in relation to which the offence is committed are liable, at the discretion of the Court, to be forfeited to the Republic.

Other relevant information:

Section 27 of the Interpretation Act, 2009 (Act 792) defines a penalty unit as equivalent to GHS 12.

Under section 25 of the Trademarks Act, " A person forges a trademark if that person

- (a) without the consent of the owner of the trademark makes that trademark or a mark so nearly resembling that trademark as likely to deceive or
 - (b) falsifies a genuine trademark, whether by alteration, addition, effacement, or otherwise, and a trademark or mark so made or falsified is in this Act referred to as a forged trademark.
- (2) In prosecuting for forging a trademark, the burden for proving the consent of the owner lies on the defendant.



See also section 27 of the Trademarks Act on Defenses.

(1) Where a person is charged with an offence under subsection (1) of section 26, it is a good defense if that person proves that the act was done without the intent to defraud.

(2) Where a person is charged with an offence under paragraph (a), (b) or (d) of subsection (1) of section 26 or under paragraph (f) of that subsection, it is a good defense if that person proves that

(a) being in the business of making articles or other instruments to make trademarks, that person applied marks or descriptions to goods and was not interested in the goods for profit or commission dependent on the sale of the goods; and

(b) reasonable precautions were taken against committing the offence charged; and

(c) at the time of the commission of the alleged offence, there was no reason, as an employee, to doubt the genuineness of the mark, trademark or trade description; and

(d) the police officer was given the relevant information with respect to the persons on whose behalf the trademark, mark, or description was applied.

(3) Where a person is charged with an offence under subsection (2) of section 26, it is a good defense for that person to prove

(a) that having taken reasonable precautions against committing an offence against this Act, that person, did not at the time of the commission of the alleged offence have reason to doubt the genuineness of the trademark, mark or trade description and that on demand made by or on behalf of the police officer, gave the information that was required with respect to persons from whom the goods or things were obtained, or

(b) that otherwise that person had acted innocently.

As regards unfair competition, The Protection Against Unfair Competition Act 2000 does not make provision for criminal liability. Only civil liabilities and remedies apply.

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GREECE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 45 "Criminal provisions" of the Greek Law 4679/2020 on "Trademarks - Transposition of Directive (EU) 2015/2436 on the approximation of the laws of the Member States relating to trade marks"

<https://www.taxheaven.gr/law/4679/2020>

What are the Elements of the Crime/How is the Crime Defined?

(a) Offenses. Whoever knowingly

(i) uses a trademark in breach of the provisions of article 7§3 (a), (b) with regards to the right of the proprietor of a registered trade mark is entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(i) the sign is identical with the trademark and is used in relation to goods or services which are identical with those for which the trade mark is registered;

(ii) the sign is identical with, or similar to, the trademark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

(ii) places on the market, owns, imports or exports products bearing another's trademark, or offers services with another's trademark;

(iii) proceeds to any of the following actions:

(a) affixes the sign to the goods or to the packaging thereof;

(b) affixes the sign on genuine products of the proprietor, which he/she intended to distribute as anonymous or under another sign;

(c) removal of the sign from the genuine products of the proprietor and their placing on the market as anonymous under another sign;

(d) offers the goods or puts them on the market, or stocks them for those purposes, under the sign, or offers or supplies services thereunder;

(e) Imports or exports the goods under the sign;

(f) uses the sign as a trade or company name or part of a trade or company name;

(g) uses the sign on business papers and in advertising, including social media;

(h) uses the sign in comparative advertising in a manner that is contrary to article 9§ 2 of the Law 2251/1994

Whoever intentionally uses a mark with reputation, in breach of Article 7(3)(c)*, in order to exploit or damage its reputation.

* Article 7(3)(c): the proprietor of a registered trade mark is entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where the sign is identical with, or similar to, the trade mark irrespective of whether it is used in relation to goods or services



which are identical with, similar to, or not similar to, those for which the trade mark is registered, where the latter has a reputation in Greece State and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.

(iv) whoever intentionally uses symbols and signs which have not been authorized by the competent authorities and are to be refused or invalidated pursuant to Article 6ter of the Paris Convention, or consist of or include badges, emblems and escutcheons other than those covered by Article 6ter of the Paris Convention and which are of public interest and t+G31he consent of the competent authority to their registration has not been given or have high symbolic value, in particular religious symbol, representations and words.

What is the typical Sentence for the Crime?

(b) Penalties. Whoever commits any of the offenses described in points (i)-(iii) may be imposed the following penalties:

(1) imprisonment of at least six (6) months and a fine of at least six thousand (6,000) Euros. The same penalty shall be imposed on anyone who intentionally uses a mark with reputation, in breach of Article 7(3)(c), in order to exploit or damage its reputation.

(2) imprisonment of at least two (2) years and a fine of at least six thousand (6,000) to thirty thousand (30,000) Euros in case of infringement of a trademark with a sign that is identical with the said trademark and at the same time there is an identity or similarity of products or services:

(a) if the benefit sought or the damage threatened by the action(s) referred in points (i)-(iii), is particularly great and there is an exploitation on a commercial scale or, (b) or the person proceeds to any of the action(s) referred in points (i)-(iii) as a profession.

(3) Whoever intentionally uses the symbols or signs referred in point (iv) may be imposed a fine not exceeding two thousand (2,000) euros.

In the cases of paragraphs 1 and 2, the criminal prosecution is exercised upon complaint, while in the case of paragraph 3, the criminal prosecution is exercised ex officio.

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GRENADA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The Trademarks Act, Act No. 1 of 2012

What are the Elements of the Crime/How is the Crime Defined?

1. Infringement

Section 27(1) of the Trademarks Act: the performance of any of the acts referred to in Section 14, in Grenada, by a person, other than the owner of the title of the trademark and without the agreement of the latter, shall constitute an infringement.

Section 14:

- (i) the using of a trademark without the consent of the registered owner (this extends to the use of a sign similar to the registered trademark, and to such use in relation to goods and services similar to those for which the trademark has been registered, where such similarity is likely to cause confusion on the part of the public); and
- (ii) performing acts involving the trademark which make it likely that infringement will occur.

2. Unlawful Use of Tradename

Section 20(1) of the Trademarks Act: a name or designation shall not be used as a trade name, if by its nature or the use to which it is put, it is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

Section 20(2): even without registration, such names shall be protected against unlawful acts committed by third parties and that any use of the tradename by a third party, whether as a trade name or a trademark or collective mark, or any such use of a similar trade name or trademark, likely to mislead the public, shall be deemed unlawful.

3. Falsification of Trademark Register

Section 34 of the Trademarks Act: a person who makes or causes to be made:

- (a) a false entry in the Register or
- (b) anything falsely purporting to be a copy of an entry in the Register or
- (c) produces, or tenders or causes to be produced or tendered in evidence, any such thing, knowingly, or having reason to believe the entry or thing to be false, commits an offence.

4. False Representation in Respect of Trademarks

Section 35(1) of the Trademarks Act: a person who

- (a) falsely represents that a trademark is a registered trademark or
- (b) makes a false representation as to the goods or services for which such a trademark is registered, knowingly, or having reason to believe the representation to be false, commits an offence.



What is the typical Sentence for the Crime?

Infringement:

Section 27(3) of the Trademarks Act: any person who knowingly performs an act which constitutes an infringement as defined under section 27(1) commits an offence and is liable to a fine of \$10,000 (Eastern Caribbean Currency) or to imprisonment for a term not exceeding five years or both.

Unlawful Use of Tradename:

Section 27(3) of the Trademarks Act: any person who knowingly performs an unlawful act as defined in section 20 (referenced above) commits an offence and is liable to a fine of \$10,000 (Eastern Caribbean Currency) or to imprisonment for a term not exceeding five years or both.

Falsification of Trademark Register:

Section 34 of the Trademarks Act: a person convicted of falsification of the Register shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding \$10,000 (Eastern Caribbean Currency), or to both.

False Representation in Respect of Trademarks:

Section 35(1) of the Trademarks Act: a person convicted of false representation in respect of a trademark shall be liable to pay a fine of \$8,000.00 (Eastern Caribbean Currency).

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GUATEMALA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

i. Criminal Code; ii. Intellectual Property Law

What are the Elements of the Crime/How is the Crime Defined?

ARTICLE 275.- Violation of industrial property rights. Without prejudice to the corresponding civil liabilities, whoever performs any of the following actions without the consent of the rights holder, will be punished with imprisonment for one to six years and a fine of fifty thousand to seven hundred fifty thousand quetzals:

- a) Introduces to the trade, sells, offers to sell, store or distribute products of services protected by a registered distinctive sign or that falsifies said signs in relation to products or services that are identical or similar to those that are protected by the registry;
- b) Trade with a trade name, emblem or expression or protected publicity sign;
- c) Introduces, sells, offers to sell, stores or distributes products or services protected by a registered distinctive sign, after having partially or totally altered, replaced or suppressed said sign;
- d) Use, offer to sell, store or distribute products or services with a registered trademark, similar in degree of confusion to another, after having issued a ruling ordering the discontinuation of the use of said trademark;
- e) Produce labels, containers, wrappings, packaging or other similar materials that reproduce or contain the registered sign or an imitation or forgery thereof, and also market, store or display said materials;
- f) Fill or reuse, for any purpose, containers, wrappings, labels or other packaging that have a registered distinctive sign;
- g) Use in commerce: labels, wrappings, containers and other means of packaging and packaging, or products or the identification of services of an entrepreneur, or copies, imitations or reproductions of said products and services that could lead to error or confusion about the origin of the products or services;
- o) Import or export to introduce counterfeit goods to the commercial circuit; and
- p) Commercially use a registered trademark, or a copy or a fraudulent imitation of it, in relation to products or services that are identical or similar to those to which the trademark applies.

The assumptions contained in this provision shall be determined based on the applicable provisions of the Industrial Property Law.

What is the typical Sentence for the Crime?

A typical sentence for distinctive signs or registered trademarks rights would be a prison sentence of 1 to 4 years and a fine (proportional to the quantity of the counterfeit goods). The destruction of the goods will also be included in the sentence.



Other relevant information:

In Guatemala there is civil liability for the damages caused by the accused party when committing the crime. Note, the text included here is for counterfeit regarding trade marks. For unfair competition for intellectual matters, most is governed in the Industrial Property Code and the Civil and Commercial Procedural Code. For copyright counterfeit, the crime is governed in the Criminal Code.

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HAITI

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- (I) Articles 20-25, The July 17th 1954 Trademark Law;
- (II) Articles 104-105, in Paragraph II "Counterfeiting of State seals, banknotes, public bills, hallmarks, stamps and marks", of Section 1 "Counterfeits", Chapter III "Crimes and offenses against the constitution" of the Haitian Penal Code.

What are the Elements of the Crime/How is the Crime Defined?

(I) TRADEMARK LAW: Article 20.- Will be subject to a penalty of 500 Gourdes payable to the Public Treasury upon decision of the Correctional Tribunal:

- 1) Anyone who uses without authorization a mark of which he is not the owner;
- 2) Anyone who reproduces a registered trademark wholly or in part, in any manner whatsoever, so as to mislead the consumer, the similarity of the marks being determined by their similarities rather than their differences;
- 3) Anyone who uses an imitation or counterfeit trademark.

Article 21.- Will also be subject to a penalty of 500 Gourdes payable to the Public Treasury:

- 1) Anyone who uses as a mark or as a part of the same the insignia or device of a public, official character, national or foreign;
- 2) Anyone who uses trade marks offending public morals or decency.

Article 22.- The fabrication, imitation or illicit use of a trade mark will be prosecuted either by the Prosecutor or upon the complaint of the interested party. The matter will be decided as an urgent affair.

An interested party includes all producers, manufacturers or merchants who are concerned with the production, manufacture or trading of the product.

Article 23.- Prosecutions will be exercised by the Prosecutor before the Civil Tribunal in the jurisdiction in which the products are found, without prejudice to the damages which will be due to the interested party.

Article 24.- Fraud once established, the products bearing the falsified or counterfeit trade mark will be seized and sold at public auction, if they are susceptible of damage or deterioration, or during execution of the judgment. They constitute the guarantee of payment of damages and indemnity due to the injured party.

Article 25.- The seizure will be made on request of the interested party, and in the case of Article 20, on request of the Prosecutor in the jurisdiction where the merchandise or products have been found.

The competent Tribunal is that of the domicile of the guilty party or of the place where the merchandise or products have been found.



PENAL CODE (II) Art. 104.- Those who will have forged the marks intended to be affixed, in the name of the government, on the various species of food or goods, or who will have made use of these false marks; Those who have forged the seal, stamp, mark of any authority, or of a particular banking or trade establishment; or who have used counterfeit seals, stamps or marks; will be punished with reclusion.

Art. 105.- Will be punished with imprisonment, whoever being improperly procured the true seals, stamps or marks, having one of the destinations expressed in the preceding article, will have made an application or use prejudicial to the rights or interests of the State of any authority, or even of a particular establishment.

What is the typical Sentence for the Crime?

Articles 20 and 21 of the Trademark Law impose a penalty of 500 Gourdes as well as seizure of the goods.

Articles 104 and 105 of the Penal Code impose a punishment of "reclusion" and imprisonment, respectively.

Other relevant information:

It is possible that there has not yet been any actual sentencing for trademark violations. The Trademark Law of 1954 refers only to fines, with the legislator deferring to the Penal Code for more further punishment. The code classifies unlawful actions into either Crimes, Misdemeanors, or Citations based on the severity of the punishment. An article 104 violation results in the punishment of "Reclusion" (a form of imprisonment entailing labor) and is thus a crime. On the other hand, article 105 prescribes a punishment of "imprisonment" (with a limit of six days to three years) and is thus a misdemeanor. Lastly and unfortunately, the fines of 500 Gourdes were set in 1954 and have never been updated to reflect inflation.

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HONDURAS

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- Criminal Code/Penal Code (art. 393-397);
- Intellectual Property Law/Industrial Property Law (art. 96, 160, 165);
- Decree 16-2006 Implementation Law of the DR-CAFTA Free Trade Agreement (art. 43, 46, 47)

What are the Elements of the Crime/How is the Crime Defined?

- Manufacture, produce, import or store products that incorporate an identical, similar or confusing distinctive sign with that such sign; or,
- Offers, distributes or markets products that incorporate an identical, similar or confusing distinctive sign.
- Apply, adhere or fix in any way a distinctive sign identical or similar to the registered trademark on products for which the trademark has been registered, or on packaging, wrapping, packaging, or representations of such products.
- Delete or modify the brand that its owner or person authorized to do so would have applied, adhered to or affixed to the aforementioned products;
- Manufacture labels, containers, wraps, packaging or other similar elements that reproduce or contain reproduction of the registered trademark, as well as to commercialize or to hold such elements;
- Refill or reuse for commercial purposes, packaging, wrapping or packaging bearing the mark.
- Use in commerce a sign identical or similar to the mark for the same products or services for which the mark has been registered, or different but that could cause confusion or a risk of association with the owner of the registration.
- Using in commerce a sign identical or similar to the registered trademark in circumstances that such use could mislead the public or cause confusion, or could cause the owner unfair economic or commercial damage by reason of dilution of distinctive force or value commercial use of the brand or an unfair use of the reputation or distinctive strength of the mark.

What is the typical Sentence for the Crime?

- The condemnatory sentence that establishes precisely the penalties and the security measures that the prisoner is subject to. In this case, he must be punished with prison terms of one (1) year to four (4) years and a fine for an amount equal to three times the benefit obtained.
- The itinerant or occasional sale must be punished with a prison sentence of one (1) to three (3) years. Given the nature of the culprit and the small amount of economic benefit obtained, it may be imposed instead of imprisonment, a fine of thirty (30) to one hundred fifty (150) days. (The day has a value not less LPS.20.00 lempiras or more than LPS.5,000.00 (USD.0.80 to USD240.00).
- There may be worth increased by one third (1/3) taking aggravating circumstances such as
 1. economic importance attending the benefit to the damage caused or the value of the illegally produced objects;



2. the fact is committed within an organized criminal group; or,
 3. minors under 18 are used to commit crimes.
- The liability of legal persons with closure penalties of their premises and establishments for a term of three (3) to five (5) years or a fine of five hundred (500) to one thousand (1,000) days, as well as other sanctions, is also contemplated. suspension of specific activities, prohibition to carry out specific activities in the future and disqualification to obtain subsidies and public aid, to contract with the State and to enjoy benefits and fiscal or social security incentives for a period not exceeding 15 years.

Other relevant information:

In Honduras there is civil liability for the damages caused by the accused party when committing the crime.

Unfair competition is governed in Civil Procedural Code, Commercial Code and Intellectual Property Law. For copyright counterfeit, the crime is governed in the Criminal Code.

Links:

Industrial Property Law – Judiciary www.poderjudicial.gob.hn

About Intellectual Property | Property Institute – IP www.poderjudicial.gob.hn

D E C R E E No.130-2017 THE NATIONAL CONGRESS tbinternet.ohchr.org

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HUNGARY

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Act C of 2012 on the Criminal Code; link: https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

What are the Elements of the Crime/How is the Crime Defined?

Section 388 (1) Any person who infringes the industrial property right of the rightful holder afforded by law, international agreement promulgated by an act of Parliament, or under European Union legislation:

- a) by imitating or copying the subject matter of protection;
- b) by the marketing of goods produced by imitating or copying the subject matter of protection, or by way of obtaining or keeping such goods for the purpose of distribution; thereby causing financial loss

What is the typical Sentence for the Crime?

In general: whoever commits the crime under Section 388 (1) is guilty of a misdemeanor punishable by imprisonment not exceeding two years.

(2) The penalty shall be imprisonment between one to five years for a felony if the infringement of industrial property rights is committed on a commercial scale.

(3) If the infringement of industrial property rights:

- a) results in substantial financial loss, the penalty shall be imprisonment between one to five years;
- b) results in particularly considerable financial loss, the penalty shall be imprisonment between two to eight years;
- c) results in particularly substantial financial loss, the penalty shall be imprisonment between five to ten years.

Other relevant information:

(4) For the purposes of Section 388:

- a) industrial property rights shall cover:
 - aa) patents,
 - ab) plant variety rights,
 - ac) supplementary protection certificates,
 - ad) trademarks,
 - ae) geographical indications,
 - af) designs rights,
 - ag) utility models,
 - ah) topographies;
- b) 'goods' shall mean any goods of a fungible nature that are capable of being delivered, including services.



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ICELAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Mark Act

https://www.hugverk.is/sites/default/files/2020-05/trade_mark_act_w.32.2019.pdf

What are the Elements of the Crime/How is the Crime Defined?

ART 40

Should the use of a trade mark be considered deceptive, after it has been transferred or a license to use it has been notified, the party concerned may be prohibited by verdict of a Court from using the mark in its existing form.

The same applies in other cases where a trade mark is deceptive, its proprietor uses it in a deceptive manner, or another party does so with his consent.

ART 41-42

Any activity which has already commenced or is demonstrably pending and infringes or will infringe against a trade mark right.

Use of a trade mark which is contrary to this Act may be prohibited by verdict of a Court.

Willful infringement of trade mark right shall be fined. Depending upon the circumstances, punishment could take the form of . . . 1) imprisonment of up to three months

What is the typical Sentence for the Crime?

Ch. 7, ART 41-42: Fine and imprisonment up to three months; and/or court injunction against the activity.

Contact:

See the Trade Mark Act at the link above for more information.



INDIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Marks Act, 1999: Relevant Sections 103 and 104

http://www.ipindia.nic.in/writereaddata/Portal/IPOAct/1_43_1_trade-marks-act.pdf

What are the Elements of the Crime/How is the Crime Defined?

Offences:

103: Any person who

- a) falsifies any trade mark; or
- b) falsely applied to goods and services any trade mark; or
- c) makes, disposes of, or has in his possession any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying a trade mark; or
- d) applies any false trade description to goods or services; or
- e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or
- f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or
- g) causes any of the things above mentioned in this section to be done.

shall, unless he proves that he acted, without intent to defraud, be punished.

104: Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided as the case may be are without the indications so required, unless he proves---

- a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence has been committed in respect of the goods or service; or
- b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or
- c) that otherwise he had acted innocently

shall, be punished.



What is the typical Sentence for the Crime?

Penalties and Exceptions under Section 103 and 104:

Imprisonment for term, not less than six (06) months but which may extend to three (03) years and a fine, of not less than fifty thousand rupees but which may extend to two lakh rupees.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Other relevant information:

The Trade Marks Act 1999 imposes criminal liabilities, for falsely applying/ or falsifying the indication of country or place, but the Act does not govern geographical indication exclusively. The Geographical Indications of Goods (Registration and Protection) Act, 1999 ["GI Act"] separately provides for offences and penalties.

http://www.ipindia.nic.in/writereaddata/Portal/IPOAct/1_49_1_gi-act-1999.pdf

Other than Trade Marks Act, the Customs Act 1962 also provides for protection to trade mark right holders. Wherein, other than absolute confiscation of infringing goods, penal actions under Sec.112 or Sec. 114 of the Act is also taken against infringing importer/ exporter.

https://www.indiacode.nic.in/handle/123456789/2475?view_type=browse&sam_handle=123456789/1362

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INDONESIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 100, Paragraph (1), (2) and (3) of Indonesian Trademark and Geographical Indication Law, No. 20 of 2016 regarding the criminal provision

<http://ditjenpp.kemenkumham.go.id/arsip/terjemahan/38.pdf>

What are the Elements of the Crime/How is the Crime Defined?

Any party who deliberately imitates, copies and uses a trademark that has similarity in entirety with a trademark belonging to another person for the benefit of his own business that causes damage to another person, or to raise circumstances of unfair competition, deceive, or mislead the consumers.

What is the typical Sentence for the Crime?

(1) "Every person who deliberately and without right uses a Mark which is similar in its entirety to a registered Mark of another party for the same kind of goods and/ or services produced and/or traded shall be sentenced to imprisonment for a maximum period of 5 (five) years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah)."

(2) "Every person who deliberately and without right uses a Mark which is similar in its essential part to a registered Mark of another party for the same kind of goods and/ or services produced and/or traded shall be sentenced to imprisonment for a maximum period of 4 (four) years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah)."

(3) "Every person who violates the provisions as stipulated in paragraph (1) and paragraph (2), which the type of goods causes health problems, environmental disturbances, and / or death of human, shall be punished with imprisonment of up to 10 (ten) years and / or a fine of not more than IDR 5,000,000,000.00 (five billion rupiah)."

Other relevant information:

Article 83 Paragraph (1) of Indonesian Trademark and Geographical Indication Law, No. 20 of 2016 also stipulated that:

The owner of registered Mark and/or the Licensee of Registered Mark can file a lawsuit against other party who, without right, used the Mark that has similarities for similar goods and/or services in the form of:

- a. compensation lawsuit and/or
- b. termination of all activities related with the use of such Mark.

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IRAQ

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Iraq Trademarks Law No. 21 of 1957

What are the Elements of the Crime/How is the Crime Defined?

Article 35

Whosoever:

- 1) Contravenes the provisions of Chapter Five of this law, or
- 2) Counterfeits or imitates a mark registered under this law in a manner likely to deceive the public or willfully uses a counterfeit or imitated mark, or
- 3) Willfully places on his products a mark which is the property of another person, or
- 4) Willfully sells, offers for sale or circulation, or possesses for sale products bearing a counterfeit or imitated mark or a mark which, to his knowledge, has been unlawfully placed thereon.

Article 36

Whosoever:

- 1) Uses an unregistered mark of those prescribed in paragraphs 2 to 11 of Article 5 of this law, or
- 2) Contrary to reality puts on his marks or commercial papers any references calculated to lead to the belief that the marks are registered whereas in fact they are not registered

What is the typical Sentence for the Crime?

Article 35

Whosoever:

- 1) Contravenes the provisions of Chapter Five of this law, or
- 2) Counterfeits or imitates a mark registered under this law in a manner likely to deceive the public or willfully uses a counterfeit or imitated mark, or
- 3) Willfully places on his products a mark which is the property of another person, or
- 4) Willfully sells, offers for sale or circulation, or possesses for sale products bearing a counterfeit or imitated mark or a mark which, to his knowledge, has been unlawfully placed thereon, shall, upon conviction be punished with imprisonment for a term not exceeding three years and with a fine not exceeding two hundred Iraqi Dinars or with either of such penalties.

Article 36

Whosoever:

- 1) Uses an unregistered mark of those prescribed in paragraphs 2 to 11 of Article 5 of this law, or
- 2) Contrary to reality puts on his marks or commercial papers any references calculated to lead to the belief that the marks are registered whereas in fact they are not registered, shall upon conviction, be punished



with imprisonment for a term not exceeding one year and with a fine not exceeding one hundred Dinars or with either of such penalties.

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IRELAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade mark law in Ireland is principally governed by the Trade Marks Act 1996 as amended, the Trade Mark Rules 1996 as amended and the respective EU Directives and Regulations. Being a common law jurisdiction, in Ireland non-statutory law applies (for instance, the tort of passing off) and binding precedent judicial decisions are also a source of Irish law.

Under the 1996 Act, the High Court of Ireland has jurisdiction for most actions concerning the enforcement of national marks. Trade mark infringement actions can be dealt with in the Commercial Division of the High Court as well as the Circuit Court to make an order for the delivery and disposal of infringing goods.

<http://www.irishstatutebook.ie/eli/1996/act/6/section/92/enacted/en/html#sec92>

What are the Elements of the Crime/How is the Crime Defined?

An action for fraudulent use of a trade mark can be brought under Section 92 of the 1996 Act which is a more serious offence than trade mark infringement and requires the 'mental element' or intent of the perpetrator who "acts with a view to gain, for himself or another, or with intent to cause a loss".

- "(a) to apply a mark identical to or nearly resembling a registered trade mark to goods or to material used or intended to be used for labelling, packaging or advertising goods,
(b) to sell, let for hire, offer or expose for sale or hire or distribute—
 (i) goods bearing such a mark, or
 (ii) material bearing such a mark which is used or intended to be used for labelling, packaging or advertising goods,
(c) to use material bearing such a mark in the course of a business for labelling, packaging or advertising goods, or
(d) to possess in the course of a business goods or material bearing such a mark with a view to doing any of the things mentioned in paragraph (a) to (c),"

What is the typical Sentence for the Crime?

- "(4) A person who commits an offence under this section shall be liable—
(a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £1,000, or to both;
(b) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding £100,000, or to both."

Other relevant information:



Criminal proceedings in an action for infringement are uncommon and infringement is usually dealt with by the Courts acting in their civil and commercial capacity.

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ISRAEL

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Merchandise Marks Ordinance 1929 as Amended

<https://www.wipo.int/edocs/lexdocs/laws/en/il/il045en.pdf> (this antiquated translation has been modified to ensure accuracy)

What are the Elements of the Crime/How is the Crime Defined?

Trademark and commercial descriptions offenses:

Every person that makes a false commercial designation of goods;

Or causes such designation to be made, shall

be accused of an offense if he does not prove that he acted without intent to defraud.

Every person who sells, exhibits for sale, or holds for sale or for any of the purposes of commerce or manufacture, any merchandise or thing designated by a trademark or by a mark which resembles a trademark near enough to deceive, all as the case may be, shall be accused of an offense unless he proves that

- (a) after he took all reasonable precautions against committing an offense he had – when the offense of which he is accused was committed – no reason to suspect the genuineness of the trademark, mark or commercial description, and that –
- (b) when required by the prosecutor, he gave all the information he was able to give about the persons from whom he obtained that merchandise or those things, and that
- (c) he otherwise acted in good faith.

Designating by mark or description

"6. (1) A person shall be deemed to have designated merchandise by a trademark or mark or commercial description, if he

- (a) Used it in respect of the merchandise itself; or

- (b) Used it in a cover, label, reel or other thing in which the merchandise is sold, displayed or kept for purposes of sale, commerce or manufacture; or

- (c) Placed, enclosed or attached it to a cover, label, reel or other thing designated by a trademark or mark or commercial description of any merchandise which is sold, displayed, or kept for purposes of sale, commerce or manufacture; or

- (d) Used a trademark or mark or commercial description in any a manner likely to cause people to believe that the merchandise in respect of which the trademark is used is designated or described by that trademark or mark or commercial description."

(2) The term "cover" includes every stopper, jar, bottle, vessel, box, crate, covering, capsule, case, frame or envelope, and the term "label" includes any band or card.



(2a) Merchandise delivered to an order made in reference to a trademark or commercial description that appears on any sign advertisement, invoice, wine, list, business letter, business stationary or other commercial letter shall be deemed – for purposes of paragraph (d) in subsection (1) of this section – merchandise in respect of which a trademark or commercial description is used.

(3) a trademark or mark or commercial description shall be deemed to have been used, whether it is woven into, stamped into or otherwise attached to the merchandise or to any cover, label, reel or other thing.

(4) a person shall be deemed to have designated merchandise falsely with a trademark or mark, if he – without the consent of the owner of a trademark – used the trademark or a mark that resembles a trademark near enough to deceive; but in any trial for the false use of a trademark or mark on merchandise, the burden of proving the owner's consent shall lie on the defendant.

[See Sections 3+6 of the Merchandise Marks Ordinance]

What is the typical Sentence for the Crime?

- A person who commits any of these acts, shall be liable to imprisonment for three years or to a fine of up to 1,582,000 NIS (~465,150 USD).
- Where an offence has been committed by a body corporate, it shall be liable to a double fine (i.e. ~ 930,300 USD).
- A person who gives false information to the Registrar in connection with an application for registration of a mark in the Register shall be liable to imprisonment for one year.

[See Section 60 of the Trademarks Ordinance + Israeli Penal Law, Section 61(a)(4)]

"61. After a conviction of an offence under Section 60, the Court may, in lieu of or in addition to the prescribed penalties, issue an injunction for prevention of or against a repetition of the offence.

"62. The Court, before whom any person charged under Section 60 is brought, may order the forfeiture or destruction of any goods, wrapping, packing or advertising material, and of blocks, dies or other apparatus for printing the mark or other material in respect of which the offence was committed."

"63. A person who represents a trademark as registered which is not so registered shall be liable for every offence to a fine of 750 Lira" [Note: as this portion of the law has not been amended since the 1970s the monetary denomination is in old Israeli Lira. The Lira has been replaced by the Israel Shekel. The present-day value of the maximum fine is 0.075~ USD. Accordingly, this particular law has fallen into disuse].

[Sections 61-63 of the Trademark Ordinance]



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JAPAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademark Act

Chapter IX PENAL PROVISIONS

(<http://www.japaneselawtranslation.go.jp/law/detail/?id=45&vm=04&re=01>)

Unfair Competition Prevention Act

Chapter V Penal Provisions (<http://www.japaneselawtranslation.go.jp/law/detail/?id=2803&vm=&re=>)

What are the Elements of the Crime/How is the Crime Defined?

Trademark

(1) Direct Infringement

An unauthorized third party, who

- (i) uses the registered trademark in connection with the designated goods or designated services,
- (ii) uses a trademark similar to the registered trademark in connection with the designated goods or designated services, or
- (iii) uses the registered trademark or a trademark similar thereto in connection with goods or services similar to the designated goods or designated services (Trademark Act §25 and §37(i)).

The term “use” is defined as the act of applying a mark on packaging of goods, as well as the act of assigning, delivering, displaying for the purpose of assignment or delivery, importing, exporting, displaying or distributing advertisements, and so forth (Trademark Act §2 (3)).

(2) Indirect Infringement

An unauthorized third party, who

- (i) possesses, for the purpose of assignment, delivery, or export, the designated goods, or goods similar to the designated goods or designated services, with the registered trademark or a trademark similar thereto affixed to the goods or their packages;
- (ii) possesses or imports articles with the registered trademark or a trademark similar thereto affixed that are used in the course of the provision of designated services or services similar to the designated services or the designated goods by a person who receives the said services, for the purpose of the provision of the said services through use of the said articles;
- (iii) assigns, delivers, possesses, or imports for the purpose of assignment or delivery articles with the registered trademark or a trademark similar thereto affixed that are used in the course of the provision of designated services or services similar to the designated services or the designated goods by a person who receives the said services, for the purpose of the provision of the said services through use of the said articles;



- (iv) possesses articles indicating the registered trademark or a trademark similar thereto, for the purpose of using the registered trademark or a trademark similar thereto in connection with the designated goods or designated services or goods or services similar thereto;
- (v) assigns, delivers, or possesses for the purpose of assignment or delivery articles indicating the registered trademark or a trademark similar thereto, for the purpose of causing the registered trademark or a trademark similar thereto to be used in connection with the designated goods or designated services or goods or services similar thereto;
- (vi) manufactures or imports articles indicating the registered trademark or a trademark similar thereto, for the purpose of using or causing to be used the registered trademark or a trademark similar thereto in connection with the designated goods or designated services or goods or services similar thereto; and
- (vii) manufactures, assigns, delivers, or imports, as a business, articles to be used exclusively for the manufacturing of articles indicating the registered trademark or a trademark similar thereto (Trademark Act §37(ii) through (viii)).

Unfair Competition

A person who,

- (1) for a wrongful purpose, creates confusion with another person's goods or business by using an indication of goods or business (meaning a name, trade name, trademark, markings, containers or packaging for goods belonging to a business, or any other indication of a person's goods or business; the same applies hereinafter) that is identical or similar to the another person's indication of goods or business that is well-known among consumers as belonging to that person or by transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods that use the same indication;
- (2) for the purpose of wrongful gain through the use of the reputation or fame of another person's famous indication of goods or business or for the purpose of injuring said reputation or fame, uses an indication of goods or business that is identical or similar to another person's famous indication of goods or business as his/her own or transfers, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through a telecommunications line goods that use the same indication;
- (3) for the purpose of wrongful gain, transfers, leases, displays for the purpose of transfer or lease, exports or imports goods that imitate the configuration of another person's goods (excluding that which is indispensable to its functioning) (Unfair Competition Prevention Act §2(1)(i) through (iii)).

What is the typical Sentence for the Crime?

Trademark

(Crime of infringement)

- (1) A person who directly infringes the trademark rights of another (limited to (1)(i) in the left column) shall be punished by imprisonment with hard labor for a term not exceeding ten (10) years or a fine not exceeding 10,000,000 yen or a combination thereof (Trademark Act §78).
 - (2) A person who directly (limited to (1)(ii) and (iii) in the left column) and indirectly infringes the trademark rights of another shall be punished by imprisonment with hard labor for a term not exceeding five (5) years or a fine not exceeding 5,000,000 yen or a combination thereof (Trademark Act §78-2).
- (Joint liability)



Where the representative of a juridical person or an agent, employee, or other staff member of a juridical person or an individual, in the course of performing social activities for the juridical person or individual, directly or indirectly infringes the trademark rights of another, in addition to the offender, the juridical person shall be punished by a fine not exceeding 300 million yen (Trademark Act §82).

Unfair Competition

(Penal Provisions)

A person who commits any of the acts described in items (1) through (3) in the left column shall be punished by imprisonment with hard labor for a term not exceeding five (5) years or a fine not exceeding 5,000,000 yen or a combination thereof (Unfair Competition Prevention Act §21(2)(i) through (iii)).

(Joint liability)

Where the representative of a juridical person or an agent, employee, or other staff member of a juridical person or an individual, in the course of performing social activities for the juridical person or individual, commits any of the acts described in items (1) through (3) in the left column, in addition to the offender, the juridical person shall be punished by a fine not exceeding 300 million yen (Unfair Competition Prevention Act §22).

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JORDAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- 1) Trademarks Law No. 33 of 1952 with its Amendments.
- 2) Trade Secrets and Unfair Competition Law No. 15 for the Year 2000

What are the Elements of the Crime/How is the Crime Defined?

Trademarks Law No. 33 for the year 1952

Article 37 - Offenses

1- Whoever committed with the intention to cheat any of the following deeds shall be penalized by an imprisonment term of no less than three months and no more than one year, or a fine of no less than 100 Jordanian Dinars and of no more than 3000 Jordanian Dinars or by those two penalties:

- a) Whoever counterfeited a trademark registered under this law, imitated it in any other way that misleads the public, or affixed a counterfeit or imitation mark on the same goods for which the trademark has been registered.
- b) Whoever illegally used a trademark owned by another on the same class of goods or services for which that trademark is registered.
- c) Whoever sold or possessed for the purpose of selling or offered for sale goods bearing a trademark whose use is regarded as an offense under paragraphs (A) and (B) of this Article if he was cognizant of that beforehand.

2- Notwithstanding what is mentioned in paragraph 1 of this Article, whoever sells, or offers for sale, or possesses for the purpose of selling goods bearing a trademark whose use is regarded as a contravention under the items (A) and (B) of paragraph 1 shall be penalized by a fine of no less than 50 Jordanian Dinars and no more than 500 Jordanian Dinars.

3- The provisions of paragraph 1 of this Article shall apply to whoever started to commit any of those acts provided for in this Article or aided or abetted another to commit it.

Trade Secrets and Unfair Competition Law No. 15 for the Year 2000

Article 2 - Unfair Competition

A. Any competition contradictory to the honest practices in the commercial and industrial activities shall be deemed one of the unfair competition acts and particularly the following:

1. The activities that may by nature cause confusion with entity, products or commercial or industrial activities of one of competitors.
2. Untrue assumptions in practicing trade, whereby causing deprivation of trust from one of the competitors' entity, products or industrial or commercial activities.
3. The data or assumptions which use in commerce may mislead public in respect to the product's nature, methods of manufacturing, properties, amounts, and availability for use.



4. Any practice that reduce the product reputation, cause confusion in respect to the product general shape or presentation, or mislead the public on declaring the product price or the method of counting thereof.

B. If the unfair competition related to a trademark used in the kingdom either being registered or not and causes public misleading, provisions of paragraph (A) of such article shall be applied.

C. The provisions of paragraphs (A) and (B) of this article shall be applied on the services as necessary.

What is the typical Sentence for the Crime?

Trademarks Law No. 33 for the year 1952

Article 37 - Offenses

1- Whoever committed with the intention to cheat any of the following deeds shall be penalized by an imprisonment term of no less than three months and no more than one year, or a fine of no less than 100 Jordanian Dinars and of no more than 3000 Jordanian Dinars or by those two penalties: . . .

Article 38 - Confiscation or destruction of goods by court order

4) The court may decide to seize the goods, materials for packaging, wrapping and advertising, plates, seals, and other tools and materials predominantly used in affixing the trademark on the goods or which the infringement was made with or stemmed from. The court may order to destroy them or to dispose of them for noncommercial purposes.

Trade Secrets and Unfair Competition Law No. 15 for the Year 2000

Article 3 - Unfair Competition

F. The court shall decide to impound the goods subject of infringement and the materials and tools used mainly in the infringement. The court shall further decide to spoil or dispose of such products, materials and goods in any commercial purpose.

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KAZAKHSTAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The Criminal Code of the Republic of Kazakhstan, dated 3 July, 2014 No. 226-V of the Law of the Republic of Kazakhstan. <http://adilet.zan.kz/eng/docs/K1400000226>

What are the Elements of the Crime/How is the Crime Defined?

The main elements of the offense are: Object, Objective side, Subject, Subjective side.

The presence of all elements of the offence determines the offense itself. If at least one element is missing, the committed act cannot be defined as an offense. For example, the brief form of the offense for Illegal use of a trademark is as follows:

- Object: Public relations concerning the exclusive right of the Right Holder to own a trademark as well as to fair competition.
- Objective side: Illegal use of a trademark, service mark, trade name, appellation of origin of goods or similar designations for similar goods or services.
- Subject: A sane individual who has attained the age of 16.
- Subjective side: The presence of both direct and indirect intent.

What is the typical Sentence for the Crime?

Illegal use of trademark shall be punished by a fine in the amount of up to eighty monthly calculation indicators or corrective labors in the same amount, or community services for a term of up to eighty hours, or arrest for a term of up to twenty days.

Illegal use of warning marking in respect of a trademark shall be punished by a fine in the amount of up to eighty monthly calculation indicators or corrective labors in the same amount, or community services for a term of up to eighty hours, or arrest for a term of up to twenty days.

Illegal use of objects of copyright shall be punished by a fine in the amount of up to eighty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to eighty hours.

The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly, shall be punished by a fine in the amount of up to one hundred and sixty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one hundred and sixty hours, or arrest for a term of up to forty days.

The actions, provided by second part of this Article, committed:

- 1) by group of persons on previous concert;
- 2) on a large scale or inflicted heavy damage;



3) by person with the use of his (her) official position, -
shall be punished by a fine in the amount of up to five thousand monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one thousand two hundred hours, or restriction of liberty for a term of up to five years, or deprivation of liberty for the same term, with deprivation of the right to hold certain positions or engage in certain activity for a term of up to three years or without it.

4. The actions, provided by second or third parts of this Article, committed by criminal group, shall be punished by restriction of liberty for a term of three to six years or by deprivation of liberty for the same term.

Infringement of rights to invention, utility models, industrial designs, selection achievements or topologies of integrated microcircuits - shall be punished by a fine in the amount of up to eighty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to eighty hours.

2. The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly, shall be punished by a fine in the amount of up to one hundred and sixty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one hundred and sixty hours, or arrest for a term of up to forty days.

3. The actions, provided by second part of this Article, committed:

- 1) by group of persons on previous concert;
- 2) on a large scale or inflicted heavy damage;
- 3) by person with the use of his (her) official position, -

shall be punished by a fine in the amount of up to five thousand monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one thousand two hundred hours, or restriction of liberty for a term of up to five years, or deprivation of liberty for the same term, with deprivation of the right to hold certain positions or engage in certain activity for a term of up to three years or without it.

4. The actions, provided by second or third parts of this Article, committed by criminal group, shall be punished by restriction of liberty for a term of three to six years or by deprivation of liberty for the same term.

Other relevant information:

A typical sentence for an offense is a fine in monthly calculation indices (1 monthly calculation index is 2,778 tenge (6.64 USD). For example, the fine for illegal use of a trademark is 80 monthly calculation indices (531,20 USD).

Please also note that illegal use of a trademark will only be subject to criminal liability if major damage is caused. Major damage is defined in Article 3, Paragraph 38 of the Criminal Code. This rule specifies major damage under article 222 of the Illegal use of a trademark:



damage caused to a citizen in an amount one hundred times higher than the monthly calculation index (664 USD) or damage caused to an organization or state in an amount one thousand times higher than the monthly calculation index (6640 USD).

Please also note that a Person who has committed an act under article 222 for the first time is exempt from criminal liability in the event of voluntary compensation for damages.

Article 222 Illegal use of a trademark is fully subject to criminal misdemeanor.

Please be informed that violation of the articles will not always be a criminal offense.

For example, only violations of parts 3 and 4 of these Articles will constitute offences under Articles 198 and 199 of the Criminal code. Part 1 and 2 will be defined as criminal misdemeanor.

See also the Entrepreneur Code which provides for the concept of unfair competition.

Entrepreneur Code of the Republic of Kazakhstan (Chapter 16 unfair competition)

<http://adilet.zan.kz/eng/docs/K1500000375>

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KENYA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Anti-Counterfeit Act of 2008, Sections 32, 33 and 35

Trade Marks Act, Section 58E (1), 58F, 58H(1) & 2

What are the Elements of the Crime/How is the Crime Defined?

Anti-Counterfeit Act:

"It shall be an offence for any person to

- (a) have in his possession or control in the course of trade any counterfeit goods;
- (b) manufacture, produce or make in the course of trade, any counterfeit goods;
- (c) sell, hire out, barter or exchange, or offer Or expose for sale, hiring out, barter or exchange any counterfeit goods;
- (d) expose or exhibit for the purposes of trade any counterfeit goods;
- (e) counterfeit goods for of trade or any other distribute purposes purpose;
- (f) import into, transit through, tranship within or export from Kenya except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods;
- (g) in any other manner, dispose of any counterfeit goods in the course of trade."

Any holder of an intellectual property right, his successor in title, licensee or agent may, in respect of any protected goods, where he has reasonable cause to suspect that any of the above offences have been or are being committed, or are likely to be committed, by any person, lay a complaint.

Trade Marks Act:

Under the Kenya Trade Marks Act, it is an offence to sell or import any goods or perform any services to which

- (a) a forged registered trade mark is falsely applied; or
- (b) a registered trade mark is falsely applied.

In addition, any person who within Kenya procures, counsels, aids, abets or is accessory to the commission outside Kenya of an offence which amounts to forgery is liable to fine or imprisonment.

What is the typical Sentence for the Crime?

Anti-Counterfeit Act:

A person convicted of an offence shall be liable

- (a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;



(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years or to a fine, not less than five times the value of the prevailing retail price of the goods, or both.

Trade Marks Act:

A person convicted shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

Other relevant information:

There are no specific laws that govern unfair competition in Kenya. It is therefore governed by common law.

On conviction, the court may, in addition to any sentence passed, declare any goods in respect of or by means of which the offence was committed to be forfeited to the Government, unless the owner of the goods or any person acting on his behalf or any other person interested in the goods shows cause to the contrary.

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REPUBLIC OF KOREA (SOUTH KOREA)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Articles 108, 230 and 236 of the Korean Trademark Act

https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48682&lang=ENG

What are the Elements of the Crime/How is the Crime Defined?

The following shall be deemed infringement of trademark rights (excluding the right to collective mark with geographical indication) or an exclusive license:

1. Using a trademark identical to a registered trademark of another person on goods similar to the designated goods, or using a trademark similar to the registered trademark of another person on goods identical or similar to the designated goods;
2. Delivering, selling, forging, imitating, or possessing a trademark identical or similar to a registered trademark of another person for the purpose of using or causing a third party to use such trademark on goods identical or similar to the designated goods;
3. Manufacturing, delivering, selling or possessing equipment for the purpose of forging or imitating a registered trademark of another person or causing a third party to forge or imitate such registered trademark;
4. Possessing goods identical or similar to the designated goods bearing a registered trademark of another person or any other similar trademark for the purpose of transferring or delivering such goods.

Criminal remedies are also available against the above-mentioned infringement on trademark rights or exclusive licences. Since the criminal liability of intellectual Property rights is also subject to the procedures and the provisions of the Criminal Act, the willful misconduct must exist.

What is the typical Sentence for the Crime?

A. Punishment

Any person who infringes trademark rights or a exclusive license shall be punished by imprisonment with labor for not more than seven years or by a fine not exceeding 100 million won.

B. Confiscation

1. A trademark, mark, or goods (hereafter in this paragraph, referred to as "infringed goods") provided to infringe trademark rights or an exclusive license or generated from such infringement, and manufacturing tools or materials provided to be mainly used for manufacturing such infringed goods shall be confiscated.
2. Notwithstanding paragraph (1), where goods can be easily separated from a trademark or packing without impairing the function or appearance thereof, such goods may not be confiscated



Other relevant information:

For copyright infringement, Article 136 of the Copyright Act is applicable.

(https://elaw.klri.re.kr/kor_service/lawView.do?hseq=49128&lang=ENG)

For unfair competition, Article 18 of the Unfair Competition Prevention and Trade Secret Protection Act is applicable. (https://elaw.klri.re.kr/eng_service/lawView.do?hseq=48681&lang=ENG) .

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KOSOVO

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 292 of the Code No. 06/L-074 Criminal Code of the Republic of Kosovo available on <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

What are the Elements of the Crime/How is the Crime Defined?

1. Whoever, in the course of engaging in an economic activity and with the intent to deceive purchasers or consumers, uses or possesses with intent to use another's trade name or trademark, another's goods trademark or services trademark or another's trademark related to geographical origin or any other special trademark of goods or components thereof in his or her own trade name, trademark, or special trademark of goods.

What is the typical Sentence for the Crime?

Whoever commits the offence under article 292 of the Criminal Code shall be punished by imprisonment of up to three (3) years.

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KYRGYZ REPUBLIC (KYRGYZTAN)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>

What are the Elements of the Crime/How is the Crime Defined?

(1) Unauthorized use of trademark, service mark, appellation of origin of good or confusingly similar designations for the similar goods if such infringement is committed repeatedly or caused the heavy damages;

(2) Unlawful use of warning marking with respect trademark, service mark, appellation of origin of good regarding marks not registered in the Kyrgyz Republic if such infringement caused the heavy damages.

Note: The damage is considered to be heavy if damage cost exceeds 500 times the index rate* established by Kyrgyz laws (KGS 50 000 which is equal to approx. USD 660).

What is the typical Sentence for the Crime?

Penalties:

Whoever commits an offense under subsection (1):

If an individual, shall be fined not more than KGS 260 000 (approx. USD 3 405) OR imprisoned from one to two years with a fine not more than KGS 100 000 (approx. USD 1 300);

If a juvenile, shall be fined not more than KGS 120 000 (approx. USD 1 600) OR imprisoned from one to two years with a fine not more than KGS 40 000 (approx. USD 525)

Whoever commits an offense under subsection (2)

If an individual, shall be fined KGS not more than KGS 220 000 (approx. USD 2 900);

If a juvenile, shall be fined KGS not more than KGS 100 000 (approx. USD 1300).

Other relevant information:

* The specified index rate is set forth by the Kyrgyz laws and is KGS 100 as of the date hereof.

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LATVIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Law, Section 206 <https://likumi.lv/ta/en/en/id/88966-the-criminal-law>

What are the Elements of the Crime/How is the Crime Defined?

Criminalized actions:

- 1) illegal using of a trademark, other distinguishing marks for goods or services,
- 2) counterfeiting a mark,
- 3) knowingly using a counterfeit mark,
- 4) distributing a counterfeit mark.

Mandatory qualifying element, either:

- a) if it has been committed on a significant scale,
- b) it has caused substantial harm to the State,
- c) it has caused substantial harm to the interests of a person protected by the law.

What is the typical Sentence for the Crime?

Penalties:

- 1) deprivation of liberty for a period of up to two-six years
- 2) temporary deprivation of liberty,
- 3) community service,
- 4) a fine,
- 5) deprivation of the right to engage in specific employment for a period of up to five years,
- 6) deprivation of the right to engage in entrepreneurial activity of a specific type or of all types,
- 7) the right to take up a specific office,
- 8) probationary supervision for a period of up to three years

Other relevant information:

Criminal liability requires an intent of the guilty (accused person) - in most cases lack of intent or at least knowledge of committing a crime was regarded as sufficient obstacle to refuse criminal liability, except if aggregate obstacles are found. Aggregate circumstances:

- i) if committed by a group of persons according to a prior agreement,
- ii) if it has been committed by an organized group,
- iii) if it has been committed on a large scale.



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LEBANON

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Penal Code No. 340/1943; Articles: 702, 703, 714, 716, 721

https://www.unodc.org/res/cld/document/lebanon-penal-code.html/Lebanon_Penal_Code_1943.pdf

What are the Elements of the Crime/How is the Crime Defined?

702: Whoever knowingly commits any of the following:

Counterfeiting a trademark belonging to another, even if he adds thereto terms like similar to, or lookalike or kind or type or recipe; or

Affix a counterfeiting trademark belonging to another on his harvest or products; or

Sells a harvest having an infringed or counterfeited trademark or offers same for sale;

If his act is likely to deceive the buyer

703: Anyone who imitates a trademark with the intent of fraud, but without counterfeiting it; and

Anyone who uses such a trademark or sells it or offers for sale a harvest bearing said trademark, if his act is likely to deceive the buyer.

714: Anyone who uses, fraudulent means or false claims or insinuation with bad faith to redirect the customs of another to himself,

716: The penalty stipulated for Article 702 shall be applied on anyone who infringed the name of a third party:

Either by placing it or displaying it in any way on natural or manufactured crops or their dependencies, on packaging, or badges.

Or by broadcasting leaflets, advertisements, invoices, letters, or the like.

These provisions apply, even if the infringed name is distorted, even slightly, or is associated with a nickname other than the nickname of its owner, or in any other phrase, the distinctive letters of the name remain confused.

The sanction shall also apply with the attempt to commit this crime.

721: Deprivation of the rights specified in the third and fourth paragraphs of Article 65 shall be pronounced and the judgment published and attached in accordance with the provisions of Articles 67 and 68, if any of the misdemeanors mentioned in this chapter are ruled for.

What is the typical Sentence for the Crime?

Courts usually rule for fines and damages, but rarely imprisonment. The articles relating to trademarks also apply on Trade name infringements. Unfair competition is not penally sanctioned, unless it was committed via fraudulent measures.



702:

He shall be sanctioned with a fine amounting to one hundred thousand to one million Lebanese pounds and imprisoned with labor from three months up to three years, or any of these sanctions.

703:

Shall be sanctioned with a fine amounting to one hundred thousand to five hundred thousand Lebanese Pounds, and imprisonment with labor from two months to two years or any of these sanctions.

714: shall be sanctioned based on the complaint of the injured, with a fine amounting to One Hundred thousand to Five Hundred thousand Lebanese Pounds.

The sanction shall also apply on the attempt to commit this crime.

716:

The sanction shall also apply with the attempt to commit this crime.

721:

And upon its recurrence the judgment can also decide that the criminal is to be prevented from practicing the trade or industry in which the offense occurred.

Other relevant information:

There is no official English Translation for the Lebanese Penal Code; the above translations are provided for information only.

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LIBYA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

As for trademark matters: articles 1263, 1264, 1286 of law no. 23 of 2010, and article 338 of criminal code.
As for patent and designs: article 1286 of law no. 23 of 2010, and article 338 of criminal code, and articles 44, 45, 46 of patent law no. 8 of 1985.

[http://www.ascasociety.org/UploadFiles/2017/IACPA_Regulations/Libya/%D9%82%D8%A7%D9%86%D9%88%D9%8623%20%D8%A8%D8%B4%D8%A3%D9%86%20%D8%A7%D9%84%D9%86%D8%B4%D8%A7%D8%B7%20%D8%A7%D9%84%D8%AA%D8%AC%D8%A7%D8%B1%D9%8A%20%D9%88%D8%A7%D9%84%D9%88%D8%A7%D8%A6%D8%AD%20%D8%A7%D9%84%D8%B5%D8%A7%D8%AF%D8%B1%D8%A9%20%D8%A8%D9%85%D9%82%D8%AA%D8%B6%D8%A7%D9%87%20%20\(1\).pdf](http://www.ascasociety.org/UploadFiles/2017/IACPA_Regulations/Libya/%D9%82%D8%A7%D9%86%D9%88%D9%8623%20%D8%A8%D8%B4%D8%A3%D9%86%20%D8%A7%D9%84%D9%86%D8%B4%D8%A7%D8%B7%20%D8%A7%D9%84%D8%AA%D8%AC%D8%A7%D8%B1%D9%8A%20%D9%88%D8%A7%D9%84%D9%88%D8%A7%D8%A6%D8%AD%20%D8%A7%D9%84%D8%B5%D8%A7%D8%AF%D8%B1%D8%A9%20%D8%A8%D9%85%D9%82%D8%AA%D8%B6%D8%A7%D9%87%20%20(1).pdf)

What are the Elements of the Crime/How is the Crime Defined?

- 1- Falsify a mark registered in accordance with the law.
- 2- Accidentally placing on his products a mark owned by others.
- 3- He sold or offered for sale or circulation, possessed with intent to sell, or brought into the country with the intention of trading a forged mark or products bearing a forged mark with his knowledge of that.
- 4- Trademark counterfeiting: Anyone who improperly imitates or uses a registered trademark.

Forgery and counterfeiting of registered trademarks.

- 2- Assault on the commercial name and logo registered in the commercial registry.
- 3- Exploiting the achievements of others and obtaining undisclosed information through illegal means, such as espionage, theft and fraud.
- 4- Failure to respect the rules regulating the registered industrial designs and models.
- 5- Attacking copyright, related rights, audio works, and broadcasting programs, as well as assaulting (electronic) information systems, piracy against them, and attempting to penetrate their coding system, and attempting to harm information (electronic) programs

What is the typical Sentence for the Crime?

A penalty of imprisonment for a period not exceeding two years and a fine of not less than one thousand (1,000 dinars) and not exceeding ten thousand (10,000 dinars) or either of these two penalties



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LIECHTENSTEIN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Liechtenstein Trademark Act (Law of 12 December 1996 regarding the Protection of Trademarks and Geographical Indications (Trade Mark Protection Act, LI-TmPA)

<https://www.gesetze.li/konso/pdf/1997060000?version=9>

What are the Elements of the Crime/How is the Crime Defined?

Art. 59 LI-TmPA: Infringement of a trade mark right

(1) On complaint of the injured party, any person who willfully infringes the trade mark right of another[...] if he:

- a. appropriates, counterfeits or imitates the trade mark of the other person;
- b. places goods on the market or provides services, or offers, imports, exports, carries in transit or advertises such goods or services under the appropriated, counterfeited or imitated trade mark.

(2) On complaint of the injured party, any person who refuses to provide information on the origin or quantity of the items in his possession that unlawfully bear the trade mark and to name the recipients and disclose the extent of distribution to commercial and industrial customers is also liable to the same penalties.

Art. 60 TmPA: Fraudulent use of trade marks

(1) On complaint of the injured party, any person who commits any of the following acts [...]:

- a. unlawfully labels goods or services with the trade mark of another person in order to mislead and thereby give the impression that the goods or services are original goods or services;
- b. offers or places goods or services on the market as original goods or services, or offers or provides original services that unlawfully bear the trade mark of another;

What is the typical Sentence for the Crime?

Art. 59 LI-TmPA:

(1) [...] is liable to a custodial sentence for up to one year or a fine of up to 360 daily rates [...]

(3) Any person who commits an infringement of trademark rights for commercial gain shall be liable to a custodial sentence for up to three years.

Art. 60 LI-TmPA:

(1) [...] is liable to a custodial sentence not exceeding three years [...]

(2) Any person who commits the infringement of (1) for commercial gain shall be liable to a custodial sentence for up to five years.



Other relevant information:

English is not an official language of Liechtenstein. This translation is provided for informational purposes only and has no legal force.

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LITHUANIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Art. 204 Use of Another's Trademark or Service Mark of the Criminal Code of the Republic of Lithuania, document No. VIII-1968, in force from May 1, 2003.

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555/asr>

What are the Elements of the Crime/How is the Crime Defined?

- (1) A person who, without holding an authorisation, identifies a large quantity of goods with another's trademark or presents them for handling or makes use of another's service mark and thereby incurs major damage
- (2) A person who, without holding an authorisation, identifies a small quantity of goods with another's trademark or presents them for handling or makes use of another's service mark and thereby incurs damage.
- (3) A legal entity shall also be held liable for the acts provided for in this Article.

What is the typical Sentence for the Crime?

- (1) if an individual, shall be punished by a fine or by restriction of liberty or by a custodial sentence for a term of up to two years.
- (2) if an individual, such actions shall be considered as a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty.

Other relevant information:

For penalties for legal person see Art. 67 of the Criminal Code. Note, the text included here is for counterfeit regarding trade marks. For copyright counterfeits, see Art. 191-194 of the Criminal Code. For counterfeit regarding patents and design, see Art. 195 of the Criminal Code.

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LUXEMBOURG

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Art. 173 Code pénal du Luxembourg (version of 20 March 2020), Art. 167 - 176

<http://legilux.public.lu/eli/etat/leg/code/penal/20200320> (trademark counterfeit)

What are the Elements of the Crime/How is the Crime Defined?

Failure to respect or infringement of a trademark right or title constitute an act of counterfeit

(<https://ipil.lu/fr/contrefacon/>)

Art. 168 + Art. 173 (Counterfeit)

1. Forging, altering or falsifying seals, stamps, hallmarks or trademarks or making use of such counterfeit, altered or falsified seals, stamps, hallmarks or trademarks;
2. the fact of improperly procuring genuine seals, stamps, hallmarks or trademarks having one of the purposes referred to in Articles 167 and 169, and of applying or using them in a manner prejudicial to the rights and interests of the Luxembourg State, of any Luxembourg authority, of a legal person governed by Luxembourg public or private law, under any name whatsoever, or even of a natural person, or of a foreign State, an international organization, any foreign authority whatsoever or of a legal person under public or private law of a foreign State, under any name whatsoever, or of a natural person.

What is the typical Sentence for the Crime?

Art. 173

(1) Shall be punished by imprisonment from three months to five years and a fine from 500 euros to 75,000 euros, and may be punished by prohibition in accordance with Art. 24.

(2) The attempt of one of these offences is punishable by imprisonment from three months to two years and a fine from 500 euros to 25,000 euros.

Other relevant information:

Note, the text included here is for counterfeit (and violation) regarding trademarks. For copyright counterfeits, see Art. 82 -87 Loi du 18 avril 2001 sur les droits d'auteur, les droits voisins et bases de données. For unfair competition, much is governed by the Code de la consommation of 25 April 2018. There are no criminal sanctions for patent infringement to date.



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MADAGASCAR

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Ordinance Establishing Arrangements for the Protection of Industrial Property (89-019) and Criminal Liability Articles 41, 84 and 113.

What are the Elements of the Crime/How is the Crime Defined?

The crime is the infringement of a trade mark, copying a trade mark, non-authorised use of a trade mark or a counterfeit trade mark.

What is the typical Sentence for the Crime?

Trade mark infringement is a crime punishable by imprisonment for between six months and three years or a fine

Other relevant information:

There is no Specialist Intellectual Property court in Madagascar, so civil proceedings in respect of the Infringement of Intellectual Property and dilution claims are heard at the Commercial Court. The chance obtaining a successful outcome or result at the Criminal Court is low. Litigation in Madagascar is expensive and slow, and costs are seldom awarded. Furthermore, there is little to no case law to rely on.

Counterfeiting issues are dealt with using the ordinance. Interim measures include the seizure of goods; however, legal proceedings must be instituted within one month of a seizure. Officials may detain seized goods for more than one month if it is court ordered.

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MALAWI

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademark Act 2018

<https://www.wipo.int/edocs/lexdocs/laws/en/mw/mw032en.pdf>

What are the Elements of the Crime/How is the Crime Defined?

section 47: any person who:

- (a) makes or causes to be made, a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register; or
- (b) produces or tenders, or causes to be produced or tendered in evidence any such writing, commits an offence.

section 48: A person who makes a representation:

- (a) that a trademark which is not registered, is a registered trademark;
- (b) with respect to a part of a registered trademark not being a part separately registered as a trademark to the effect that it is so registered;
- (c) to the effect that a registered trademark is registered in respect of any goods or services in respect of which it is not registered; or
- (d) to the effect that the registration of a trademark gives an exclusive right to the use thereof in any circumstances in which, having regard to any limitation entered on the register, the registration does not give such right, commits an offence.

Section 49: A person who:

- (a) for the purpose of deceiving the Registrar or any other officer in the Trademarks Office, in the implementation of this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act, makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, commits an offence.

Section 51: any person who:

- (a) forges a registered trademark or falsely applies to goods or in relation to services, any registered trademark or any mark so nearly resembling a registered trademark so as to be calculated to deceive;
- (b) falsely applies a registered trademark to goods or in relation to services;
- (c) makes a die, block, machine or other instrument for the purpose of forging, or of being used for forging a registered trademark;
- (d) disposes of, or has in his possession, a die, block, machine or other instrument, for the purpose of forging, or of being used for forging, a registered trademark;
- (e) without the consent of the owner of a registered trademark;



- (i) makes, imports or has in his possession, any device for applying that registered trademark to goods or in relation to services or representation of that registered trademark;
- (ii) makes any reproduction, replica or representation of that registered trade mark; or
- (iii) imports any reproduction, replica, or representation of that registered trademark otherwise than on goods and services to which they have been applied; or
- (f) makes, imports or has in his possession__
 - (i) any device for applying to any goods or in relation to any services, a mark so nearly resembling a registered trademark that is likely to deceive or cause confusion;
 - (ii) any reproduction, replica or representation of a mark, so nearly resembling a registered trademark, that is likely to deceive or cause confusion, for the purpose of applying it to goods or in relation to services;
 - (iii) any covering bearing a mark so nearly resembling a registered trademark that is likely to deceive or cause confusion in relation to goods and services, commits an offence.

Section 52(1): A person who sells, imports, exports, lets for hire or distributes goods or performs any services to which

- (a) a forged registered trademark is applied; or
- (b) a registered trademark is falsely applied, commits an offence.

Section 53: Any person who, within Malawi, procures, counsels, aids, abets or is accessory to the commission outside Malawi of any offence which, if committed within Malawi, would be an offence under this Part, commits an offence.

Section 54: Any person who, willfully gives false evidence before the Registrar or the Appeals Tribunal in any proceedings knowing such evidence to be false or not knowing or believing it to be true, commits an offence.

What is the typical Sentence for the Crime?

Any person who contravenes section 47 shall on conviction, be liable to a fine of MK 3,000,000.00 and to imprisonment for five years. Further, under section 50, any person who knowingly and with intent to deceive, performs any of the acts referred to in section 47, commits an offence and shall, on conviction, be liable to a fine of MK 1,000,000.00 in the case of an individual, and imprisonment for five years; or to a fine of MK 10,000,000 in the case of a body corporate.

Any person who contravenes section 48 shall on conviction be liable to a fine of MK10,000,000 and imprisonment for ten years.

Any person who contravenes section 49 shall be liable to a fine of MK3,000,000.00 and imprisonment for seven years.



Any person who contravenes section 51 (1) shall be liable, on conviction to a fine of MK5,000,000 and imprisonment for ten years. In addition, under section 51 (2) the Court shall order seizure or destruction of any goods or any instruments used in the commission of the offence.

Section 53: Any person who, within Malawi, procures, counsels, aids, abets or is accessory to the commission outside Malawi of any offence which, if committed within Malawi, would be an offence under this Part, commits an offence, and shall, on conviction, be liable to a fine of K5,000,000.00 and imprisonment for ten years.

Any person who contravenes section 54 shall be liable, on conviction, to a fine of Mk1,000,000 and imprisonment for three years.

Other relevant information:

The Intellectual property regime comprises of the Trademarks Act; the Trademark Act does recognise unfair competition, however, it does not impose criminal liability for acts of unfair competition.

The Patents Act

<https://www.aripo.org/wp-content/uploads/2018/12/patents.pdf>

The

Registered Designs Act

<https://www.aripo.org/wp-content/uploads/2018/12/registerreddesign.pdf>

The Copyright Act

<https://www.aripo.org/wp-content/uploads/2018/12/Malawi-Copyright-ACT-September-2016-1.pdf>

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MALAYSIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Marks Act 2019.

What are the Elements of the Crime/How is the Crime Defined?

Section 54 of the Trade Marks Act 2019:

A person infringes a registered trademark if he uses a sign which is identical with the trademark in relation to goods or services which are identical with those for which it is registered.

Section 99 of the Trade Marks Act 2019:

Any person who counterfeits a registered trademark by –

- (a) making a sign identical or similar to a registered trademark with the intent to deceive or
- (b) falsifying a genuine registered trademark whether by alteration, addition, effacement, partial removal or otherwise without the consent of the registered proprietor of the trademark.

What is the typical Sentence for the Crime?

Shall on conviction, be liable to a fine not exceeding RM 1million or to imprisonment for a term not exceeding five years or both.

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MALDIVES

Criminal Liability for Trademark-Related Offenses?

No

Applicable Statute, Law, or Rule:

There is no applicable IP Law in the Maldives.

What are the Elements of the Crime/How is the Crime Defined?

N/A

What is the typical Sentence for the Crime?

N/A

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MAURITIUS

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

PATENTS, INDUSTRIAL DESIGNS AND TRADEMARKS ACT, NO 25 of 2002

What are the Elements of the Crime/How is the Crime Defined?

51 (1) The performance of any act referred to in sections 21, 32 and 40 in the Mauritius by any person other than the owner of the tile of protection or the licensee and without the agreement of the owner, shall be unlawful

What is the typical Sentence for the Crime?

51 (2) Any person who knowingly performs any act in breach of subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 250, 000 rupees and to imprisonment for a term not exceeding 5 years

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MEXICO

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Industrial Property Law (prior to November 5, 2020);

Federal Law for the Protection of Industrial Property Rights (after November 5, 2020)

What are the Elements of the Crime/How is the Crime Defined?

(a) Offenses set forth in the Federal Law for the Protection of Industrial Property Rights in connection with trademark counterfeiting:

(1) Counterfeiting a trademark for the commercial speculative purposes.

For the purposes of this Law, counterfeiting shall be understood as the use of an identical trademark or in such a way that it does not can be distinguished in its essential aspects to one previously registered or to one protected by this Law, without the authorization of its legitimate holder or its licensee, to falsely represent a product or service as original or authentic.

In order to prove the counterfeit, it shall be sufficient that the mark is used in an identical manner or in such a way that it does not

can be distinguished in its essential aspects to how it is represented in the registration title or if applicable, in the resolution that estimates or declares its notoriety or fame;

(2) Produce, store, transport, introduce into the country, distribute or sell for speculative commercial purposes, objects that show counterfeit of trademarks, or to contribute or to provide in any form, raw materials or inputs intended for the production of objects, knowing that such materials or inputs bear such forgeries;

What is the typical Sentence for the Crime?

(b) Penalties.

(1) In general. Whoever commits an offense under subsection (a) —

(A) shall be fined up to \$500,000 UMAs (approximately US\$2,172,000) and imprisoned for up to 10 years.

*UMA is a metric established by the Mexican Government for the determination of fines to be imposed in accordance with Mexican legal system.

Other relevant information:

The current Law will change on November 5, 2020. The offenses and penalties described herein are as set forth in the new Law. With this changes in the Law, several adjustments are expected in the structure of IP rights in Mexico.



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MICRONESIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Code of the Federated States of Micronesia; Title 34

<http://fsmlaw.org/fsm/code/code2014/FSMCode2014TabCont.html>

What are the Elements of the Crime/How is the Crime Defined?

TITLE 34:

§ 103. Unlawful acts or practices.

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (1) passing off goods or services as those of another;
- (2) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- (6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
- (13) engaging in any act or practice which is unfair or deceptive to the consumer.

What is the typical Sentence for the Crime?

TITLE 34:

§ 105. Restraint of prohibited acts.



(1) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act, or practice declared in section 103 of this chapter to be unlawful, and that proceedings would be in the public interest, he may bring a civil action in the name of the Trust Territory against such person to restrain by temporary or permanent injunction the use of such method, act, or practice.

§ 113. Civil and criminal penalties.

(1) Any person who violates the terms of an injunction issued under section 105 of this chapter shall forfeit and pay to the Trust Territory a civil penalty of not more than \$10,000 per violation. For the purposes of this section, the High Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, acting in the name of the Trust Territory, may petition for recovery of civil penalties.

(2) In any action brought under section 105 of this chapter, if the Court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by section 103 of this chapter, the Attorney General, upon petition to the Court, may recover, on behalf of the Trust Territory, a civil penalty of not exceeding \$1,000 per violation.

(3) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 103 of this chapter.

§ 114. Forfeiture of corporate franchise.

Upon petition by the Attorney General, the High Court in the district in which the alleged violator has its principal place of business may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 105 of this chapter.

Other relevant information:

Title 35 of the Code of the Federated States of Micronesia contains Copyright Law.

See below for a relevant case:

http://fsmlaw.org/fsm/decisions/vol10/10fsm409_419.html

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MOLDOVA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002, Art. 185-2, 246-1, 246-2
<http://agepi.gov.md/en/legislatie/nationale>

What are the Elements of the Crime/How is the Crime Defined?

To define a crime, the following elements must be identified:

- presence of a registered right to a trademark
- presence of facts of violation of the owner's rights - manufactured goods with someone else's trademark
- presence of intent in the actions of the infringer
- presence of unconditional harm caused not only to the owner of the rights, but also to the public interests

What is the typical Sentence for the Crime?

As a rule, the court orders the payment of a fine according to the law. We do not know of a single case that ended with a real term of imprisonment. In principle, there are very few criminal cases on violation of trademark rights. Owners of rights to trademarks whose rights are violated prefer to act within the framework of civil law, resorting to the services of patent attorneys and lawyers with experience in litigation on intellectual property. In the case of a direct appeal to state bodies, it is rather difficult to act promptly, to receive documents and respond to them within the time limits established by law without the help of a specialist.

Other relevant information:

Criminal cases are instituted by the police and criminal investigation authorities in cases where:

- the owner of trademark addresses a complaint to the police when it is necessary to investigate the violation of rights and find the infringer during the investigation (the infringer is not known to the owner of the rights)
- criminal cases can be instituted by the border police authorities on their own initiative, in cases where the illegal import of goods (smuggling) is accompanied by a violation of trademark rights - the import of counterfeit goods (a combination of several criminal acts, when one of them can only be considered within the framework of a criminal case)
- a criminal case may be instituted on a complaint by a consumer who suffered from the purchase of a counterfeit product and when his health was damaged. Also, the police or public prosecution authorities can institute cases on their own initiative based on the results of inspections by state bodies that check the quality and safety of products (violation of rights to a trademark not only causes damage to the rights holder, but also the consumer, i.e. is socially dangerous)



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MONTENEGRO

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code of Montenegro

Official Gazette of the Republic Montenegro 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017 and 49/2018

What are the Elements of the Crime/How is the Crime Defined?

Unauthorized Use of a Trade Name

Article 271

Whoever, with the intention to deceive buyers or service users, uses someone else's trade name, geographical indication of origin, trademark, proprietary mark, or special commodity mark, or enters particular features of these marks into his trade name, trademark, proprietary mark, or his special commodity mark, shall be punished by a fine or a prison sentence for a term not exceeding three years

What is the typical Sentence for the Crime?

"shall be punished by a fine or a prison sentence for a term not exceeding three years"

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MOROCCO

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

<http://www.ompic.ma/sites/default/files/loi23-13FR.pdf>

(Intellectual Property Protection Law)

What are the Elements of the Crime/How is the Crime Defined?

A) counterfeiters:

- 1) those who have infringed a registered trademark or have fraudulently affixed a mark belonging to others;
- 2) those who have used a mark without the authorization of the interested party even with the addition of words such as "formula", "way", "system", "recipe", "imitation", "kind", or any other indication similar to this;
- 3) those who have without legitimate reason detained products which they knew to have counterfeit or fraudulently affixed mark that have knowingly sold, put into selling, providing or offering to provide goods or services under such a mark;
- 4) those who have knowingly delivered a product or provided a service other than that which They were applied for under a registered trademark.
- 5) those who have imported or exported products bearing a counterfeit mark or fraudulently affixed.
- 6) one who knowingly imported or used on a commercial scale labels or packaging and packaging to which is affixed without authorization a mark that is identical to a registered trade mark or which cannot be distinguished from them and which are intended for commercial use on goods or as part of services which are identical to goods or services for such a trademark or trade is registered

B) 1) those who without infringing a registered trademark have made an imitation of it fraudulent likely to deceive the buyer or have made use of a trademark

fraudulently imitated;

- 2) those who have made use of a registered mark bearing particulars specific to mislead the buyer as to the nature, substantial qualities, composition or content of useful principles, the species or origin of the object or product designated;
- 3) those who have without legitimate reason detained products which they knew to have fraudulently imitated trademark or those who have knowingly sold, offered for sale or offered to supply products or services under such a mark.

What is the typical Sentence for the Crime?

A) Counterfeiters:

Are considered counterfeiters and punished by imprisonment for three months one year and a fine of 100,000 to 1,000,000 dirhams or one of these two penalties



B) Are punished with a term of two to six months imprisonment and a fine of 50,000 to 500,000 dirhams or one of these two penalties

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MYANMAR (FORMERLY BURMA)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

1. Trademark Law January 30, 2019.
2. Industrial Design Law January 30, 2019.
3. Patent Law March 11, 2019.
4. Copyright Law May 24, 2019.

The above laws are not yet come into force. At present the responsible Ministries are working to issue Rules & Regulations of above laws, to establish IP offices and IP Courts, to facilitate other requirements in order to be practically operative. Only at the time when the above preparations are completed, those laws will come into force by the issuance of Presidential notification.

What are the Elements of the Crime/How is the Crime Defined?

Cannot currently be determined

What is the typical Sentence for the Crime?

Cannot currently be determined

Other relevant information:

In this interim period, the Case Law of Myanmar in respect of IPR protection, especially of trade mark and copyright, sustains through the different eras, under legal principles of English Common Law. Below are existing/historical IP-related laws that contain provisions concerning IP counterfeiting rights in general:

- Myanmar Copyright Act (1914)
- Penal Code (1860)
- Merchandise Marks Act (1889)
- Specific Relief Act (1877)
- Sea Customs Act (1878)
- Registration Act (1908)
- Private Industrial Enterprise Law (1990)
- Control of Money Laundering Law (2002)
- Television and Video Law (1996)
- Motion Picture Law (1996)
- Control of Money Laundering Law (2002)
- Patent and Design (Emergency Provisions) Act (1946)
- Science and Technology Development Law (1994)



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NEPAL

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Patent, Design and Trademark Act, 2022 (1965); Black Marketing Act, 2032; Consumer Protection Act, 2075 (2018); Export and Import (Control) Act, 2013 (1957)

What are the Elements of the Crime/How is the Crime Defined?

PATENT, DESIGN, & TRADEMARK ACT

Offense as per sec. 19

1. Copying or using or causing to use the registered trademark of others without transforming the ownership or written permission.
2. Using of trademark which has been cancelled by the Department.
3. Using any trademark as a registered Trademark without registering it at the Department.

BLACK MARKETING ACT

Sec.6 of this act states that, If any person sells or distributes the goods by misleading any sub-standard goods to be standard ones or by misrepresenting any goods to be another goods it is considered as an offense.

CONSUMER PROTECTION ACT

Sec 18 prohibits the act of selling or causing to sell any goods or services by lying or deceiving that the goods or services are other goods or services and stating high standard goods for low standard goods or services.

EXPORT AND IMPORT CONTROL ACT

Sec.3 (1) (o) of the act prohibits the actions in order to protect the intellectual property rights such as patents, trademarks, copyrights, industrial designs, geographical indications and protection of undisclosed information.

What is the typical Sentence for the Crime?

PATENT, DESIGN, & TRADEMARK ACT

For all the offenses mentioned, section 19 penalizes the action with a fine not exceeding is One Hundred Thousand Rupees and articles and goods connected with such offense confiscated on the orders of the Department as per the gravity of offense.

Compensation as per sec. 25

In relation to the patent, design or trademark registered under the act, the Department may cause to pay a reasonable amount of the loss, incurred through the violation of the act by anybody, to the person who had really been suffered from such loss, and whose name the patent, design and trademark was registered, from the person who violated, as a compensation.



BLACK MARKETING ACT

Such person may be punished with imprisonment for a term not exceeding Two years or with a fine or with both.

CONSUMER PROTECTION ACT

Section 40 (b) provides punishment for the action, with imprisonment from three months to one year or fine from one hundred thousand rupees to three hundred thousand rupees or both penalties if the offence is committed.

EXPORT AND IMPORT CONTROL ACT

Sec 5 (1) states that, Where any person exports or imports any goods prohibited or restricted pursuant to this Act, the goods to be exported or imported shall be forfeited and such person shall be punished with a fine equal to the value of the goods or with imprisonment for a term not exceeding one year or with both punishments.

Other relevant information:

Nepal had released its Intellectual Property Policy on March 2017, one of the visions of this policy is to control the IP infringements and this policy also recommends revising penal provisions under the existing legal framework.

As per Competition Promotion and Consumer Protection Act, 2063 (2007) Government of Nepal may make necessary provisions to prevent the abuse of intellectual property.

Also Import and Export (Control) Act, 2013 (1957) prohibits the actions in order to protect the intellectual property rights such as patent, trademark, copyrights, industrial designs, geographical indications and protection of undisclosed information.

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NETHERLANDS

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademarks can be filed under the Benelux Office for Intellectual Property, the European Intellectual Property Office, or as an International Trademark.

What are the Elements of the Crime/How is the Crime Defined?

Criminal enforcement is possible in the cases of:

- a threat to public health;
- large-scale counterfeiting and piracy;
- evidence of involvement of criminal organisations.

What is the typical Sentence for the Crime?

See below.

Other relevant information:

As a matter of principle, parties in the Netherlands settle their IP disputes under civil law. Enforcement under the criminal law is seen as a last resort. The enforcement of IPRs under criminal law is possible, for instance, in the case of:

- a threat to public health;
- large-scale counterfeiting and piracy;
- evidence of involvement of criminal organisations.

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NEW ZEALAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Marks Act 2002 Trade Mark Act 2002 Section 120: Offence to counterfeit registered trade mark
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165024.html>

Trade Mark Act 2002 Section 121: Offence to falsely apply registered trade mark to goods or services
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165025.html>

Trade Mark Act 2002 Section 122: Offence to make object for making copies of registered trade mark, etc
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165030.html>

Trade Mark Act 2002 Section 123: Offence to possess object for making copies of registered trade mark, etc
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165031.html>

Trade Mark Act 2002 Section 124: Offence to import or sell, etc, goods with falsely applied registered trade mark
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165032.html>

Trade Mark Act 2002 Section 125: Penalties for offences
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165033.html>

Trade Mark Act 2002 Section 126: Order for delivery up in criminal proceedings
<http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM165035.html>

Fair Trading Act 1986 Section 10: Misleading conduct in relation to goods
<http://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96904.html>

Section 40: Contraventions of provisions of Parts 1 to 4A an offence
<http://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96990.html>

Section 11: Misleading conduct in relation to services
<http://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96905.html>

Section 40: Contraventions of provisions of Parts 1 to 4A an offence
<http://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96990.html>



What are the Elements of the Crime/How is the Crime Defined?

TMA §120

- (1) Every person commits an offence who, with the intention of obtaining a gain for himself or herself or any other person or of causing loss to any person, counterfeits a registered trade mark.
- (2) For the purposes of subsection (1), a person counterfeits a registered trade mark if, without the consent of the owner of the registered trade mark, the person knowingly:
 - (a) makes a sign that is identical to, or similar to, the registered trade mark so as to be likely to deceive; or
 - (b) falsifies a genuine registered trade mark, whether by alteration, addition, effacement, partial removal, or otherwise.

TMA §121

- (1) Every person commits an offence who falsely applies a registered trade mark to goods or services.
- (2) For the purposes of this section and section 124, a person falsely applies a registered trade mark to goods or services if:
 - (a) without the consent of the owner of the registered trade mark, the person knowingly applies the trade mark or a sign that the person knows is likely to be mistaken for that trade mark to the goods or services; and
 - (b) in the case of an application to goods, the person knows the goods are not the genuine goods of the owner or licensee of the registered trade mark.
- (3) For the purposes of this section and section 124, a trade mark is applied to goods or services if:
 - (a) the trade mark is used in a sign or an advertisement including a televised advertisement or an invoice, wine list, catalogue, business letter, business paper, price list, or other commercial document; and
 - (b) the goods are delivered, or services provided, as the case may be, to a person in accordance with a request or order made by reference to the trade mark as so used.
- (4) For the purposes of this section and section 124, a sign is applied to goods or services if the sign:
 - (a) is applied to the goods themselves; or
 - (b) is applied to a covering, label, reel, or thing in or with which the goods are sold or exposed or had in possession for a purpose of trade or manufacture; or
 - (c) is used in a manner likely to lead a person to believe that it refers to, describes, or designates the goods or services.
- (5) For the purposes of subsection (4)(b) covering includes a stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper
label includes a band or ticket.

TMA § 122

Every person commits an offence who makes an object specifically designed or adapted for making copies of a registered trade mark or a sign that is likely to be mistaken for a trade mark with intent that the object be used for, or in the course of, committing an offence against section 120 or section 121.



TMA §123

Every person commits an offence who, without lawful authority or excuse:

- (a) has in the person's possession, custody, or control, an object specifically designed or adapted for making copies of a registered trade mark or a sign that is likely to be mistaken for that trade mark; and
- (b) intends the object to be used for, or in the course of, committing an offence against section 120 or section 121.

TMA §124

Every person commits an offence who:

- (a) imports into New Zealand for the purpose of trade or manufacture any goods to which that person knows a registered trade mark is falsely applied; or
- (b) sells or exposes for sale any goods to which that person knows a registered trade mark is falsely applied; or
- (c) has in the person's possession for the purpose of trade or manufacture any goods to which that person knows a registered trade mark is falsely applied.

TMA §126

The court before which proceedings are brought against a person for an offence against any of sections 122 to 124 may order that goods or an object be delivered up to the owner of the registered trade mark or to any other person that the court may direct if it is satisfied that, at the time of the defendant's arrest or charge,

- (a) the defendant had in the defendant's possession, custody, or control in the course of trade, goods to which—
 - (i) the registered trade mark that has been counterfeited has been applied; or
 - (ii) a trade mark or sign that is similar to the registered trade mark so as to be likely to deceive or confuse has been falsely applied; or
- (b) the defendant had in the defendant's possession, custody, or control an object specifically designed or adapted for counterfeiting a particular trade mark, knowing that the object had been or was to be used to counterfeit trade marks for use in the course of trade.

FTA §10

Section 10: Misleading conduct in relation to goods

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.

FTA §11

Section 11: Misleading conduct in relation to services

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.



What is the typical Sentence for the Crime?

TMA §125

Every person who is convicted of an offence against:

- (a) section 120 or section 121 or section 122 or section 123 is liable on conviction to:
 - i. a fine not exceeding \$10,000 for each of the goods or services to which the offence relates, but not exceeding \$150,000 in respect of the same transaction; or
 - ii. imprisonment for a term not exceeding 5 years; or
- (b) section 124 is liable on conviction to:
 - i. a fine not exceeding \$150,000; or
 - ii. imprisonment for a term not exceeding 5 years.

FTA §40

Section 40: Contraventions of provisions of Parts 1 to 4A an offence

(1) Every person who contravenes [Sections 10 or 11] commits an offence and is liable on conviction:

- (a) in the case of an individual, to a fine not exceeding \$200,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$600,000.

Other relevant information:

Section 119 of the Trade Marks Act extends criminal liability to every director and every person concerned in the management of a body corporate if it is proved:

- (a) that the act that constituted the offence took place with his or her authority, permission, or consent; and
- (b) that he or she
 - (i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
 - (ii) failed to take all reasonable steps to prevent or stop it.

Copyright Act 1994 Section 131: Criminal liability for making or dealing with infringing objects

<http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM346602.html>

CA §131

(1) Every person commits an offence against this section who, other than pursuant to a copyright licence:

- (a) makes for sale or hire; or
- (b) imports into New Zealand otherwise than for that person's private and domestic use; or
- (c) possesses in the course of a business with a view to committing any act infringing the copyright; or
- (d) in the course of a business:
 - i. offers or exposes for sale or hire; or
 - ii. exhibits in public; or
 - iii. distributes; or
- (e) in the course of a business or otherwise, sells or lets for hire; or
- (f) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,



an object that is, and that the person knows is, an infringing copy of a copyright work.

- (2) Every person commits an offence against this section who:
 - (a) makes an object specifically designed or adapted for making copies of a particular copyright work; or
 - (b) has such an object in that person's possession, knowing that the object is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (3) Subject to subsection (4), every person commits an offence against this section who:
 - (a) causes a literary, dramatic, or musical work to be performed, where that performance infringes copyright in that work; or
 - (b) causes a sound recording or film to be played in public or shown in public, where that playing or showing infringes copyright in that sound recording or film, knowing that copyright in the work or, as the case requires, the sound recording or film would be infringed by that performance or, as the case requires, that playing or that showing.
- (4) Nothing in subsection (3) applies in respect of infringement of copyright by the reception of a communication work.

CA §131

- (5) Every person who commits an offence against this section is liable on conviction:
 - (a) in the case of an offence against section 131(1), to a fine not exceeding \$10,000 for every infringing copy to which the offence relates, but not exceeding \$150,000 in respect of the same transaction, or to imprisonment for a term not exceeding 5 years;
 - (b) in the case of an offence against section 131(2) or section 131(3), to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 5 years.
- (6) Where any person is convicted of an offence against this section in circumstances where that offence involves the making of profit or gain, [a court may impose a sentence of reparation pursuant to section 32(1)(a) of the Sentencing Act 2002].

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NIGERIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

1. Merchandise Marks Act Cap. M10 Laws of the Federation of Nigeria 2004. <https://www.lawyard.ng/wp-content/uploads/2016/01/MERCHANDISE-MARKS-AC1.pdf>
2. Trade Malpractices (Miscellaneous Provisions) Act Cap 73 Laws of the Federation of Nigeria 2004. <https://nlipw.com/trade-malpractices-miscellaneous-offences-act/>

What are the Elements of the Crime/How is the Crime Defined?

Criminal elements under the Merchandise Marks Act:

1. Every person who
 - (a) forges any trademark; or
 - (b) falsely applies to goods, any trademark or any marks so nearly resembling a trademark as to be calculated to deceive; or
 - (c) makes, dispose of, or has in his possession any die, block, machine or other instrument for the purpose of forging, or of being used for forging a trademark; or
 - (d) applies any false trade description to goods; or
 - (e) causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence.
- (2) Every person who sells, exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trademark or false trade description is applied, or to which any trademark or mark so nearly resembling a trademark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves either
 - (a) that, having taken all responsible precautions against committing an offence against this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trademark, mark or trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
 - (b) that otherwise he had acted innocently, be guilty of an offence against this Act.

Criminal elements under the Trade Malpractices (Miscellaneous Provisions) Act:

- (1) Any person who
 - (a) labels, packages, sells, offers for sale or advertises any product in a manner that is false or misleading or is likely to create a wrong impression as to its quality, character, brand name, value, composition, merit or safety... commits an offence under this Act and is liable on conviction to a fine of not less than N50,000 (fifty thousand Naira).



What is the typical Sentence for the Crime?

Every person guilty of an offence under the Merchandise Marks Act shall be liable

- (a) on conviction before a high court to imprisonment for a term of two years, or to a fine, or both;
- (b) on summary conviction before a magistrate court to imprisonment for a term of six months or to a fine of N100 (one hundred Naira);
- (c) in any case, to forfeit every chattel, article, instrument or thing by means of or in relation to which the offence has been committed.

The penalty for an offence under the Trade Malpractices (Miscellaneous Provisions) Act is: (1)(a) a fine of not less than N50,000 (fifty thousand Naira).

Other relevant information:

The information provided here refers to criminal liability for trademark infringement only.

The Trade Marks Act provides for criminal liability only in respect of falsification of the Trademarks Register and false representation of a mark as registered.

In respect of copyright, see section 20 of the Copyrights Act.

The Patents and Designs Act provides for only civil liability.

Protection of Trade Secrets is governed essentially by common law and is not expressly protected under local legislation.

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NORWAY

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Norwegian Trademarks Act, Norwegian Penal Code Act, Marketing Control Act

What are the Elements of the Crime/How is the Crime Defined?

Trademark infringement:

Norwegian Trademarks Act Section 4:

"(..) no one, without the consent of the proprietor of the trademark right (the trademark proprietor), may use in an industrial or commercial undertaking:

- a. any sign which is identical with the trademark for goods or services for which the trademark is protected
- b. any sign which is identical with or similar to the trademark for identical or similar goods or services if there exists a likelihood of confusion, such as if the use of the sign may give the impression that there is a link between the sign and the trademark.

For a trademark which is well known in Norway, the trademark right implies that no one, without the consent of the trademark proprietor, may use a sign that is identical with or similar to the trademark for similar or any other goods or services, if the use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute (goodwill) of the well-known trademark.

Use is considered to include the following:

- a. affixing the trademark to goods or to the packaging thereof
- b. offering goods for sale or otherwise putting them on the market, stocking or delivering them under the sign, or offering or supplying services thereunder
- c. importing or exporting goods under the trademark
- d. using the sign on business documents and in advertising.

Verbal use of the sign is also considered as use."

Fraud:

The Norwegian Penal Code Act Section 270:

"A penalty of a fine or imprisonment for a term not exceeding two years shall be applied to any person who with intent to obtain an illicit gain for himself/herself or others

- a) causes, strengthens or exploits a mistaken belief and thereby deceives someone into doing or omitting to do something by which someone suffers a loss or risks a loss, or
- b) makes use of false or incomplete information, modifies data or a computer system, uses a credit or debit card which belongs to another person, or otherwise illicitly affects the result of automated data processing, thereby causing someone a loss or risk of loss."



Copied products and unfair competition:

Marketing Control Act Section 30:

"Copying the products of another person – It shall be prohibited in the course of trade to use copies of distinguishing marks, products, catalogues, advertising materials or other produced items in such a manner and under such circumstances that the use must be considered an unfair exploitation of the efforts or results of another person, and to present a risk of confusion."

What is the typical Sentence for the Crime?

Trademark infringement:

Any person who commits a trademark infringement is liable to fines or imprisonment for a term of up to one year. If especially aggravating circumstances exist, the penalty shall be fines or imprisonment for a term of up to three years, cf. Norwegian Trademark Act Section 61.

Fraud:

A penalty of a fine or imprisonment for a term not exceeding two years. Aggravated fraud is punishable by imprisonment for a term not exceeding six years, cf. The Norwegian Penal Code Act Section 270.

Copied products and unfair competition:

Marketing control act, section 48:

"A person who infringes section 30, shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies."

Imposition of penalties:

Imposition of penalties exceeding the maximum penalty may accrue when an offender has by one or more acts committed multiple offences, repeated offences, or if the criminal act was perpetrated as part of the activities of an organised criminal group, cf. The Norwegian Penal Code Act Section 79.

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OMAN

Criminal Liability for Trademark-Related Offenses?

No

Applicable Statute, Law, or Rule:

Industrial Property Law No. 67/2008 • Royal Decree No. 38/2000 promulgating the Law of Trade Marks, Descriptions, and Secrets and Protection from Unfair Competition

What are the Elements of the Crime/How is the Crime Defined?

Note, Civil definitions only listed here.

TRADEMARK

a. Registration as a pre-requisite to action?

Yes, it is required.

b. Scope of protection

The owner of a trademark has the following rights:

1. The right to stop others from applying a similar or identical mark to goods or service related to those for which the mark has been registered, if there is a chance for confusion in relation to that use.
2. The right to take legal action against anybody using the trademark without his permission or takes any action that may lead to the violation of his trademark.
3. Trademarks laws in Oman stated as the following:
 - (1) Without prejudice to the provisions of Subsection (3), the Minister shall have the authority, ex officio or at the request of any interested party, of declaring the trademark rights exhausted and thus of authorizing others to import the product identified by or bearing a registered or otherwise protected trademark ("the product") from another territory when that product is not available in the territory of Oman or is available in the territory of Oman with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at prices that the Minister deems abusive or for any other reason of public interest, including anticompetitive practices, provided that:
 - i. The product has been put in the channels of commerce in the territory from which it will be imported by the owner of the trademark or with his consent; and
 - ii. A similar or identical trademark is registered or otherwise protected in the territory from which the product will be imported and is owned by the same person who owns the registered or otherwise protected trademark in Oman or by a person under his control.

c. Key elements of infringement cause of action:

- Using signs identical with a registered trademark for identical goods or services.
- Using signs identical with a registered trademark for similar or related goods or services.
- Using signs similar to a registered trademark for identical or similar goods or services.
- Using signs identical with or similar to a well-known trademark for any goods or services.



UNFAIR COMPETITION

a. Registration as a pre-requisite to action?

It is not an intellectual property right, so it's not required to be registered. However, it is a type of juridical civil procedures which is usually used to support claims regarding trademark enforcement procedures, such as trademark infringement.

b. Scope of protection

It is not an intellectual property right. There is no scope of protection.

c. Key elements of infringement cause of action

Article (60): from Royal Decree 67/2008:

1 - The provisions of this Part shall apply independently of, and in addition to, any legislative provisions protecting inventions, utility models, industrial designs, layout-designs, distinctive signs, literary and artistic works and other intellectual property subject matter.

2 - A) Any act or practice, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

B) An act or practice that is contrary to honest practices, for the purposes of this Part, shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition of undisclosed information. Also the acts of breach of legal duties in a manner that leads to obtaining illicit advantages over competitors, such as the breach of environmental or labor law.

C) Any natural person or legal entity damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies referred to in Part IV.

Article (61):

1 - Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

2 - Confusion may, in particular, be caused with respect to:

(A) A trademark, whether registered or not, or trade name;

(B) A distinctive sign other than a trademark or trade name;

(C) The appearance of a product, the presentation of products or services as well as of the place of business;

Article (62):

Shall be considered an act of unfair competition any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another competitor. Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character, regardless of whether such act or practice causes confusion.



Article (63):

- 1 - Any act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.
- 2 - Misleading may arise out of advertising or promotion and may, in particular, occur with respect to:
 - a) The manufacturing process of a product;
 - b) The suitability of a product or service for a particular purpose;
 - c) The quality or quantity or other characteristics of products or services;
 - d) The geographical origin of products or services;
 - e) The conditions on which products or services are offered or provided;
 - f) The price of products or services or the manner in which it is calculated.

Article (64):

- 1 - Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another's competitor enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.
- 2 - Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to:
 - A – The manufacturing process of a product;
 - B – The suitability of a product or service for a particular purpose;
 - C – The quality or quantity or other characteristics of products or services;
 - D – The conditions on which products or services are offered or provided;
 - E - The price of products or services or the manner in which it is calculated.

What is the typical Sentence for the Crime?

Note, Civil remedies only listed here, as well as injunctions.

TRADEMARK

In civil judicial proceedings concerning trademark counterfeiting, the Court shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and documentary evidence relevant to the infringement.

UNFAIR COMPETITION

From the Royal Decree 67/2008:

Article (66):

- 1 - Subject to the provisions of articles (11), (13), and (17) of this Law an infringement of a patent or a utility model shall consist of the performance of any act referred to in article (11/2) in Oman by a person other than the owner of the patent and without the agreement of the latter.
- 2 - On the request of the owner of the patent or of the utility model, or of an exclusive licensee, or of a non-exclusive license, or of a compulsory licensee, if he has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so within ninety (90) days, the Court may grant an injunction to prevent infringement or an imminent infringement and, where the infringer acted knowingly or with reasonable grounds to know, award damages and grant any other remedy provided for according to the provisions of this Law.



3 - The legal remedies provided to owners of patents in Oman shall be also available, whenever appropriate, to the owners of foreign patents that have been the subject of a compulsory license for the purposes of supplying the market of Oman of pharmaceutical products, under the scheme established by the Decision of the WTO General Council, in order to prevent or remedy the unauthorized importation as well as the re-exportation or deviation of the products in question. Customs authorities shall have the authority to take border measures for the purposes of the provisions of this article ex officio. In this event, they shall notify the right holder of the suspension of release who shall have ten (10) days for providing adequate evidence that the retained products prima facie correspond to the claims of the patent in question.

4 - Without prejudice to the provisions of paragraph (3) of this article, the same border measures that are available under this Law for the suspension by the customs authorities of the release into free circulation of counterfeit trademark and pirated copyright goods shall also apply to prevent the unauthorized importation or re-exportation of the products that have actually been imported into the territory of Oman under the scheme referred to in paragraph (3) of this article.

5 - Courts may refuse to grant provisional or definitive injunctions, without prejudice to the payment of damages, when:

A - after the expiration of a period of four (4) years from the date of filing of the patent application or three (3) years from the date of the grant of the patent, the plaintiff or a person with his authorization is not, or has not taken serious preparations for, or has no serious intention to start, commercially exploiting the invention in a manner that meets the demands of the market as to quantity, or at any time if the invention is exploited in a manner that does not meet the demands of the market as to quality;

B - the injunction causes serious harm to the public interest;

C - the patented products or the products manufactured by a patented process are sold by the plaintiff or by a third party with the plaintiff's consent at prices that are deemed excessive taking into account the average purchase power of consumers and the specific nature of the needs the products aim at meeting, and there is no competing product on the market;

D - the patent owner has engaged in anti-competitive acts or practices, as determined by the Court or by a competent administrative authority;

E - the patent owner is found to have engaged in inequitable conduct during the procurement of the patent letter; this paragraph applies without prejudice to the provisions of article (14) of this Law.

Article (67):

1 - Subject to the provisions of article (40/3) of this Law, an infringement of a registered mark, or a registered collective mark, or a registered certification mark, or of a trade name shall consist of the performance of any act referred to in the two articles (40/1) and (46) of this Law in Oman by a person other than the owner of the mark or of the trade name and without the agreement of the latter.

2 - An infringement of a well-known mark shall consist of the use of a sign identical with or confusingly similar to the well-known mark, whether registered in Oman or not, without the agreement of the owner of the well-known mark provided that the sign is used:

a) in relation to goods or services identical with or similar to the goods or services for which the well-known mark has been registered, or



b) in relation to goods or services which are not identical with or similar to those in respect of the well-known mark provided that the use of the sign in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use.

3 - On the request of the owner of a registered mark or of a well-known mark, even if unregistered, or of an exclusive licensee, or of a non-exclusive licensee if he has requested the owner of the mark to institute court proceedings for a specific relief and the owner of the mark has refused or failed to do so within ninety (90) days, the Court may grant an injunction to prevent infringement, or an imminent infringement, and grant appropriate remedies to cover for damages resulting from such infringements.

The same injunction by the court applies if the request is submitted to the Court by any competent authority or any interested person, group association or syndicate, including producers, manufacturers, or traders.

Other relevant information:

Copyright Enforcement Strategies

a. Registration as a pre-requisite to action?

The Omani copyright protects any original literary, artistic, and scientific work automatically upon their creation without the need to undertake any formalities irrespective of the value, kind, method of expression, or purpose for which the work was created.

b. Scope of protection

The Omani law grants the owner of the copyright over a work the following exclusive economic rights:

- The right to reproduce the work.
- The right to translate the work, create adaptations of it, rearrange it musically, or modify it into another form.
- The right to sell the work or any of its copies to the public or deal with it in any title-transferring dealing.
- The right to rent the work for a commercial purpose.
- The right to perform the work to the public.
- The right to communicate the work to the public.
- The right to broadcast the work.

Moral rights under the Omani copyright law cannot be waived or disposed of. The moral rights available under Omani law are the right of the author for attribution as the author of the work in the manner of his choice and the right of the author to object to any distortion, mutilation, modification, or other derogatory action in relation to his work that could prejudice the author's honor or reputation.

c. Key elements of infringement cause of action

Article (4) from the Royal Decree No. 65/2008 promulgating the Law on Copyright and Related Rights Protection shall not cover mere ideas, procedures, working methods, mathematical concepts, principles, discoveries and data.

Additionally, protection shall not cover the following:

a. Official documents of whatever original language or translated language, as texts of laws, regulations, decisions, agreements, international conventions, judicial orders, judgments of arbitrators and decisions issued by administrative committees with judicial competence, as well as official translations.



b. News of the day and current events which are mere journalistic information.

Notwithstanding, all of the above in the previous paragraphs shall enjoy protection if their compilation or arrangement, or any creation or intellectual effort, eligible for protection, is distinguished.

d. Remedies

Article (42): from the Royal Decree No. 65/2008 promulgating the Law on Copyright and Related Rights The competent court shall, upon the request of the holder of a protected right, under an order issued for a petition, order to take one, or more, of the following preventive measures:

a. Prevent the violation of, or the prohibited action against, any right protected under this law.

b. Stop violation of any right protected under this law.

c. Sign the seizure of the copies of the work, subject to violation, as well as the materials used in making such copies.

d. If the alleged violation is for public performance of a work, performance, or sound recording, stop the current show or ban it in the future.

e. Limit income from illegal publishing or presentation decided by an expert, appointed by the court for such purpose, and sign the seizure of the income in all cases.

Article (43):

1 - Without prejudices to any other compensations prescribed by any other law, the Court shall order anyone convicted of committing acts of infringements against any of the financial rights of the Author or of the holders of Neighboring rights to pay to the rights holder the following:

a) Compensations sufficient enough to cover for the damages to the right holder attributed to the infringement;

b) The amount of profits gained by the infringer and attributed to the infringement, and which was not taken into consideration when estimating the compensations referred to in the previous paragraph.

For the implementation of the provisions of this paragraph, the right holder is each and every exclusive licensee, and also the unions and association representing the right holders, as per prevailing laws.

2 - Without prejudices to any other compensations prescribed by any other law, the Court shall order anyone convicted of committing any of the acts cited in Article (40) of this law to pay to the rights holder the following:

a) Compensations sufficient enough to cover for the damages to the right holder attributed to the infringement;

b) The amount of profits gained by the infringer and attributed to the infringement, and which was not taken into consideration when estimating the compensations referred to in the previous paragraph.

- Design Patent Strategies

a. Registration as a pre-requisite to action

Yes it is required. Article (5) Royal Decree No. 82/2000 in Oman stated:

Patent applications are submitted to the Patent Office by the inventor or his accredited agent, or by one to whom the rights for invention have been transferred, in accordance with the conditions stipulated in the bylaws. The applicant may withdraw the application at any time as long as it has not been decided. Withdrawing registration application shall not result in recovering the application documents nor any fees paid.

b. Scope of protection:



- a patent shall confer on its owner the right to prevent third parties from exploiting the patented invention in Oman; and
- The right of the patent owner is defined by the claims.
- c. Key elements of infringement cause of action

Article (9):

"The patent entitles its holder the right to utilize the invention by manufacturing, usage, import whatever is being manufactured and offer it for sale, whether the subject of the invention was material produce, industrial operation or manufacturing process. Others may not utilize the patent without the patent holder's permission."

d. Remedies

Article (21) from Royal Decree No. 82/2000 in Oman stated:

"In the event of any illegal act, or violation of this law or the license awarded in accordance with its provisions, the patent holder, or whomever some or all the patent's rights have been assigned to, in accordance with this law, may request the competent court to issue a provisional seizure on the invention and the installation used or utilized for the invention, or part thereof"

Article (24):

Without prejudice to any greater penalty stipulated by another law, anyone submitting false or incorrect documents or information to obtain a patent, or anyone forging an invention or manufacturing process, or encroached intentionally upon any right protected by this law, shall be punished by imprisonment for not more than two years and/or a fine not exceeding Rial Omani two thousand.

The court may order the seizure of confiscated items, or its destruction, together with the machinery and equipment used in the forgery.

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PAKISTAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Section 11: Misleading conduct in relation to services

<http://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96990.html>

What are the Elements of the Crime/How is the Crime Defined?

Pakistan Penal Code 1860

Section 480. Using a false trade mark: Whoever marks any goods or any case, packages or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked/or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Section 481. Using a false property mark: Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

What is the typical Sentence for the Crime?

Pakistan Penal Code 1860

Section 482. Punishment for using a false trade-mark or property mark: Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 483. Counterfeiting a trademark or property mark used by another: Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Trade Marks Ordinance, 2001

Section 99(a). Penalty for applying false trade description, etc.- Any person who applies any false trade description to goods or services shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which shall not be less than three months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees, or with both.

Section 100. Enhanced penalty on second or subsequent convictions.- Whoever having already been convicted of an offence under section 99 is again convicted of any such offence shall be punished for the second and every subsequent offence with imprisonment of either description for a term which shall not be less than six months but which may extend to three years, or with fine which shall not be less than one hundred thousand rupees, or with both.



Section 101. Penalty for falsification of entries in Register.- Any person who makes, or causes to be made, a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees, or with both.

Section 102. Penalty for falsely representing a trade mark as registered.-

(1) No person shall make any representation-

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark;

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark;

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not, in fact, registered; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the Register, the registration does not, in fact, give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to six months, or with fine which shall not be less than twenty thousand rupees, or with both.

Other relevant information:

The Customs Authority is also empowered under Section 17 of the Customs Act, 1969 to seize and confiscate any goods imported into Pakistan in violation of Section 15. Extracts of sections 15 and 17 of the Customs Act 1969 attached herewith.

The Trade Marks Ordinance 2001 provides protection to a proprietor of a registered trademark where the same is being infringed in Pakistan. It enables the proprietor of the registered trade mark to approach the Custom Authority with evidence in their possession regarding a potential infringement of their trademark. Extract of sections 53 to 66 of the Trade Marks Ordinance 2001 are enclosed herewith for your ready reference.

Chapter VII of the Trade Marks Ordinance 2001 deals with the unfair competition and comparative advertisement. Extracts of Sections 67 and 68 are also enclosed herewith.

The Copyright Ordinance 1962, Chapter XII (Sections 56-58) contains provisions relating to inter alia "Infringement of Copyrights" and "Importation and exportation of infringing copies". Extracts of sections 58, 60A and Chapter XIII A of the Copyright Ordinance 1962 are also enclosed herewith.



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PALESTINE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Fair Trading Act 1986

<http://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96990.html>

What are the Elements of the Crime/How is the Crime Defined?

Offences for the following:

- (a) not being the proprietor thereof makes use of a trade mark registered under this Ordinance or of an imitation of such trade mark upon the same class of goods as that in respect of which the mark is registered;
 - (b) sells, stores for the purposes of sale, or exposes for sale, goods bearing a mark the use of which is an offence under paragraph (a);
 - (c) uses a mark duly registered by another person under this Ordinance for the purpose of advertising in the public press or in any other manner, goods of the same classification as those for which registration has already been obtained by another person;
 - (d) makes engravings, prints, or sells, any plate, die, block or other representation of a duly registered mark or any other imitation thereof for the purpose of enabling any person other than the registered proprietor of such mark to make use of such mark or an imitation thereof in connection with goods of the same classification as those for which registration has already been obtained by another person;
 - (e) makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writings to be false;
- (2) In all such cases in lieu of or in addition to penalties prescribed by subsection (1), the court shall have power to grant an injunction against a continued repetition or any offence committed under this section.

What is the typical Sentence for the Crime?

Any person who with intent to deceive, commits or attempts to commit or aids or abets any other person in committing any of the criminal acts shall be guilty of an offence against this Ordinance and shall be liable upon conviction to imprisonment for a period not exceeding one year or to a fine not exceeding one hundred pounds, or to both such penalties.

2. If a person is convicted of committing an offence under this law, every material, machine, or tool with which the offence was committed or related to its commission shall be confiscated.



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PANAMA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Panamanian Penal Code, Industrial Property Law

What are the Elements of the Crime/How is the Crime Defined?

trademark counterfeit, counterfeit products, trademark imitation, pirated products

What is the typical Sentence for the Crime?

- Imprisonment of 4-6 years
- Seizure and destruction of the infringing products and the equipment used in the manufacture of the infringing products
- Suspension of the infringer's commercial license
- If an infringer is located in the Colón Free Zone (a free trade zone around the port in Colón): the revocation of the Free Zone operation permit
- Disbursements appropriate to the circumstances (often US \$1,200 - \$1,500)

Other relevant information:

During a trial, the trademark owner may have to bear costs of the storage of any seized merchandise.

The trademark owner must become a criminal complainant by signing a criminal complaint.

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PAPUA NEW GUINEA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code Act 1975, Customs Act, Trade Marks Act

What are the Elements of the Crime/How is the Crime Defined?

CRIMINAL CODE

477. Counterfeiting trade marks.

(1) In this section—

"counterfeit" includes any imitation of a genuine mark that is not genuine and that resembles the genuine mark;

"trade mark" includes any word or mark of any kind that is lawfully used by any person to denote that any article is—

(a) of his manufacture, workmanship, production or merchandise; or

(b) a thing of a peculiar or particular description made or sold by him.

(2) A person who, with intent to defraud or to enable another person to defraud—

(a) makes a counterfeit trade mark; or

(b) knowingly uses a trade mark, whether genuine or counterfeit, on an article, or on any thing containing or connected with any article, in such a manner that the trade mark signifies or implies, or may reasonably induce any person to believe, contrary to the fact, that the article is such as is

designated by the trade mark,

is guilty of a misdemeanour.

CUSTOMS ACT

Customs Act, which defines "counterfeit trade mark goods" and "pirated copyright goods" in section 1 (Interpretation).

TRADE MARKS ACT

75. Forgery, etc., of trade marks.

(1) A person who—

(a) forges a registered trade mark; or

(b) falsely applies a registered trade mark to goods; or

(c) makes a die, block, machine or instrument for the purpose of forging, or of being used for forging, a registered trade mark; or

(d) disposes of or has in his possession a die, block, machine or instrument for the purpose of forging, or of being used for forging, a registered trade mark,
is guilty of an offence.

(2) It is a defence in proceedings for an offence against Subsection (1) if the defendant proves that he acted without intent to defraud.



76. Selling, etc., of goods with false marks.

(1) A person who sells or exposes for sale, or has in his possession for sale or for the purpose of trade or manufacture, goods to which a forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied, is guilty of an offence.

(2) It is a defence in proceedings for an offence against Subsection (1) if the defendant proves that he acted without intent to defraud.

77. Importing goods with false marks.

A person who knowingly imports into the country goods to which a forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied, is guilty of an offence.

79. Aiding and abetting offences.

(1) A person who aids, abets, counsels or procures, or is in any way, directly or indirectly, knowingly concerned in or party to the commission of an act outside Papua New Guinea which if it were committed in Papua New Guinea, would be an offence against this Act, is guilty of an offence.

(2) Subsection (1) does not affect the operation of the Criminal Code.

80. Forgery of trade mark.

(1) A person shall be deemed to forge a registered trade mark—

(a) if, without the assent of the registered proprietor of the trade mark or of a registered user of the trade mark, or the authority of this Act, he makes the trade mark or a mark substantially identical with it; or

(b) if he falsifies a registered trade mark, whether by alteration, addition, effacement or otherwise.

(2) In a prosecution for forging a trade mark, the burden of proving the assent of the registered proprietor or registered user lies on the defendant.

What is the typical Sentence for the Crime?

CRIMINAL CODE

Penalty: Imprisonment for a term not exceeding two years and a fine at the discretion of the court.

(3) When a person is convicted under this section—

(a) every thing that he has in his possession to which the trade mark or counterfeit trade mark has been applied; and

(b) every instrument that he has in his possession—

(i) by means of which any such mark has been so applied; or

(ii) which is intended for applying any such mark,

is forfeited to the State

CUSTOMS ACT

Pursuant to section 146 of the Customs Act any goods which meet the above definition are forfeited to the State.

Penalties by way of fines for various offences against the Customs Act are provided in sections 161 to 164, and section 165 provides a penalty of not less than 12 months and not more than two years imprisonment



for persons who offend against the Customs Act repeatedly. Section 165 is in the following terms: (underlining added)

165. Penalty on second conviction.

Where—

(a) a person is convicted of an offence against this Act for which a fine only is provided; and

(b) he has been previously convicted of a similar offence,

The court may, instead of or in addition to imposing a fine, impose a sentence of imprisonment for a term of not less than twelve months and not exceeding two years, with or without the right of release on payment of a fine.

TRADE MARKS ACT

75. Forgery, etc., of trade marks.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding three years.

(2) It is a defence in proceedings for an offence against Subsection (1) if the defendant proves that he acted without intent to defraud.

76. Selling, etc., of goods with false marks.

Penalty: A fine not exceeding K500.00.

(2) It is a defence in proceedings for an offence against Subsection (1) if the defendant proves that he acted without intent to defraud.

77. Importing goods with false marks.

Penalty: A fine not exceeding K500.00.

78. Forfeiture of goods.

A person convicted of an offence against Section 75, 76 or 77 is liable, in addition to the punishment provided by those sections to forfeit to the State all goods by means of which, or in relation to which, the offence was committed.

79. Aiding and abetting offences.

Penalty: A fine not exceeding K500.00.

(2) Subsection (1) does not affect the operation of the Criminal Code.

Other relevant information:

Copyright and Neighbouring Rights Act

Part IV (Enforcement of Rights) provides civil and criminal sanctions for the protection of rights under the Copyright and Neighbouring Rights Act, including a penalty of a maximum of 10 years imprisonment under section 28(1). Sections 26 to 29 are reproduced below (with underlining added)

PART IV.—ENFORCEMENT OF RIGHTS.

26. Conservatory and provisional measures.



- (1) The Court shall have the authority, under its civil and criminal jurisdiction, and on such terms as it may deem reasonable—
- (a) to grant injunctions to prohibit the committing, or continuation of committing, of an infringement of any right protected under this Act; or
 - (b) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization; or
 - (c) to order the impounding or packaging of the implements that could be used for the making of copies of works and sound recordings, and the documents, accounts or business papers relating to such copies.
- (2) The provisions of the Criminal Code Act (Chapter 262) dealing with search and seizure shall apply to infringement of rights under this Act.
- (3) The provisions of the Customs Act (Chapter 101) dealing with illegal goods shall apply to articles and implements used in relation to infringements of rights protected under this Act.

27. Civil remedies.

- (1) The owner of any right protected under this Act whose right has been infringed shall be entitled to payment of damages by the infringer for the prejudice suffered as a consequence of the act of infringement including such expenses directly caused by the infringement.
- (2) For the purposes of Subsection (1), the amount of damages shall be fixed taking into account the importance of the material, the moral prejudice suffered by the owner of the right and the importance of the infringer's profits attributable to the infringement.
- (3) Where the infringer did not or had no justifiable reason to know that he was engaged in an infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.
- (4) Subject to Subsection (5), where infringing copies exist, the Court shall order the destruction or other reasonable disposition of those copies and their packaging in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise.
- (5) Subsection (4) shall not apply to copies and their packaging which were acquired by a third party in good faith.
- (6) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court may, whenever and to the extent it is reasonable, order their destruction or other reasonable disposition in such a manner as to minimize the risks of further infringements, including the surrender of the implements to the owner of the right.
- (7) Where it appears to the Court that there likelihood of an act of infringement continuing, the Court may order that such act of infringement shall cease to be continued.
- (8) A person who carries on an act of infringement in contravention of an order under Subsection (7) shall be liable, on conviction, to a fine not exceeding K100,000.00 in addition to any other penalty the Court is empowered to impose.

28. Criminal sanctions.

- (1) A person who infringes a right protected under this Act, if done wilfully or by gross negligence and for profit-making purposes, is guilty of an offence.



Penalty: Imprisonment for a term not exceeding ten years or a fine not exceeding K100,000.00, or both.

(2) The Court may apply the measures and remedies referred to in Sections 31 and 32 in any criminal proceedings under Subsection (1) provided that no decision has yet been taken on such remedies in a civil proceeding.

29. Measures, remedies and sanctions against abuses.

(1) The following acts shall be considered unlawful and, in the application of Sections 26, 27 and 28, shall be assimilated to infringements of the rights protected under this Act:—

- (a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, a sound recording or a broadcast, or to impair the quality of copies made;
- (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
- (c) the removal or alteration of any electronic rights management information without authority;
- (d) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recordings or broadcasts, knowing, or having reason to know, that electronic rights management information has been removed or altered without authority.

(2) In the application of Sections 26, 27 and 28, any illicit device and means referred to in Subsection (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies or works, and any illicit act referred to in Subsection (1) shall be treated as an infringement of copyright or neighbouring rights to which the civil remedies and criminal sanctions provided for in Sections 26, 27 and 28 are applicable.

Patents and Industrial Designs Act

The Patents and Industrial Designs Act in Division 4, sections 58 to 62 (Court Proceedings and Offences) provides a regime for the imposition of fines but not for imprisonment.

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PARAGUAY

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademark infringement and trademark counterfeiting: Criminal Code of Paraguay (Article 184 b)

Law N°1294/98 available in: <https://www.bacn.gov.py/leyes-paraguayas/862/de-marcas>

Criminal Code of Paraguay, available in:

<https://www.bacn.gov.py/leyes-paraguayas/3497/codigo-penal>

What are the Elements of the Crime/How is the Crime Defined?

Trademark infringement and trademark counterfeiting:

Article 84 - The owner of a right to exclusive use of a registered trademark or of a commercial name may initiate action before a judicial authority against any person who infringes upon said right. The following acts shall be considered infringements upon the rights of an owner of a registered trademark:

- (a) to apply or place a trademark or a similar distinguishing sign on products for which the trademark has been registered, or on products related to the services for which the trademark has been registered, or on containers, wrappers, or packaging of said products;
- (b) to delete or modify the trademark with commercial purposes after the trademark has been applied or placed on products;
- (c) to manufacture labels, containers, wrappers, packaging and other materials on which are duplicated the trademark or commercial name, and market or unlawfully possess said materials;
- (d) to refill or reuse with commercial purposes containers, wrappers or packaging which bear the trademark or commercial name;
- (e) to use in commerce a sign identical or similar to the trademark or commercial name for any products or services when such use may cause confusion or a risk of association with the owner of the registration;
- (f) to use in commerce a sign identical or similar to the trademark or commercial name for any products or services or activities when such use may cause the owner an unjust economic or commercial damage due to a dilution of the distinguishing force or of the commercial or advertising value of the sign, or due to the unjust exploitation of the prestige of the sign or its owner; and
- (g) to use publicly a sign identical or similar to the trademark or commercial name, even if it is used for noncommercial purposes, when said use may cause a weakening of the distinguishing force or of the commercial or advertising value of the sign, or an unjust exploitation of its goodwill.

Criminal Code: (Translation of article 184 b of the Criminal Code of Paraguay)

Article 184 b. - The violation of trademark rights.

1°.- Anyone that:

1. falsify, adulterate or fraudulently imitate a registered trademark or the same products protected or similar services;



2. have on deposit, put up for sale, sold or given to sell or circulate products or services with counterfeit trademark, adulterated or fraudulently imitated.

What is the typical Sentence for the Crime?

Trademark infringement and trademark counterfeiting:

Imprisonment of up to five years. In particularly serious cases the penalty of deprivation of liberty be two to eight years.

Destruction of the counterfeit goods.

Monetary compensation for the damage caused (If parties reach to an agreement).

Other relevant information:

Unfair competition action: Please note that this action is a Civil Action. Unfair Competition is any act contrary to good practice and honest use with regard to industrial or commercial matters. This is regulated in Our trademark Law N°1294/98, title III and the judicial process is governed by the Code of Civil Procedure.

Civil Code of Paraguay, available in:

<https://www.bacn.gov.py/leyes-paraguayas/5293/codigo-civil>

Unfair competition action: Please note that there is no "crime" for unfair competition and the acts that are considered unfair competition are found in article 81 of our Trademark Law.

Unfair competition action: The decision in cases of unfair competition action will depend on the course of the trial, taking into account the evidence shown in the same.

Unfair competition action: The judicial action against unfair competition shall prescribe two years after the unfair act has become known with certainty, or four years computed from the time said act was committed for the last time, whichever term expires first.

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PERU

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Court/ Penal Code

What are the Elements of the Crime/How is the Crime Defined?

The Penal Code establishes in its articles:

Article 222. Manufacture or unauthorized use of a patent.

It shall be punished with a custodial sentence of not less than two nor more than five years, with sixty to three hundred and sixty-five days fine and disqualification pursuant to Article 36 subsection 4) taking into consideration the seriousness of the crime and the value of the damages caused, who in violation of the rules and rights of industrial property, stores, manufactures, uses for commercial purposes, offers, distributes, sells, imports or exports, in whole or in part:

f) A product or service that uses an unregistered trademark identical or similar to a trademark registered in the country.

Article 223.- Unauthorized use or sale of industrial design or model.

It shall be punished with a custodial sentence of not less than two nor more than five years, with sixty to three hundred and sixty-five days-fine and disqualification pursuant to Article 36 subsection 4) taking into consideration the seriousness of the crime and the value of the damages caused, who in violation of the rules and rights of industrial property:

- a) Manufacture, market, distribute or store labels, stamps or containers that contain registered trademarks;
- b) Remove or use labels, stamps or containers that contain original marks for use on products of different origin; and
- c) Pack and/or market products using containers identified with brands owned by third parties.

Article 225. - Condition and degree of participation of the agent

It shall be punished with a custodial sentence of not less than two nor more than five years and with ninety to three hundred and sixty-five days-fine and disqualification pursuant to article 36, paragraph 4:

- a) If the agent who commits the crime is part of a criminal organization destined to perpetrate the crimes set forth in this chapter.
- b) If the agent who commits any of the crimes provided for in this chapter, has the status of official or public servant.

What is the typical Sentence for the Crime?

"In the criminal proceedings on crimes against intellectual rights, the judges usually fail by condemning to those sentenced to:



1. Two years of imprisonment, suspending its execution for a period of one year, establishing the compliance of the following rules of conduct:
 - a) Do not change their address without prior notice to the Judge;
 - b) Not to be absent from the place of their residence without authorization of the Court; and
 - c) Appear every 30 days before the Office of Registration and Biometric Control in order to register their signature, under notice of warning and/or extend the period of the suspension and/or revoke the suspension of the sentence as the case may be /
2. Sets fine days between 30 and 60 days, which must be paid by the sentenced at S/.1.00 per fine day in favor of the Public Treasury. /
3. Disqualification for a period of one year to carry out commercial activities related to the commercialization of the products subject to the process. /
4. Civil reparation in favor of the injured companies for the approximate sum of S/.1,500.00. /
5. The destruction and/or donation of the confiscated products in favor of a State entity that has the purpose to provide social assistance. /
6. The inscription of the sentence in the register of convictions.

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POLAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Industrial Property Law of June 30, 2020,

<http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20010490508/U/D20010508Lj.pdf>

What are the Elements of the Crime/How is the Crime Defined?

Art. 305. Counterfeit mark.

1. Anyone who, for the purpose of placing on the market, marks goods with a counterfeit trade mark including counterfeit European Union trademark, with a registered trade mark or with an European Union trademark while not being entitled to use it or who distribute goods bearing such marks (...)

Article 308.

Anyone who places on the market goods bearing a trade mark with a feature intended to create a false impression that these items are protected (...)

What is the typical Sentence for the Crime?

Art. 305. Counterfeit mark.

1. In general, whoever commits an offence under Article 305 (1) will be subject to a fine, restriction of freedom or imprisonment for up to 2 years.
2. In less serious cases, the perpetrator of an offence specified in section 1 will be subject to a fine.
3. If the perpetrator makes himself, by committing an offence specified in section 1, a permanent source of income or commits the offence in relation to a good of significant value, he will be subject to imprisonment for between 6 months and 5 years.

Additionally, according to Article 306 (forfeiture)

1. In the event of being convicted of an offence specified in Article 305 (3) the court will adjudicate forfeiture to the State Treasury of materials and tools and any technical measures that served or were intended to commit the offence; if such materials, tools or technical measures were not owned by the perpetrator, the court may adjudicate that they be forfeited to the State Treasury.
2. In the event of being sentenced for an offence specified in Article 305 (1) and (2), the court may adjudicate forfeiture to the State Treasury of materials and tools and any technical measures that were used or intended to be used to commit the offence, even if they were not owned by the perpetrator.

Art. 308.

Whoever commits an offence under Article 308 will be subject to a fine.



Other relevant information:

The text included here is for infringement of trade mark rights.

Regarding criminal liability for copyright infringement see Articles 115-123 of the Law on copyright and related rights of February 4, 1994

(<http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf>).

For unfair competition see Articles 23-27 of the Suppression of Unfair Competition Act of April 16, 1993

(<http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19930470211/U/D19930211Lj.pdf>). Especially, we draw you attention to the Article 25 (1) of Suppression of Unfair Competition Act which also establishes prohibited acts connected inter alia with the offence of trademark counterfeiting:

Article 25

1. Whoever, by labelling goods or services or by failing to label them contrary to their duty, misleads clients as to the origin, quantity, quality, ingredients, the manner of manufacturing, usefulness, applicability, repair, maintenance or other important features of goods or services, or fails to inform of the risk related to the use thereof and thus exposes the clients to any damage, shall be liable to a penalty of arrest or a fine.

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PORTUGAL

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Industrial Property Code (IPC)

What are the Elements of the Crime/How is the Crime Defined?

Portuguese law provides for and punishes in the same provisions, with the same penalties, criminal offenses regarding the use of identical marks (counterfeiting or reproduction of a trademark) and of confusingly similar marks (imitation of a trademark).

Article 320 "Counterfeiting, imitation and illegal use of a trademark"

— intentional crime;

— anyone who, without the consent of the right holder:

(a) manufactures, imports, acquires or keeps any medium that reproduces or imitates a registered trademark;

(b) uses on his products or packaging counterfeit or imitated trademarks;

(c) provides services relating to counterfeit or imitated trademarks;

(d) imports, exports, distributes, places on the market or stores goods with counterfeit or imitated trademarks;

(e) uses a reproduction or imitation of a trademark as a company name;

(f) uses in advertising counterfeit or imitated trademarks in the exercise of the activities mentioned above in (b) and (e);

(g) reproduces or imitates well-known marks (within the meaning of Article 6bis of the Paris Convention);

(h) uses reproductions or imitations of trademarks with a reputation, even if on different goods or services (Art. 8(5) EUTMR and Art. 16(3) of the TRIPS Agreement);

(i) uses original labels or packages on non-original goods;

Article 321 "Sale or concealment of goods"

— intentional crime;

— anyone who sells or conceals for that purpose goods in the conditions referred to in Article 320.

What is the typical Sentence for the Crime?

For the crimes provided for in Article 320, the penalty is a prison sentence of up to three years or a fine (which many vary considerably);

For the crimes provided for in Article 321, the penalty is a prison sentence of up to 18 months or a fine (the amount of which many vary considerably);



Article 317 of the IP Code also provides for additional penalties, i.e.:

- loss of objects belonging to the infringer;
- prohibition to carry out certain professional activities;
- prohibition to participate in fairs or markets;
- closures of establishments;
- announcement of the decision of conviction.

Other relevant information:

These crimes are classified under Portuguese law as "semi-public" crimes, which means that a criminal proceeding can only take place if a complaint is filed by the right holder. However, the police authorities do have the power to execute ex officio measures of search and seizure. Indeed, the police authorities are very active in this regard.

As well as the special rules provided for in the Industrial Property Code, the general rules laid down in the Penal Code and in the Criminal Procedure Code are applicable.

Acts of unfair competition are provided for as administrative offenses in Article 330 of the IP Code (the definition of the various acts of unfair competition is contained in Article 311 of the IP Code). The penalties are administrative fines of EUR 5,000 to EUR 100,000 if the infringer is a corporate body and EUR 1,000 to EUR 30,000 if the infringer is an individual.

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QATAR

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Any potential litigation in the domain of the protection of Intellectual Property in Qatar should be dealt with under the cover of Law number No. 9 of 2002, on Trademarks, Commercial Indication, Trade Names, Geographical Indication, and Industrial Designs, as well as the Convention of Paris that was ratified on 5 April 2000.

Any breaches of a third party's ownership of intellectual property and rights as protected by the law or an international agreement to which the State of Qatar is a signatory shall be punished by Law No. 11 of 2004 the penal code.

What are the Elements of the Crime/How is the Crime Defined?

Article No. 47 and Article No. 48 defines the trademark infringement actions offense under law No. 9 of 2002 as the following:

The trademark infringement actions based on article No. 47:

- Any Counterfeit or imitate a registered trademark, trade name, geographical indication, or industrial design in a manner, which is likely to mislead or confuse the public.
- Any fraudulent action by using a counterfeit or imitated mark, trade name, geographical indication or industrial design.
- Any fraudulent action by affixing a mark, a trade name or a geographical indication belonging to another person, to his products, or using in connection to his products or services.
- Any sales, offers for sale or distributing, and holds for the purpose of sale, products bearing a counterfeit or imitated mark, trade name, geographical indication, or industrial design.
- Any fraudulent action of offering services using a registered mark, trade name, geographical indication, or industrial design belongs to the others.

The trademark infringement actions based on article No. 48:

Article No. 8 prescribed the marks and the component elements of marks which may not be registered in the cover of law no. 9 of 2002. Accordingly, any usage of unregistered marks prescribed in article no. 8 will be illegal usage and penalized under article no. 48 of law no. 9 of 2002.

The marks and the component elements prescribed in article no. 8 are the following:

- (ii) Any expression, design or sign contrary to morality or public order;
- (iii) Public emblems, flags and other symbols and names or denominations relating to a State or an international organization, as well as any imitation of such emblems, names, etc., unless a written authorization of the competent authority has been previously obtained;
- (iv) Official signs and hallmarks of a State relating to its control and guarantee of products and services, unless a written authorization of the competent authority has been previously obtained.
- (v) Signs identical or similar to the Red Cross or Red Crescent and other similar symbols;



- (vi) The picture of a third party or his emblem, unless his consent has been previously obtained;
- (vii) Indications of honorary distinctions to which the applicant cannot prove that he is legally entitled;
- (viii) Signs which are confusingly identical or similar to a mark already filed or registered by a third party for identical or similar products, services or well-known signs even if they are not filed or registered in Qatar (sic) irrespective of the identification or similarity of the goods or related services or for which registration is sought;
- (ix) Signs likely to deceive the public or which contain false indications as to the origin or other characteristics of the goods or services, as well as signs containing a fictitious, falsified or counterfeit indication or a trade name,
- (x) Marks identical or similar to religious symbols;

What is the typical Sentence for the Crime?

Article No. 47 defined the sentence of the trademark infringement actions prescribed in the article to be imprisonment for a term not exceeding two years and to a fine, not more than 20,000 Riyals or to either of those penalties.

Article No. 48 defined the sentence of the trademark infringement actions prescribed in the article to be imprisonment for a term not exceeding one year, and to a fine not exceeding 10,000 Riyals or to either of these penalties.

Any breaches of a third party's ownership of intellectual property and rights as protected by the law or an international agreement to which the State of Qatar is a signatory, shall be punished by Article 388 of Law No. 11 of 2004 issuing the penal code, which shall be punished with imprisonment for a term not exceeding three years and/or a fine not exceeding twenty thousand (QR 20.000) Riyals. All the materials produced in breach of any of these rights shall be confiscated.

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ROMANIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Art. 90 of the Law no. 84/1998 (modified in 2020) on trademarks and geographical indications

What are the Elements of the Crime/How is the Crime Defined?

- (1) Constitutes an infringement and shall be punished with imprisonment from 3 months to 2 years or with a fine the committing of the following acts:
 - a) counterfeiting a trademark;
 - b) putting on the market a product bearing a sign that is identical or similar to a registered trademark and where that product is identical or similar to the goods protected by the registered trademark;
- (2) Counterfeiting a trademark means the realization and the utilization by third parties in their commercial activity, without the prior consent of the trademark owner, of a sign that:
 - a) is identical with the trademark and is used in relation to goods or services which are identical with those for which the trademark is registered;
 - b) given its identity or similarity with the trademark or given the identity or similarity of the goods or services to which the sign is affixed with the ones covered by the registered trademark, if there is a risk of confusion which includes a likelihood of association of the trademark with the sign among the relevant public;
 - c) is identical or similar with the trademark and is used in connection with goods or services that are different from the ones covered by the registered trademark, when the trademark is renown in Romania and if the use of that sign without due cause takes unfair advantage or damages the distinctive or renown character of the trademark.
- (3) Putting the products on the market means offering them for sale or stocking them for those purposes, or, as the case may be, offering or providing services under that sign, including the import, export or transit of the goods bearing the sign.
- (4) The acts provided at para. (1) are not considered an infringement if they were committed before the publication date of the trademark.
- (5) In case of the infringement provided at para. (1) point a), the reconciliation of the parties excludes the criminal liability.

What is the typical Sentence for the Crime?

When the number of seized goods is low and/or the perpetrator is not a repeat offender, the Public Prosecutor will most likely decide not to take any further action and will terminate the criminal proceedings. This is due to the fact that, pursuant to art. 318 of the Criminal Procedure Code "in case of infringements where the law provides the punishment with a fine of with maximum 7 years of imprisonment, the Public Prosecutor may drop the criminal proceedings when he established that there is no public interest in pursuing the respective case". In such cases the Public Prosecutor will order the confiscation and destruction of the seized goods and the payment of legal costs to the state.



In more serious cases, where there is a large number of seized goods, the perpetrator is a repeat offender or where organized crime group is involved, the Prosecutor will send the case to Court. The typical sentence in such cases is the payment of a fine and the payment of damages to the trademark owner. Alternatively the Court could sentence the infringer to jail time but most of the times such a sentence is suspended.

In a minority of cases, the infringer is sentenced actual jail time. This mostly happens where there are several crimes the infringer is tried for (tax evasion, endangering public health and safety etc.).

Other relevant information:

Precautionary measures (art. 91 of the Law no. 84/1998) and the recovery of damages (art. 92 of the Law no. 84/1998) are available by way of a civil action which can take place within the framework of the criminal proceedings or in separate civil proceedings.

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RUSSIAN FEDERATION (RUSSIA)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 180 of the Criminal Code of the Russian Federation, Plenum of the Supreme Court of The Russian Federation Resolution of April 26, 2007 No. 14

What are the Elements of the Crime/How is the Crime Defined?

Intentionally committed illegal use of trademarks:

1. Illegal use of someone else's trademark or similar designations for similar goods, if this act has been committed repeatedly or caused major damage (i.e. the damage that exceeds RUB 250,000)
2. Illegal use of warning markings "R", ®, "trademark" or "registered trademark" in relation to a trademark not registered in the Russian Federation, if this act has been committed repeatedly or caused major damage (i.e. the damage that exceeds RUB 250,000).

Warning markings should be understood as the image of such markings on goods and (or) on packages, as well as its use in advertising, printed publications, on official letterheads, on signboards, when demonstrating exhibits at exhibitions and fairs held in the Russian Federation. Warning markings can be placed by the rightholder next to the trademark, it is used to indicate that the designation used on the relevant product is a trademark registered in the Russian Federation.

3. The acts provided for in clauses 1 or 2 above committed by a group of persons by prior conspiracy
4. The acts provided for in clauses 1 or 2 above committed by an organized group.

What is the typical Sentence for the Crime?

Penalties:

1. Illegal use of someone else's trademark:

Punishable by a fine in the amount of RUB 100,000 to 300,000, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to two years, or by compulsory works for a term of up to four hundred and eighty hours, or by corrective labor for a term of up to two years, or by compulsory labor for a term up to two years, or imprisonment for up to two years with a fine of up to RUB 80,000 or in the amount of the convict's salary or other income for a period of up to six months.

2. Illegal use of warning markings:

Punishable by a fine in an amount of up to RUB 120,000, or in the amount of the wage or salary, or any other income of the convicted person for a period up to one year, or by compulsory works for a term of up to three hundred and sixty hours, or by corrective labor for a term of up to one year.

3. Illegal use of someone else's trademark or illegal use of warning markings committed by a group of persons by prior conspiracy:

Punishable by a fine in the amount of RUB 200,000 to 400,000, or in the amount of the wage or salary, or any other income of the convicted person for a period from eighteen months to three years, or by compulsory labor for a term of up to four years, or by imprisonment for the same term, with a fine in the



amount of up to one hundred thousand rubles or in the amount of the wages or other income of the convicted person for a period of up to one year or without it.

4. Illegal use of someone else's trademark or illegal use of warning markings committed by an organized group:

Punishable by a fine in the amount of RUB 500,000 to RUB 1,000,000, or in the amount of the wage or salary, or any other income of the convicted person for a period of three to five years, or compulsory labor for a term of up to five years, or imprisonment for a term of up to six years, with a fine of up to five hundred thousand rubles or in the amount of the wage or other income of the convicted person for a period of up to three years or without it.

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SÃO TOMÉ E PRÍNCIPE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Intellectual Property Code

(Version with automatic translation tool available at <https://wipolex.wipo.int/en/legislation/details/18553>)

What are the Elements of the Crime/How is the Crime Defined?

Criminal Elements

ARTICLE 265

CRIMES AGAINST INDUSTRIAL PROPERTY

The following shall constitute crimes against industrial property, punishable under this Code: [...]

- c) Counterfeiting, imitation or unlawful use of a trademark;
- f) The sale, putting into circulation or concealing counterfeit products or articles;

ARTICLE 271

COUNTERFEITING, IMITATION OR UNLAWFUL USE OF A TRADEMARK

The following acts, carried out without the consent of the respective right holder are punishable by a prison sentence of up to 3 years or a fine of up to 360 days:

- a) Counterfeiting, totally or partially, or by any other means reproducing a registered trademark;
- b) Imitating a registered trademark, in whole or in any of its characteristic parts;
- c) Using the counterfeit or imitated trademarks;
- d) Using, counterfeiting or imitating well-known trademarks for which registration has already been applied for in São Tomé e Príncipe;
- e) Using, even if in products or services without identity or affinity, trademarks that are a translation or are identical or similar to previously existing trademarks for which registration has been applied for and which have a reputation in São Tomé and Príncipe or in the world, whenever the use of the subsequent trademark seeks to unjustly derive undue benefit from the distinctive character or reputation of the prior trademarks or may be prejudicial to them;
- f) Use, in its products, services, establishment or company a trademark belonging to a third party.

ARTICLE 272

SALE, CIRCULATION OR CONCEALMENT OF COUNTERFEIT PRODUCTS OR ARTICLES

The act of selling, putting into circulation or concealing counterfeit products produced by any of the means and in any of the conditions referred to in Articles 269 to 271, with knowledge of that situation, is punishable with a prison sentence of up to 1 year or a fine of up to 120 days.



ARTICLE 275

REGISTRATION OBTAINED OR MAINTAINED THROUGH ABUSE OF RIGHTS

Whoever applies for, obtains or retains the validity, in his own name or of a third party, the registration of a trademark, name, insignia or logotype that is a reproduction or imitation of a trademark or commercial name belonging to a national of any member state of the International Organizations of Trade of which São Tomé e Príncipe is a party, and does so with the proven purpose of affecting the assets of, and consequently creating a loss for, the affected party in question, or to obtain an illegitimate commercial advantage, shall be punished with a prison sentence of up to three years or a fine of up to 360 days.

ARTICLE 276

REGISTRATION OF A NON-EXISTENT ACT OR REGISTRATION WITH CONCEALMENT OF THE TRUTH

Whoever performs a legally non-existent act or an act with manifest concealment of the truth, independently of the violation of the rights of third parties, shall be subject to a prison sentence of 3 years or a fine of up to 360 days.

ARTICLE 285

PREPARATORY ACTS

Any person who, without the consent of the respective right holder, and with the intention of committing the acts referred to in articles 269 to 278 of this Code, manufactures, imports, acquires or keeps for himself, or for another party, signs that are constitutive elements of trademarks, names, emblems, logotypes, designations of origin or geographic indications, shall also be punished with a fine.

Misdemeanours

ARTICLE 279

OTHER MISDEMEANOURS

The following acts shall also constitute misdemeanours punishable under this Code:

- g) Manufacturing, importing, acquiring or keeping for oneself or others, signs that are constitutive elements of registered trademarks, names, insignias, logos, designations of origin or geographical indications;
- h) Using as an unregistered distinguishing sign, a logo or any of the signs that are banned or considered to be an imitation or usurpation in terms of this Code;
- j) Falsely presenting oneself as the holder of an industrial property right or, if the right previously existed it has already been declared null and void or has lapsed;
- k) Unduly using or applying the patent, utility model or registration indications authorised solely for the owners of the respective rights;
- l) The use of an industrial property right for products and services different to the ones protected by the registration.

ARTICLE 286

USE OF UNLAWFUL TRADEMARKS

1. Whoever uses as non-registered distinctive signs, any of the signs indicated in paragraphs 4(a) and (b) and paragraph 6 of Article 178, as well as in paragraph 1(d) of Article 179, shall be punished with a penalty.



2. The products or articles with the trademarks prohibited under the preceding paragraph may, at the instance of the Public Prosecutor, be seized and declared forfeited to the State.

ARTICLE 288

IMPROPER REFERENCE TO OR USE OF PRIVATE RIGHTS

The following shall be punished with a penalty:

- a) Anyone who claims to be the owner of an industrial property right provided for in this code when such right does not belong to him or when same has been declared null or has lapsed;
- b) Anyone who unduly uses or applies the particulars of a patent, utility model or registration authorized solely for the respective rights-holders.

What is the typical Sentence for the Crime?

ARTICLE 266

SENTENCE

1. Any of the offences referred to in subparagraphs a), b), c), d) and e) of Article 265 are punishable with a prison sentence of up to 3 years or a fine of up to 360 days.
2. Any of the offences referred to in subparagraphs f) and g) of Article 265 are punishable with a prison sentence of up to 1 year or a fine of up to 120 days.

ARTICLE 267

ADDITIONAL SENTENCES

1. Cumulatively with the sentences applicable to different offences, the objects associated to an offence in this Code, as well as the materials or instruments that have been used predominantly for the practice of this offence shall be forfeited to the State, save if the holder of the right which was violated expressly consents to such objects being re- introduced into the commercial circuits or for them to be given another purpose.
2. The items which have been declared forfeited to the State shall be totally or partially destroyed, particularly whenever it is not possible to eliminate the part thereof or the distinctive sign thereon that constitutes the infringement of the industrial property right.

ARTICLE 280

PENALTIES

Misdemeanours are punishable with penalties of 5 000 000.00 to 50 000 000.00 Dbs or 25 000 000.00 Dbs. to 250 000 000.00 Dbs., depending on whether the offender is a natural or legal person

Other relevant information:

The text included here is for crimes and misdemeanours regarding trademarks.

For copyright, please refer to the Copyright Code (Version with automatic translation tool available at <https://wipo.lex.wipo.int/en/legislation/details/17161>).

For unfair competition, please refer to articles 277 and 281 of the Intellectual Property Code.

There are no Court decisions available on this matter; intellectual property is a recent concern in São Tomé e Príncipe so it is unknown how the courts will interpret and enforce these laws.



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SAUDI ARABIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

GCC Trademarks Law

What are the Elements of the Crime/How is the Crime Defined?

"1. Misrepresenting or imitating a mark registered under the provisions of this Law or imitating it in a manner misleading or confusing the public or using in bad faith any misrepresented or imitated mark.

2. Identifying his goods or services in bad faith with a mark owned by others"

Any acts which contain: "1. Knowingly selling, offering for sale or trading, or possessing with the intention of trading any goods bearing false or imitated marks; or unlawfully uses such marks or offers services under them.

2. Using a non-registered mark in cases provided for in Clauses from 2 to 11 of Article 3 herein.

3. Unlawfully inscribing upon his mark, papers or commercial documents anything that might lead to the belief that he has obtained registration of such mark.

4. Deliberately and in bad faith failing to indicate his registered trademark on goods or services.

5. Knowingly possessing tools or material intended to be used in the imitation of registered or famous trademarks."

What is the typical Sentence for the Crime?

The infringers who falls in one of these acts would face without prejudice to any greater penalty imposed by another law, a sentence of imprisonment for a period not less than one month and not exceeding three years and/or a fine not less than five thousand Saudi Riyals and not exceeding one million Saudi Riyals or its equivalent in other GCC currencies.

The infringer will face without prejudice to any greater penalty imposed by another law, a sentence of imprisonment for a period not less than one month and not exceeding one year and/or a fine not less than one thousand Saudi Riyals and not exceeding one hundred thousand Saudi Riyals or its equivalent in other GCC currencies.

Other relevant information:

In conclusion, the Saudi Arabia IP system admits the criminal liability for IP rights infringements, with the rhythm of an aggravating circumstance in the event of repeating the same infringing act.



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SERBIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal Code of Republic of Serbia (2005/2019), Chapter XX (§198-202), Chapter XXII (§238)

<https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html>

What are the Elements of the Crime/How is the Crime Defined?

1. Violation of Moral Right of Author and Performer
2. Unauthorised Use of Copyrighted Work or other Work Protected by Similar Right
3. Unauthorised Removal or Altering of Electronic Information on Copyright and Similar Rights
4. Violation of Patent Rights
5. Unauthorised Use of another's Design
6. Unauthorised Use of Another's Business Name or other Special Mark for Goods or Services "with intent to deceive buyers or users of services uses another's business name, another's geographical indication of origin, another's hallmark or trademark or another's special mark for goods or services or incorporates certain features of these indications/marks into his business name, his geographical indicator of origin, his hallmark or trademark, or into his other special mark for goods or services . . . for the purpose of sale in larger quantity or value obtains, produces, processes, puts into circulation, rents or stocks goods specified in paragraph 1 of this Article or engages in extending services by using another's marks without authorisation . . . organised a network of resellers or middlemen or has acquired material gain exceeding one million five hundred thousand dinars"

What is the typical Sentence for the Crime?

Monetary fine, or 6-month, 1/2/3/5/8-year imprisonment

Article 238: Unauthorised Use of Another's Business Name or other

Special Mark for Goods or Services: Monetary fine or imprisonment from six months to eight years.

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SINGAPORE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Marks Act (Cap. 332)

<https://sso.agc.gov.sg/Act/TMA1998?Provlds=P1VI-#pr46->

What are the Elements of the Crime/How is the Crime Defined?

Section 46 (Counterfeiting a trade mark)

(1) Any person who counterfeits a registered trade mark shall be guilty of an offence . . .

(2) A person who —

- (a) makes a sign identical to or so nearly resembling a registered trade mark as to be calculated to deceive; or
 - (b) falsifies a genuine registered trade mark, whether by alteration, addition, effacement, partial removal or otherwise,
- without the consent of the proprietor of the registered trade mark shall be deemed to counterfeit a registered trade mark.

(3) In a prosecution under this section, the burden of proving the consent of the proprietor lies on the accused.

Section 47 (Falsely applying a registered trade mark to goods or services)

(1) Any person who falsely applies a registered trade mark to goods or services . . .

(2) For the purposes of this section and sections 49, 53 and 53A, a person falsely applies a registered trade mark to goods or services if —

- (a) without the consent of the proprietor of the registered trade mark, the person applies the trade mark or a sign likely to be mistaken for that trade mark to the goods or services; and
- (b) in the case of an application to goods, the goods are not the genuine goods of the proprietor or licensee of the registered trade mark.

(3) For the purposes of subsection (2), a trade mark shall be deemed to be applied to goods or services if it is used in —

- (a) any sign or advertisement; or
 - (b) any invoice, wine list, catalogue, business letter, business paper, price list or other commercial document, including any such document in any medium,
- and the goods are delivered, or services provided, as the case may be, to a person in pursuance of a request or order made by reference to the trade mark as so used.

(4) For the purposes of subsection (2) —

- (a) a sign shall be deemed to be applied to goods if —
 - (i) it is applied to the goods themselves; or
 - (ii) it is applied to any covering, label, reel or thing in or with which the goods are sold, offered or exposed for sale or had in possession for a purpose of trade or manufacture; and



(b) a sign shall be deemed to be applied to goods or services if it is used in a manner that is likely to lead persons to believe that it refers to, describes or designates the goods or services.

(5) In subsection (4) —

“covering” includes any stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; “label” includes any band or ticket.

(6) In a prosecution under this section or section 49, the burden of proving the consent of the proprietor lies on the accused.

Section 48 (Making or possessing of article for committing offence)

Any person who —

(a) makes an article specifically designed or adapted for making copies of a registered trade mark or a sign likely to be mistaken for that trade mark; or

(b) has such an article in his possession, custody or control, knowing or having reason to believe that it has been, or is to be, used for, or in the course of, committing an offence against section 46 or 47, shall be guilty of an offence . . .

Section 49 (Importing or selling, etc., goods with falsely applied trade mark)

Any person who —

(a) imports into Singapore for the purpose of trade or manufacture;

(b) sells or offers or exposes for sale; or

(c) has in his possession for the purpose of trade or manufacture,

any goods to which a registered trade mark is falsely applied shall, unless he proves that —

(i) having taken all reasonable precautions against committing an offence under this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark and on demand made by or on behalf of the prosecution, he gave all the information in his power with respect to the persons from whom he obtained the goods; or

(ii) he had acted innocently,

be guilty of an offence . . .

Section 50 (Falsification of register, etc.)

Any person who —

(a) makes, or causes to be made, a false entry in the register;

(b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or

(c) produces or tenders or causes to be produced or tendered in evidence any thing referred to in paragraph (b),

knowing or having reason to believe that the entry or thing, as the case may be, is false shall be guilty of an offence . . .

Section 51 (Falsely representing trade mark as registered)

(1) Any person who —

(a) falsely represents that a mark is a registered trade mark; or

(b) makes a false representation as to the goods or services for which a trade mark is registered,



knowing or having reason to believe that the representation is false shall be guilty of an offence . . .

(2) For the purposes of this section, the use in the course of trade in Singapore in relation to a trade mark of —

- (a) the word “registered”; or
- (b) any other word or symbol importing a reference (express or implied) to registration, shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in Singapore and that the trade mark is in fact so registered for the goods or services in question.

Section 52 (Representation on trade marks of Arms or Flags prohibited, etc.)

(1) Any person who causes or permits to appear on a trade mark used by him for the purposes of his trade any representation of the Arms or the Flag of Singapore, or of any arms or devices likely to be mistaken for them, shall, unless such trade mark is authorised to be used by order of the President, be guilty of an offence.

(2) Any person who —

- (a) imports into Singapore for the purpose of trade or manufacture;
- (b) sells or offers or exposes for sale; or
- (c) has in his possession for the purpose of trade or manufacture, any goods or things to which a trade mark bearing any representation prohibited by subsection (1) is applied shall be guilty of an offence.

...

What is the typical Sentence for the Crime?

Section 46 (Counterfeiting a trade mark)

[S]hall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

Section 47 (Falsely applying a registered trade mark to goods or services)

[U]nless he proves that he acted innocently, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

Section 48 (Making or possessing of article for committing offence)

[S]hall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

Section 49 (Importing or selling, etc., goods with falsely applied trade mark)

[S]hall be liable on conviction to a fine not exceeding \$10,000 for each goods or thing to which the trade mark is falsely applied (but not exceeding in the aggregate \$100,000) or to imprisonment for a term not exceeding 5 years or to both.



Section 50 (Falsification of register, etc.)

[S]hall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

Section 51 (Falsely representing trade mark as registered)

[S]hall be liable on conviction to a fine not exceeding \$10,000.

Section 52 (Representation on trade marks of Arms or Flags prohibited, etc.)

[S]hall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both, and shall forfeit to the Government any goods or things to which the trade mark bearing the prohibited representation is applied.

Other relevant information:

While there is no statute which imposes criminal liability for "unfair competition", Singapore law recognizes the tort of passing-off, which is a creature of the common law. The tort of passing-off imposes civil liability on traders who pass off their goods/services as those of another.

Patent and copyright-related offences are covered in the Patents Act (Cap. 221)

(<https://sso.agc.gov.sg/Act/PA1994>) and Copyright Act (Cap. 63) (<https://sso.agc.gov.sg/Act/CA1987#legis>) respectively.

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SLOVENIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The holder of an intellectual property right can choose between the use of civil, criminal and administrative measures. ZIL-1 (Intellectual Property Act), Kazenski zakonik KZ-1 (Slovenian Criminal Code)

What are the Elements of the Crime/How is the Crime Defined?

Criminal measures fall within the jurisdiction of the police, the public prosecutor's office and the locally competent district courts. Infringements of intellectual property rights can also constitute a criminal offense. The Criminal Code of the Republic of Slovenia (KZ-1) provides, inter alia, for the following criminal offenses:

- violation of moral copyright (Article 147 KZ-1);
- infringement of material copyrights (Article 148 KZ-1);
- copyright infringement (Article 149 KZ-1);
- unjustified use of a foreign trademark or model (Article 233 KZ-1);
- unjustified use of a foreign invention or topography (Article 234 KZ-1).

Article 233 KZ-1: Anyone who unjustifiably uses a foreign company, trademark, geographical indication or other special designation for goods or services or uses a substantial part of this designation as his own trademark, trademark or other sign to designate goods or services shall be punished by imprisonment for up to three years.

What is the typical Sentence for the Crime?

The first two offenses are punishable by a fine or up to one year in prison, while other offenses carry up to eight years in prison.

As defined in Article 233 KZ-1 the prison sentence may be up to 3 years. In addition to natural persons, in the case of the commission of the aforementioned criminal offenses, legal persons are also criminally liable (the Liability of Legal Entities for Criminal Offenses Act). Penalties for legal persons are fines, confiscation of property, dissolution of the legal person, etc.

Article 232 KZ-1 states that a penalty fine is possible in case the consumers are misled (for example by using signs which do not correspond to the expected manufacturer or source of products).

Other relevant information:

Except in the case of copyright infringement, where the prosecution of the perpetrator of a criminal offense is initiated at the request of the injured party, the proceedings in respect of the said criminal offenses shall be ex officio. The right holder may file a criminal complaint with the police or the public prosecutor's office.



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SOLOMON ISLANDS

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Solomon Islands, The Customs Act, Cap. 121, Section 34, Article 7, page 81 (PROHIBITED AND RESTRICTED IMPORTS). http://www.mof.gov.sb/Libraries/Customs_Legislation/Customs_Act.sflb.ashx

Solomon Islands, The CUSTOMS AND EXCISE BILL 2013, CHAPTER 2, PART 2., 1 Article 23 (1), (C), page 50 (PROHIBITED IMPORTS AND EXPORTS).

[http://www.mof.gov.sb/Libraries/Customs_Legislation/Solomon Islands - Customs and Excise Bill 2013 - public consultation version.sflb.ashx](http://www.mof.gov.sb/Libraries/Customs_Legislation/Solomon_Islands_-_Customs_and_Excise_Bill_2013_-_public_consultation_version.sflb.ashx)

Solomon Islands, The CUSTOMS AND EXCISE BILL 2013, CHAPTER 11—ENFORCEMENT, PART 11.2—INFRINGEMENT NOTICES, 309. (1), (2).

What are the Elements of the Crime/How is the Crime Defined?

PROHIBITED AND RESTRICTED IMPORTS

List of Prohibited Imports:

7. All goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in Solomon Islands or the United Kingdom, unless such trade name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

List of Restricted Imports:

9. Goods the importation of which is regulated by any other law in force in Solomon Islands except in accordance with such law, and all other goods except with the leave and license of the Minister.

23. (1)

A person commits an offence if—

- (a) the person has goods in his or her possession or under his or her control; and
- (b) the goods have been imported; and
- (c) the goods are prohibited imports.

21. (1)

A person commits an offence if—

- (a) the person imports goods; and
- (b) the goods are prohibited imports.



What is the typical Sentence for the Crime?

23. (1)

Penalty—the same maximum penalty as applies to an offence against section 21.

21. (1)

Penalty—

(c) if the goods are drugs the amount or quantity of which is or is more than the commercial amount or commercial quantity—100 penalty units or 5 years imprisonment, or both; or

(d) otherwise—20 penalty units.

223.—(1) When any seizure has been made, or any fine or penalty incurred or inflicted, or any persons committed to prison for any offence against the customs laws, the Minister in his discretion may direct restoration of such seizure whether condemnation has taken place or not, or waive or compound proceedings or mitigate or remit such fine or penalty, or release such person from confinement either before or after conviction on any terms and conditions, as he shall see fit.

(2) Subject to the approval of the Minister in his discretion (which approval may be signified by general directions to the Comptroller), the Comptroller may mitigate or remit any penalty or restore anything seized under the customs laws at any time prior to the commencement of proceedings in any court against any person for an offence against the customs laws or for the condemnation of any seizure.

Other relevant information:

See also Solomon Islands Registration of United Kingdom Trade Marks Act 180

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SOUTH AFRICA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trade Marks Act No. 194 of 1993 [ASSENTED TO 22 DECEMBER, 1993]
[DATE OF COMMENCEMENT: 1 MAY, 1995] (Afrikaans text signed by President)
as the State amended by Intellectual Property Laws Amendment Act, No. 38 of 1997

What are the Elements of the Crime/How is the Crime Defined?

Infringement of registered trade mark.

- (1) The rights acquired by registration of a trade mark shall be infringed by—
- (a) the unauthorized use in the course of trade in relation to goods or services in respect of which the trade mark is registered, of an identical mark or of a mark so nearly resembling it as to be likely to deceive or cause confusion;
 - (b) the unauthorized use of a mark which is identical or similar to the trade mark registered, in the course of trade in relation to goods or services which are so similar to the goods or services in respect of which the trade mark is registered, that in such use there exists the likelihood of deception or confusion;
 - (c) the unauthorized use in the course of trade in relation to any goods or services of a mark which is identical or similar to a trade mark registered, if such trade mark is well known in the Republic and the use of the said mark would be likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the registered trade mark, notwithstanding the absence of confusion or deception: Provided that the provisions of this paragraph shall not apply to a trade mark referred to in section 70 (2).

What is the typical Sentence for the Crime?

Where a trade mark registered in terms of this Act has been infringed, any High Court having jurisdiction may grant the proprietor the following relief, namely—

- (a) an interdict;
- (b) an order for removal of the infringing mark from all material and, where the infringing mark is inseparable or incapable of being removed from the material, an order that all such material be delivered up to the proprietor;
- (c) damages, including those arising from acts performed after advertisement of the acceptance of an application for registration which, if performed after registration, would amount to infringement of the rights acquired by registration; and
- (d) in lieu of damages, at the option of the proprietor, a reasonable royalty which would have been payable by a licensee for the use of the trade mark concerned, including any use which took place after advertisement of the acceptance of an application for registration and which, if taking place after registration, would amount to infringement of the rights acquired by registration. [Sub-s. (3) amended by s. 64 (a) of Act No. 38 of 1997. Para. (d) substituted by s. 64 (b) of Act No. 38 of 1997.]



(4) For the purposes of determining the amount of any damages or reasonable royalty to be awarded under this section, the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as it may deem fit.

(5) Before a person institutes proceedings in terms of this section he shall give notice in writing of his intention to do so to every user concerned whose name is recorded in the register, and any such registered user shall be entitled to intervene in such proceedings and to recover any damages he may have suffered as a result of the infringement.

Other relevant information:

Also see COPYRIGHT ACT 98 OF 1978. [DATE OF COMMENCEMENT: 1 JANUARY 1979] and Counterfeit Goods Act 1997. To introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trade marks, copyright and certain marks under the Merchandise Marks Act, 1941. The Trade marks Act and the Copyright Act both contain provisions regarding civil and criminal liability for infringement. However, South Africa also has specific anti-counterfeiting legislation. The Counterfeit Goods Act 1997 is limited to the infringement of registered trade marks, well-known trade marks, copyright and prohibited marks under the Merchandise Marks Act, and establishes various prohibited acts and offences. The Counterfeit Goods Act defines 'counterfeit goods' as both imitations that are substantially identical to the protected goods and colourable imitations that are confusingly similar to the protected goods.

Counterfeiting requires deliberate and fraudulent infringement of the trademark. However, goods need not have been cloned for counterfeiting to have taken place. The fact that the trademark owner has not produced goods of that type does not mean that the goods cannot be counterfeit, provided that they are covered by the trademark registration. A benefit of the Counterfeit Goods Act is that it brings state enforcement agencies such as the police and customs officials into the fight against counterfeits. A rights holder can request the police authorities to search premises where it suspects that imported counterfeit goods are being stored and seize those goods so that they can be used as evidence in infringement proceedings. A search and seizure warrant is then executed, the goods are seized and the suspect is informed. After a seizure or raid has been conducted, the complainant must lodge criminal and/or civil proceedings, failing which the counterfeit goods could be released back to the suspect or importer. If a civil case is brought, the court can order an injunction, a declaration that the goods are counterfeit, delivery-up, a disclosure of sources, damages and legal costs.

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SOUTH SUDAN

Criminal Liability for Trademark-Related Offenses?

No

Applicable Statute, Law, or Rule:

There is currently no IP-regulating law in South Sudan.

What are the Elements of the Crime/How is the Crime Defined?

N/A

What is the typical Sentence for the Crime?

N/A

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SPAIN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The applicable regulation is the Spanish Criminal Code, Organic Law 5/2010 of 22 June:

<https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>

In particular, the infringement of trademarks is regulated by Art. 274 of the Criminal Code.

What are the Elements of the Crime/How is the Crime Defined?

The elements of the crime are:

- Reproducing or imitating a registered trademark to distinguish services and products for which the trademark is registered;
- Acting without the consent of the trademark owner;
- Acting for industrial or commercial purposes;
- Acting with knowledge of the existence of the trademark.

What is the typical Sentence for the Crime?

The penalties are:

- one to four years imprisonment if it refers to wholesale,
- six months to three years if it refers to retail sale, and
- six months to two years if it is street or occasional sale.

If the offender commits a crime for the first time, the penalties are lower. The compensation to the owner of the trademark is usually quite low.

Other relevant information:

There are particularly serious cases, in which, as it concerns an organized group of persons, they are considered a criminal gang and, in addition to the crimes against Industrial Property, they are also sued for money laundering, counterfeiting, etc.

When there are only small quantities, the prosecution of the crime is usually left to the Public Prosecutor's Office, in order to avoid legal expenses. An intervention with lawyers in the lawsuit is only made in serious cases.



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SRI LANKA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Intellectual Property Act, No. 36 of 2003. (IP Act)

Chapter XXXVIII deals with Offences and Penalties in relation to IP rights in Sri Lanka and this covers Copyright, Industrial Designs, Patents & Marks. Section 184 particularly deals with Infringement of Marks; Section 185 deals with False representations regarding Marks. Section 186 makes provision regarding other offences in connection with Marks such as forging marks, false description etc.

<https://www.wipo.int/edocs/lexdocs/laws/en/lk/lk004en.pdf>

What are the Elements of the Crime/How is the Crime Defined?

1. In terms of Section 184 of the IP Act, any person who willfully infringes the rights of any registered owner, assignee or licensee of a Mark, shall be guilty of an offence. (Trade mark infringement)
2. In terms of Section 185 of the IP Act, Any person who, for industrial or commercial purposes, makes a representation—
 - (a) with respect to a Mark not being a registered Mark to the effect that it is a registered Mark ;
 - (b) to the effect that a registered mark is registered in respect of any goods or services regarding which registration has not been carried out ; or
 - (c) to the effect that the registration of a mark gives an exclusive right to the use thereof in any circumstances, in which having regard to limitations recorded in the register, the registration does not give that right, shall be guilty of an offence. (False representation of a Trade mark) In this a person shall be deemed to represent a Mark as registered if he uses in connection with the Mark the word "registered", or any word or sign expressing or implying that registration has been obtained for the mark.
3. In terms of Section 186 (1) of the IP Act, Any person who—
 - (a) forges any Mark ; or
 - (b) falsely applies to goods any Mark or Marks so nearly resembling a registered Mark as to be likely to mislead ; or
 - (c) makes any die, seal block, machine, or other instrument for the purpose of forging, or to be used for forging, a Mark ; or
 - (d) applies any false trade description to goods ; or
 - (e) disposes of, or has in his possession, any die, seal block, machine, or other instrument for the purpose of forging a Mark ; or
 - (f) causes any of the things referred to in this subsection to be done, shall, unless he proves that he acted without intent to defraud, be guilty of an offence.
4. In terms of Section 186 (2) of the IP Act, Any person who sells or exposes for sale, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged Mark or false trade description is applied, or to which any Mark so nearly resembling a registered Mark so as to be likely to mislead, is falsely applied, as the case may be, shall be guilty of an offence, unless he proves;



(a) that having taken all reasonable precautions against committing an offence he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the Mark, or trade description ; and

(b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or

(c) that otherwise he had acted innocently.

5. Criminal sanctions are further imposed under Section 475 of the Penal Code for misappropriation of property-marks.

What is the typical Sentence for the Crime?

1. In the event of a Trade mark infringement the accused pursuant to a Trial before a Magistrate on conviction shall be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment and in the case of a second or subsequent conviction to double the amount of such fine or term of imprisonment or both such fine and imprisonment.

2. In the event of a False representation of a Trade mark the accused pursuant to a Trial before a Magistrate on conviction shall be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

3. In the event of an offence under Section 186 of the Act, the accused pursuant to a Trial before a Magistrate on conviction shall be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment and in the case of a second or subsequent conviction such fine or term of imprisonment or both such fine and imprisonment may be doubled.

4. Whoever, knowingly sells goods marked with a counterfeit property-mark, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Other relevant information:

Enforcement Procedure Action could be instituted by two methods depending on the circumstances of the case.

a. A complaint could be made to the CID (Crime Investigation Department) Thereafter, CID will carry out an investigation and file a B report in court and the police along with counsel will support the matter for search warrant to seize the counterfeit goods.

b. A Private Complaint could be directly filed in the relevant Magistrate Court having jurisdiction and counsel will support the matter for search warrant to seize the counterfeit goods.

Further Points;

1. In terms of Section 187, Where an offence under the IP Act has been committed by a body corporate, every person who at the time of the commission of the offence was a Director- General, Manager, Secretary or other similar officer of that body shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

2. It is to be noted that under Section 160 (8), Any person, who willfully and without lawful authority, discloses any undisclosed information shall be guilty of an offence under this Act and shall on conviction



after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

3. It is important to note that according to Section 122 (b), the registered owner of a mark is not entitled to preclude third parties from using the mark in relation to goods lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka under that mark, provided that such goods have not undergone any change.

4. In case of a registered mark, it can be registered with the Sri Lankan Customs Authority to prevent counterfeit items entering the country.

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SURINAME

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Article 400 'Act of March 30, 2015, amending the Criminal Code' entails criminal liability for intellectual property infringement in Suriname, the article concerned deals specifically with deceit in relation to brands and trade names.

What are the Elements of the Crime/How is the Crime Defined?

Article 400 Wet van 30 March 2015, defines the crime as follows:

- (1) Whoever intentionally imports, transits, exports, sells, offers for sale, delivers, distributes or has in stock:
 - (a) counterfeited, falsified or unlawfully manufactured brands;
 - (b) goods which, -either on themselves or on their packaging- falsely portray the trade name of another person or the brand to which another person is entitled;
 - (c) goods, that, for the denotation of origin, falsely feature the name of a certain place, with addition of a devised trade name;
 - (d) goods on which -either on themselves or on their packaging- the trade name of another person or the brand to which another person is entitled -be it with a minor deviation- is counterfeited;
 - (e) goods or parts of goods that deceptively have the same appearance as a drawing or model on which another person has a right, or that exhibit merely inferior differences therewith . . .

What is the typical Sentence for the Crime?

In general, a criminal conviction for the crime of intellectual property infringement in Suriname results in a fine. It is less common that a conviction for the crime concerned leads to imprisonment.

Article 400 Wet van 30 March 2015, defines the crime as follows:

- (1) . . .
shall be punished with imprisonment for not more than one year and shall be given a fine of the third category,* or shall be punished with only one of the aforementioned penalties.
- (2) Not punishable is he who has some goods, parts of goods or brands as defined in paragraph (1), in stock, exclusively for his own usage.
- (3) The one guilty of committing the crime stated in paragraph (1), who has turned the committal of this crime into his occupation or who has turned the committal of this crime into a business, shall be punished with imprisonment of not more than four years and a fine of the fourth category**.
- (4) If the committal of the crime stated in paragraph (1), endangers persons or goods, the one guilty thereof shall be punished with imprisonment of not more than four years and a fine of the fourth category**.

*A 'fine of the third category' entails a fine with a maximum of SRD 1.000,- (one thousand Surinamese Dollars), article 5 Algemene Geldboetewet Staatsblad 2002 No. 73.



**A 'fine of the fourth category' entails a fine with a maximum of SRD 5.000,- (five thousand Surinamese Dollars), article 5 Algemene Geldboetewet Staatsblad 2002 No. 73.

Other relevant information:

Note that the above-mentioned article is a translation of the original document, which is written in the Dutch language.

The crime of intellectual property infringement in Suriname, specifically with regards to brands and trade names, listed in article 400, has been changed and modernized in the year 2015. The ratio behind the amendment was to achieve better compliance with the WTO TRIPS-Agreement. Article 61 has played a central role in that respect, since said article obliges the Member States to have adequate criminal procedures and penalties in place to criminalize cases of intellectual property infringement.

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SWEDEN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Chapter 8 of the Trademark Act (SFS 2010:1877) regulates criminal liability, prohibition of fines, damages, etc. (unofficial translation):

<https://wipolex.wipo.int/en/text/532138>

Please note that this translation is not fully up to date. E.g. Chapter 8 Section 1 has been amended and entered into force September 1, 2020, which is not included in the translation.

What are the Elements of the Crime/How is the Crime Defined?

Any person who infringes the right to a trademark (trademark infringement) is sentenced, if it occurs intentionally or through gross negligence, for trademark infringement to a fine or imprisonment for a maximum of two years.

If the infringement was committed intentionally and is to be regarded as serious, is sentenced for serious trademark crime to imprisonment for a minimum of six months and a maximum of six years. When assessing whether the crime is serious, special consideration must be given to the act

1. has been preceded by special planning;
2. has been part of a crime committed in an organized manner;
3. has been of greater extent, or
4. otherwise has been of a particularly dangerous nature.

(Chapter 8, Section 1 of the Trademark Act)

What is the typical Sentence for the Crime?

Any person who, intentionally or through gross negligence, infringes upon the right to a mark ("trademark infringement") shall be fined or sentenced to prison for a maximum of two years. Any person infringing the right to a mark as referred to in Chapter 1, section 10, third paragraph, shall not be found to have criminal liability for such infringement

§ 1 / Enters into force I: 2020-09-01 / Any person who infringes the right to a trademark (trademark infringement) is sentenced, if it occurs intentionally or through gross negligence, for trademark infringement to a fine or imprisonment for a maximum of two years.

If the infringement was committed intentionally and is to be regarded as serious, is sentenced for serious trademark crime to imprisonment for a minimum of six months and a maximum of six years.



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SWITZERLAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Swiss Federal Act on the Protection of Trade Marks and Indications of Source of 28 August 1992 (Trade Mark Protection Act, CH-TmPA) <https://www.admin.ch/opc/de/classified-compilation/19920213/201904010000/232.11.pdf>

What are the Elements of the Crime/How is the Crime Defined?

Art. 61 CH-TmPA: Infringement of a trade mark right

(1) On complaint of the injured party, any person who willfully infringes the trade mark right of another[...] if he:

- a. appropriates, counterfeits or imitates the trade mark of the other person;
- b. places goods on the market or provides services, or offers, imports, exports, carries in transit or advertises such goods or services under the appropriated, counterfeited or imitated trade mark.

(2) On complaint of the injured party, any person who refuses to provide information on the origin or quantity of the items in his possession that unlawfully bear the trade mark and to name the recipients and disclose the extent of distribution to commercial and industrial customers is also liable to the same penalties.

Art. 62 CH-TmPA: Fraudulent use of trade marks

(1) On complaint of the injured party, any person who commits any of the following acts [...]:

- a. unlawfully labels goods or services with the trade mark of another person in order to mislead and thereby give the impression that the goods or services are original goods or services;
- b. offers or places goods or services on the market as original goods or services, or offers or provides original services that unlawfully bear the trade mark of another;

What is the typical Sentence for the Crime?

Art. 61 CH-TmPA:

(1) [...] is liable to a custodial sentence not exceeding one year or a monetary penalty [...]

(3) If the offender acts for commercial gain, he shall be prosecuted ex officio. The penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence shall be combined with a monetary penalty.

Art. 62 CH-TmPA:

(1) [...] is liable to a custodial sentence not exceeding one year or a monetary penalty [...]

(2) If the offender acts for commercial gain, he shall be prosecuted ex officio. The penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence shall be combined with a monetary penalty.



Other relevant information:

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

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SYRIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Regulation on Law No. 8 of 2007 for the protection of Marks, Geographical Indication and Industrial Designs and Model

What are the Elements of the Crime/How is the Crime Defined?

- a. Registration as a pre-requisite to action?
 - Yes, it is required. According to article (7) (b) from Law No. /8/ in Syria:
 - "The ownership of the mark may be earned through genuine & continuous registration pursuant to the rules of this law subject to the following:
 - the one who registers the mark shall be considered its owner as long as that has been accompanied by using it during the five years that follow the date of registration unless it is proved that the priority of usage belongs to other another party"
- b. Scope of protection
 - Article (41) the registration of the mark gives its owner the right to own with regard to the products or the services that are included in the registration pursuant the rules of this law.
 - Article (42) without license from the owner, the others may not:
 - Copy, use or place a registered mark even if words are added to it like: way, system, composition, type or method nor can they use a copied mark concerning the products or the services that are identical to those mentioned in the registration.
 - Omit or modify the mark that was duly placed on the products or the services.
 - Article (43) In the case of probability of confusing the consumers, the others may not without license from the owner:
 - copy, use or place the registered mark or use a copied mark for the products or the services that are similar to those mentioned in the registration,
 - Imitate the mark or using an imitated mark for products or services that are identical with or similar to those mentioned in the registration.
 - Article (44)
 - a. The owner of the identifying which is well-known worldwide & in Syrian even if it is not registered - may request the competent court to cancel or ban the others from using a mark that is identical with or similar to it or is a translation of it on similar or dissimilar products or services if the use of the mark on the dissimilar products may cause the others to believe that there is a relation between the owner of the well-known mark & those products or if this use will lead to degrade the mark or damage its owner or if that use forms an unjustified utilization of it.
 - b. When deciding whether the mark is well-known, the extent of the fame the mark has with regard to the concerned section in Syria should be taken into consideration.



Key elements of infringement cause of action

- Using signs identical with a registered trademark for identical goods or services.
- Using signs identical with a registered trademark for similar or related goods or services.
- Using signs similar to a registered trademark for identical or similar goods or services.
- Using signs identical with or similar to a well-known trademark for any goods or services.

What is the typical Sentence for the Crime?

- Article (58) a. Every violation against the rights of the owner of the registered mark shall exposes its doer to liability.
- Article (60) the identifying mark that is governed by the criminal protection shall be the identifying mark that is registered according to the rules of the law.
- Article (61): Without prejudice to any harsher penalty stipulated by any other law: everyone who commits any of the following violations shall be penalized by imprisonment from (three months) to (three years) & a fine from (300,000) to (1000, 000) one million Syrian Pounds or by one of these two penalties:
 - a. Using an identifying mark that belongs to another party trough placing it with bad faith on his products or services.
 - b. Imitating an identifying mark that belongs to another party even if he adds words or something else such as simile, imitated, category, kind or quality, etc.
 - c. Using an imitated identifying mark.
 - d. Selling, exhibiting for selling or exchanging or possessing for selling or exchanging products on which a mark that is unrightfully placed or imitated for while being aware of that.
 - e. Manufacturing, carving, engraving or selling a plaque, a wooden or steel stamp or seal or anything else that indicates a duly registered mark or an imitation of it for the purpose of enabling a person other than the owner of that mark to use or imitate it for the same category of goods for which the mark was registered.

Other relevant information:

1. Copyright Enforcement Strategies

a. Registration as a pre-requisite to action?

According to the Law of the Protection of Copyright and Related Rights (issued by Legislative Decree No. 62/2013), article (2) which grants copyright protection automatically without the need for any formalities to all literary, scientific, and artistic works irrespective of the value of the work, the purpose for which it was created or whether or not it is reduced to a material form.

b. Scope of protection

According to the Law of the Protection of Copyright and Related Rights (issued by Legislative Decree No. 62/2013), article (5) and article (6) provides a number of moral and economic rights.

Moral Rights:

The Syrian copyright law provides the author with following moral rights:

- The right to decide the publication of the work for the first time and the method and timing of this publication.
- The right to attribute the work to himself, to choose not to disclose his identity, or to use a pseudonym.



- The right to reject any mutilation or change applied to his work.
- The right to reject any interference with his work in a way that affects his honour or reputation.
- The right to stop the circulation of his work if serious reasons emerged to justify this action.

Economic Rights:

The Syrian copyright law provides the author with the following economic rights:

- The right to copy the work using any medium.
- The right to translate a work, arrange it musically, or adapt into any other way.
- The right to distribute the work to the work by sale or any other disposition.
- The right to publicly perform the work.
- The right to make the work available to the public using the internet or any other method.

c. Key elements of infringement cause of action

Any one dose the above mentioned rights without authorization infringes the copyright and can be liable to the copyright owner for damages.

However, there are several exceptions which allow a copyright work to be used without permission as stated in article (33) from The Law of the Protection of Copyright and Related Rights No.62\2016.

d. Remedies

- Civil Action and Remedies for the Enforcement of Copyright

In civil proceedings seek to restore the injured right holder to his or her former position and prevent any recurrence of the infringing activities. The court may make an award of damages – that is to say, order the infringing party to pay a sum of money – to compensate the right holder for economic or moral injury suffered through the infringement. As an alternative to damages, the plaintiff may be entitled to recover any profits made by the defendant through the infringing activities.

- Criminal sanctions

Which aims to punish persons who intentionally and on a commercial scale carry out the work Piracy on copyright and related rights, and to deter possible infringement, these actions include Criminal fines and imprisonment commensurate with the level of penalties applied in respect of offences.

2. Design Patent Strategies

a. Registration as a pre-requisite to action?

Yes, it is required. According to the patent law in Syria, Invention Patent is granted in accordance with this Law to every invention that meets the

Following conditions:

- Industrial applicability.
- Novelty.
- To represent a contrivance step whether the invention related to a product, or to a manufacturing method, or to both, or to a new application of known industrial methods.

b. Scope of protection

According to the patent law in Syria:

The patent shall entitle its owner the right to prohibit a third party from exploiting the Invention by any means without the consent of the patent owner, and in particular to prohibit the following:



- Manufacturing the product about which the patent is, or displaying it, trading it, employing it, importing it or acquiring it for the mentioned purposes.
- Employing the patent's method of manufacture.
- The display of the first hand product of the manufacture method described in the patent, or trading, employing, importing, or acquiring it for the afore mentioned purposes.

The owner's right of preventing third party from importing, employing, selling or distributing

- The product or the method incorporated in the invention shall expire if he marketed the product
- Either by himself or via others outside the Syrian Arab Republic, or if he permitted others to do that or if the marketing was with his approval.

c. Key elements of infringement cause of action

Unauthorized making, using, or selling any patented invention.

d. Remedies

According to the same law, fine of no less than two hundred thousand Syrian Liras, and no more than one million Syrian Liras shall ensue on the following:

- Imitation, for the purpose of commercial exchange, of the subject of invention or benefit model that was granted a certificate according to the provisions of this Law.
- Sale, display for sale or circulation, import or acquisition in the intention of trading, of imitated products with previous knowledge of the imitation, when the invention patent or the benefit model patent relate to the product or its method of production, and are in force in the Syrian Arab Republic.
- Unlawful placement on products, advertisements or refill containers and the like, of statements that lead to the belief of the presence of an invention patent or benefit model patent.

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TAIWAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademark Act §95~§97

<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070001>

What are the Elements of the Crime/How is the Crime Defined?

Trademark (Article 95):

Whoever for business purposes but without the registered trademark or collective trademark owner's consent, commits any of the following acts:

- (1) uses a trademark which is identical with the registered trademark or collective trademark and applies in the same goods or services that are designated by the registered trademark or collective trademark;
- (2) uses a trademark which is identical with the registered trademark or collective trademark and applies in the similar goods or services that are designated by the registered trademark or collective trademark, and is likely to cause confusion with respect to the relevant consumers; or
- (3) uses a trademark which is similar to the registered trademark or collective trademark and applies in the identical or similar goods or services that are designated by the registered trademark or collective trademark, and is likely to cause confusion to the relevant consumers.

Certification Mark (Article 96):

Any person who, for business purposes and without the consent of the proprietor of a registered certification mark, uses a mark which is identical with or similar to the registered certification mark and applies in the identical or similar goods or services which the registered certification mark is designated, and is likely to mislead the relevant consumers.

What is the typical Sentence for the Crime?

Trademark (Article 95):

Penalties for infringing a registered trademark or collective trademark shall be imprisoned not more than 3 years and/or be fined not more than NT\$200,000.

Certification Mark (Article 96):

Penalties for infringing a certification mark shall be imprisoned not more than 3 years and/or be fined not more than NT\$200,000.

Penalties for knowingly selling or intending to sell infringing goods (Article 97):

Whoever knowingly sells or intends to sell, possesses, displays, exports, or imports another party's goods that infringe a registered trademark, collective trademark or certification mark under Articles 95 and 96, shall be imprisoned not more than 1 year and/or be fined not more than NT\$50,000. The same penalties aforementioned shall also apply to acts performed via electronic media or the internet.



Other relevant information:

Copyright:

For copyright infringement, the criminal liabilities are prescribed in Chapter VII of the Copyright Act (<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070017>). The copyright is protected by both economic rights and moral rights in Taiwan, and a person who infringes either the economic rights or moral rights may be subject to criminal liabilities.

Infringes the Economic Rights:

The criminal penalties for whoever infringes the economic rights are prescribed in Article 91, 91-1 and 92 of the Copyright Act:

Unauthorized Reproducing (Article 91):

§91.1:

Whoever infringes on the economic rights by means of reproducing the work without authorization shall be imprisoned not more than 3 years and/or fined not more than NT\$750,000.

§91.2:

Whoever infringes on the economic rights by means of reproducing the work without authorization with the intent to sell or rent shall be imprisoned not less than 6 months nor 5 years and may be fined not less than NT\$200,000 nor not more than NT\$2,000,000.

§91.3:

Whoever commits the aforementioned infringement (§91.2) by means of reproducing onto an optical disk shall be imprisoned not less than 6 months nor 5 years and may be fined not less than NT\$500,000 nor not more than NT\$5,000,000.

Unauthorized Distributing (Article 91-1):

§91-1.1:

Whoever infringes on the economic rights by means of distributing the original of a work or a copy thereof by transfer of ownership without authorization shall be imprisoned not more than 3 years and/or fined not more than NT\$750,000.

§91-1.2:

Whoever knowingly distributes or with intent to distribute publicly displays or possesses a copy that infringes on the economic rights of others shall be imprisoned not more than 3 years and may be fined not less than NT\$70,000 nor not more than NT\$750,000.

§91-1.3:

Whoever commits the aforementioned infringement (§91-1.2) and the infringing copy is optical disk, shall be imprisoned not more than 3 years and may be fined not less than NT\$200,000 nor not more than NT\$2,000,000.

Infringing Other Economic Rights of Copyright (Article 92):

Whoever infringes on the economic rights of another person without authorization by means of public recitation, public broadcast, public presentation, public performance, public transmission, public display, adaptation, compilation, or leasing, shall be imprisoned not more than 3 years, and/or fined not more than NT\$750,000.

Infringes the Moral Rights:



The criminal penalties for whoever infringes the moral rights are stipulated in Article 93.1 of the Copyright Act:

Whoever infringes the moral rights shall be imprisoned not more than 2 years and/or fined not more than NT\$500,000 (see Article 93.1).

Unfair Competition:

For unfair competition, the Fair Trade Act may also be applicable for protection of unregistered brand names (see Article 22, 25, 29, 30 and 42; available at:

<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0150002>).

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TAJIKISTAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Criminal liability for trademark infringement is provided for by the Criminal Code of the Republic of Tajikistan in the Article 275.

What are the Elements of the Crime/How is the Crime Defined?

Article 275. Illegal use of means of individualization of participants in civil transactions, goods, works and services (as amended by the Law of the Republic of Tajikistan dated 03.07.2012 # 844)

1. Illegal use of someone else's company name, as well as the name of the place of origin of goods, trademark and service mark, in relation to goods and services similar to them, if this act is committed repeatedly after imposing an administrative penalty or caused major damage,
2. Illegal use of warning labels in relation to an appellation of origin or a trademark not registered in the Republic of Tajikistan, if this act is committed repeatedly after the imposition of an administrative penalty or caused major damage,

What is the typical Sentence for the Crime?

Article 275. Illegal use of means of individualization of participants in civil transactions, goods, works and services

(as amended by the Law of the Republic of Tajikistan dated 03.07.2012 # 844)

1. . . . is punished with a fine in the amount of up to two hundred indicators for calculations, or correctional labor for a term of up to two years.
2. . . . shall be punished with a fine in the amount of two hundred and fifty to three hundred and sixty-five indicators for calculations, or imprisonment for a term of up to two years.
3. Acts provided for in the first or second parts of this Article, if they were committed by a group of persons in a preliminary conspiracy or by an organized group, are punished with a fine in the amount of three hundred and sixty-five to nine hundred and twelve indicators for calculations, or imprisonment for a period of two to five years (as amended by the Law of the Republic of Tajikistan dated 03.07.2012, No. 844). "

Note: In Articles 274, 275 and 276 of this Code, damage is recognized as major damage if its size exceeds one thousand times the indicators for calculations (as amended by the Law of 06.10.2008 No. 422).

One indicator for calculations is 58 somoni. One US dollar is equal to 10.33 somoni (19.10.2020). 58,000: 10.33 = \$ 5,615 (major damage)."



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41 22 342 66 30



THAILAND

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The Trademark Act B.E. 2534 (1991)

[http://web.krisdika.go.th/data/outsitedata/outside21/file/TRADEMARK ACT B.E. 2534.pdf](http://web.krisdika.go.th/data/outsitedata/outside21/file/TRADEMARK_ACT_B.E.2534.pdf)

What are the Elements of the Crime/How is the Crime Defined?

- Section 108 - Whoever counterfeits a registered trademark of another person.
- Section 109 - Whoever imitates a registered trademark in order to mislead the public into believing that it is the trademark of another person.
- Section 109/1 - Whoever reuses packaging or containers bearing the registered trademark of another person to mislead the public into believing that the goods are produced by the trademark owner.
- Section 110 - Whoever (1) imports, distributes, offers to distribute or has in possession for distribution the goods bearing a counterfeit trademark under Section 108 or an imitated trademark under Section 109; or (2) provides services or offers to provide services under a counterfeit trademark under Section 108 or an imitated trademark under Section 109.

What is the typical Sentence for the Crime?

- Section 108 - shall be liable to imprisonment not exceeding 4 years and/or a fine not exceeding THB 400,000.
- Section 109 - shall be liable to imprisonment not exceeding 2 years and/or a fine not exceeding 200,000 years.
- Section 109/1 - shall be liable to imprisonment not exceeding 4 years and/or a fine of not exceeding THB 400,000.
- Section 110 - shall be liable to the penalties provided in such sections.

Other relevant information:

Thailand does not currently have unfair competition law which is applicable to trademark infringement.



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TIMOR-LESTE (EAST TIMOR)

Criminal Liability for Trademark-Related Offenses?

No

Applicable Statute, Law, or Rule:

There is no criminal liability for intellectual property infringement in Timor-Leste at the present time.

What are the Elements of the Crime/How is the Crime Defined?

N/A

What is the typical Sentence for the Crime?

N/A

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TUNISIA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademark Law: Law no. 36 of 2001

Trademark law No. 36 dated 17/4/2001

What are the Elements of the Crime/How is the Crime Defined?

Article 22

Without the consent of the owner, others are prohibited from:

- Reproduction, usage or placing of a mark even with the addition of such words as "composition, style, system, imitation, type or method" as well as usage of a reproduced mark with respect to products or service similar to those indicated in the registration.
- Deletion or alteration of a mark which was legally placed.

Article 23

In case there is a possibility of confusion to the public, it is prohibited without a license from the owner to:

- Reproduction, usage or placing a mark as well as usage of a reproduced mark on goods or services similar to those indicated in the registration.
- Counterfeit of a mark and using a counterfeit mark on goods or services identical or similar to those listed in the registration.

Article 44

Every infringement of the rights of the owner of the mark shall be considered as counterfeit making its perpetrator liable for both civil and criminal responsibility.

The violation of the provisions stipulated in the articles 22 and 23 of this law shall be considered as infringement of the rights associated with mark.

What is the typical Sentence for the Crime?

Article 51

Taking into consideration the penalties stridulated in special provisions, a fine between five thousand and fifty thousand Dinars shall be imposed on:

- Any person who reproduces, counterfeits, uses, places, removes, alters a mark and by doing so infringes the rights granted by the registration of the mark and the restrains based on the registration.
- Any person who supplies or exports goods bearing a counterfeit mark.

Article 52

Taking into consideration the penalties stipulated in special provisions, the penalty stipulated in article 51 of this law shall be imposed on every person who illegally possesses goods which he knows are carrying a counterfeit mark, willfully sells goods or



services which bears this mark, displays them for sale, supply them to others or offers to supply them to others.

Article 53

In case of recidivism with respect to the violations stipulated in articles 51 and 52 of this law a judgment for imprisonment for a period from one to six month may be issued regardless of the judgement of the fine which is doubled.

Article 54

In all cases the court may permit the publication of the full text of the ruling or a part thereof in the newspapers which it specifies, as well as posting it in the locations it specifies specially on the main entrances of the laboratories or factories of the convicted and on the facade of his shops at the expense of the convicted.

Article 55

In the text of the ruling dealing with the violation of the provisions of article 51, 52 and 53 of this law the court may rule for the seizure of the products and instruments used in committing the crime.

The court may also authorize the destruction of these products.

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TURKEY

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Industrial Property Code no. 6769 <https://www.turkpatent.gov.tr/TURKPATENT/resources/temp/4D59A7D3-A564-40A1-9C96-DB1E3D157E90.pdf;jsessionid=6D062DD507EA1F48270F0BD0B24D451F>

Turkish Commercial Code no. 6102 <https://wipo.lex.wipo.int/en/legislation/details/11081>

Turkish Criminal Code no. 5237 <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

What are the Elements of the Crime/How is the Crime Defined?

Acts considered as infringement of trademark right as per the IP Code:

ARTICLE 29- (1) The acts below shall be considered as infringement of trademark right;

- a) To use the trademark as set out in Article 7 without the consent of the trademark proprietor;
- b) To counterfeit the trademark by using the trademark or a confusingly similar trademark without the consent of the trademark proprietor;
- c) While being aware or should be aware that the trademark is counterfeited by use of the trademark or a confusingly similar trademark, to sell, distribute, put on the market in a different form, possess for commercial purpose, import, export the products carrying infringed trademark or to offer to make a contract related to this product,
- ç) To broaden or to transfer to third parties, without consent, the rights given by the trademark proprietor through license.

Acts considered as unfair competition as per the Turkish Commercial Code:

ARTICLE 55- a) Ads and sales methods that are against the rule of integrity and other illegal behaviors and especially;

...

4. Take measures that lead to confusion with someone else's goods, business products, activities or businesses,

...

c) Unauthorized use of other business products; especially;

...

3. To take over and benefit from someone else's ready-to-market working products with technical duplication methods without any proper contribution.

What is the typical Sentence for the Crime?

Criminal provisions related to trademark infringement as per the IP Code:

ARTICLE 30- (1) A person who produces or provides services, puts on the market or sales, imports or exports, buys for commercial purposes, possesses, transports or stores, while infringing a trademark right



through quotation or likelihood of confusion, shall be sentenced from one year to three years of imprisonment and punished with judicial fine up to twenty thousand days.

(2) A person who removes the sign indicating the trademark protection from a product or packaging without authorization shall be sentenced from one year to three years of imprisonment or punished with judicial fine up to five thousand days.

(3) A person who makes, without authorization, a disposition of a trademark right, which is owned by someone else, by transferring, licensing or pledging shall be sentenced from two years to four years of imprisonment and shall be punished with judicial fine up to five thousand days.

(4) If the crimes indicated in the provisions of this Article are committed by acts of a legal entity, additionally specific security measures shall be taken.

(5) To give a sentence due to the crimes indicated in this Article, it is mandatory that the trademark is registered in Turkey.

(6) Investigation and prosecution of the crimes indicated in this Article are subject to complaint.

(7) If a person, selling or putting on the market a counterfeit product, submits information about where he acquired those goods and, thus, contributes to the detection of the producers and the seizure of the products, he shall not be sentenced.

Criminal provisions related to unfair competition as per Turkish Commercial Code:

ARTICLE 62- Those who deliberately commit one of the unfair competition acts written in Article 55, if the act does not constitute another crime requiring a heavier penalty, upon the complaint of one of those who have the right to file a civil action pursuant to Article 56, the judgement is imprisonment for up to two years for the acts within the scope of each paragraph, or punishment with a judicial fine.

Other relevant information:

Please note that the text included here is for trademark infringement, trademark counterfeiting and unfair competition along with general provisions for criminal offenses. For copyright infringement, see <https://wipo.int/wipolex/en/text/440050>.

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TURKMENISTAN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

"On Trademarks"; Criminal Code

What are the Elements of the Crime/How is the Crime Defined?

Article 37 of the On Trademarks law of Turkmenistan' "Responsibility for illegal use of a trademark"

1. Illegal use of a trademark or similarly confusingly similar designation with respect to homogeneous goods shall be deemed to be unlawful actions carried out without the permission of the owners of the trademarks, related to:

- 1) illegal production, use, use in advertising, printed publications, on official forms of enterprises, organizations and institutions, on signboards, when demonstrating exhibits at exhibitions and fairs held in Turkmenistan;
- 2) import to Turkmenistan, export from Turkmenistan, sale and other introduction into economic circulation in the territory of Turkmenistan or storage, transportation;
- 3) use and (or) placement during the performance of works or the provision of services;
- 4) other actions detrimental to the owner of the trademark or consumers of goods.

2. A person who illegally uses a trademark or a designation similar to the grade of confusion (including when rendering services), upon the request of the owner of trademark or a court decision, must:

- 1) cease using it;
- 2) compensate losses, including lost profits, or pay compensation determined by a court decision or by agreement of the parties;
- 3) remove from the product or its packaging an illegally used trademark or designation similar to the grade of confusion.

What is the typical Sentence for the Crime?

Article 247 "Illegal use of a trademark" of the Criminal Code of Turkmenistan contains the following provisions:

Illegal use of someone else's trademark, service mark, company registered name, appellation of origin or labeling of goods, if these actions caused large damage, are punishable by a fine in the amount of twenty to fifty average monthly wages or correctional labor for up to two years.

(When counting in US dollars, the fine is between USD 5400 and USD 10800.)



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UKRAINE

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- The Criminal Code of Ukraine, 2001, Article 176 <https://zakon.rada.gov.ua/laws/show/2341-14#Text>
- The Criminal Code of Ukraine, 2001, Article 177
- The Criminal Code of Ukraine, 2001, Article 229
- The Criminal Code of Ukraine, 2001, Article 231
- The Criminal Code of Ukraine, 2001, Article 232

What are the Elements of the Crime/How is the Crime Defined?

ARTICLE 229

Illegal use of a trade (or service) mark, registered trade name, qualified indication of origin

1. Illegal use of a trade (or service) mark, registered trade name, qualified indication of origin, or any other intentional violation of the rights to these objects, and if this caused a significant pecuniary damage, -
2. The same actions committed repeatedly or a group of persons upon their prior conspiracy, or where they caused a gross pecuniary damage -
3. Actions envisaged by paragraph 1 or 2 of this Article committed by an official using his/her position or an organized group or if they caused an essentially gross pecuniary damage,

What is the typical Sentence for the Crime?

ARTICLE 229

(1) shall be punishable by a fine of 1000 (≈ 566 USD) to 4000 tax-free minimum incomes (≈ 2266 USD).

(2) shall be punishable by a fine of 3000 (≈ 1700 USD \$) to 10000 tax-free minimum incomes (≈ 5666 USD \$).

(3) shall be punishable by a fine of 10000 (≈ 5666 USD \$) to 15000 tax-free minimum incomes (≈ 8500 USD \$), with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Other relevant information:

ARTICLE 176

Infringement of copyright and related rights

1. Illegal reproduction or distribution of scientific, literary, or art works, computer software or databases, and also illegal reproduction, distribution of performances, phonograms, videograms and broadcast programs, making their illegal copies and distribution on audio and video tapes, disks, and other media, camcording, cardsharing or other deliberate violation of copyright and related rights, as well as the financing of such actions where such actions caused a significant pecuniary loss, -
2. The same actions, if repeated or upon their prior conspiracy of a group of persons, or where they caused a gross pecuniary loss, -



3. Any such actions as provided for by paragraph 1 or 2 of this Article, where committed by an official through abuse of office or by organized group of persons, or where they caused a especially gross pecuniary loss, -

ARTICLE 177

Violation of the rights to invention, utility model, industrial design, topography of microelectronic integrated circuits, a variety of plants, innovative proposals

1. Illegal use of an invention, utility model, industrial design, topography of microelectronic integrated circuits, a variety of plants, innovative proposals, usurpation of authorship for them, or violation of other rights in relation to these objects, where such actions caused a significant pecuniary loss, -
2. The same actions, if repeated, or committed by a group of persons upon their prior conspiracy or where they caused a gross pecuniary loss, -
3. Actions specified in paragraph 1 and 2 of this Article, committed by an official through abuse of office or by organized group of persons, or where they caused a especially gross pecuniary loss

ARTICLE 231

Illegal collection for the purpose of use or use of information that constitutes bank or trade secrets
Willful actions taken to obtain information that constitutes bank or trade secrets for the purpose of disclosure of any other use (commercial espionage), and also illegal use of such information, where it caused a significant damage to a business entity, -

ARTICLE 232

Disclosure of commercial or bank secrets

Willful disclosure of commercial or bank secrets without consent of its owner, by a person who was aware of these secrets in connection with his/her professional or official activity, where it was committed for selfish motives and caused a significant damage to a business entity,

ARTICLE 176

- (1) shall be punishable by a fine of 200 (\approx 133 USD \$) to 1000 tax-free minimum incomes (\approx 566 USD \$), or correctional labor for a term up to two years, or imprisonment for the same term.
- (2) shall be punishable by a fine of 1000 (\approx 566 USD \$) to 2000 tax-free minimum incomes (\approx 1133 USD \$), or correctional labor for a term up to two years, or imprisonment for a term of two to five years.
- (3) shall be punishable by a fine of 2000 (\approx 1133 USD \$) to 3000 tax-free minimum incomes (\approx 1700 USD \$), or imprisonment for a term of three to six years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

ARTICLE 177

- (1) shall be punishable by a fine of 200 (\approx 133 USD \$) to 1000 tax-free minimum incomes (\approx 566 USD \$), or correctional labor for a term up to two years, or imprisonment for the same term.
- (2) shall be punishable by a fine of 1000 (\approx 566 USD \$) to 2000 tax-free minimum incomes (\approx 1133 USD \$), or correctional labor for a term up to two years, or imprisonment for a term of two to five years.



(3) shall be punishable by a fine of 2000 (\approx 1133 USD \$) to 3000 tax-free minimum incomes (\approx 1700 USD \$), or imprisonment for a term of three to six years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

ARTICLE 231

shall be punishable by a fine of 300 (\approx 1700 USD \$) to 8000 tax-free minimum incomes (\approx 4533 USD \$).

ARTICLE 232

shall be punishable by a fine of 1000 (\approx 566 USD \$) to 3000 tax-free minimum incomes (\approx 1700 USD \$) with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

ARTICLE 176

1. Note. Pecuniary loss shall be considered to be significant if its amount is twenty or more times higher than the tax-free minimum income of citizens (as of 2020 \approx 706 USD \$), gross - if its amount is two hundred or more times higher than the tax-free minimum income of citizens (\approx 7,006 USD \$), and especially gross - if its amount is a thousand or more times higher than the tax-free minimum income of citizens (\approx 35,033 USD \$).

2. A typical sentence is a fine or conditional imprisonment (without isolation from society).

ARTICLE 177

1. Note. Pecuniary loss shall be considered to be significant if its amount is twenty or more times higher than the tax-free minimum income of citizens (as of 2020 \approx 706 USD \$), gross - if its amount is two hundred or more times higher than the tax-free minimum income of citizens (\approx 7,006 USD \$), and especially gross - if its amount is a thousand or more times higher than the tax-free minimum income of citizens (\approx 35,033 USD \$).

2. Substantive norms (ways of infringement of rights) are defined in the Laws of Ukraine "On protection of rights to inventions and utility models", "On protection of rights to industrial designs", "On protection of rights to topography of integrated circuits", "On protection of rights to plant varieties".

3. Court practice is insignificant.

ARTICLE 229

1. Note. The pecuniary damage shall be deemed as significant if it equals or exceeds 20 tax-free minimum incomes (as on 2020 \approx 706 USD); the pecuniary damage shall be deemed as gross if it equals or exceeds 200 tax-free minimum incomes (\approx 7006 USD); the pecuniary damage shall be deemed as especially gross if it equals or exceeds 1000 tax-free minimum incomes (\approx 35033 USD).

2. Substantive norms (ways of infringement of rights) are defined in the Laws of Ukraine "On protection of rights to marks for goods and services", "On protection of rights to geographical indications".

3. A typical sentence is a fine of \approx 566 USD.

ARTICLE 231

There is almost no court practice on IP matters.



ARTICLE 232

There is almost no court practice on IP matters.

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UNITED ARAB EMIRATES (U.A.E.)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Federal Law No. (37) of 1992 concerning Trade Marks, amended by Federal Law No. (8) of 2002.

<https://legaladviceme.com/legislation/150/uae-federal-law-37-of-1992-concerning-trademarks#:~:text=UAE%20Trademark%20Law%20creates%20the%20legal%20framework%20for,for%20unlawful%20use%20of%20trademarks%2C%20and%20so%20on.>

What are the Elements of the Crime/How is the Crime Defined?

1. Any person who forges a trademark registered according to law or imitates same in a way misleading the public and any person who uses with bad faith a forged or imitated trademark.
 2. Any person who places with bad faith on his products a registered trademark owned by third party, or uses such mark without right.
 3. Any person who deliberately sells, offers for sale or negotiation or acquires for sale products having a forged, imitated or illegally placed trademark, the same applies to any person who deliberately provides or offers the provision or services under a forged, imitated or illegally placed trademark.
-
1. Any person who uses a trademark which may not be registered as provided in the Law
 2. Any person who illegally notes on his mark or commercial paper statements leading to believe that it has been registered or that it distinguishes products and goods other than the ones stated in the register.

What is the typical Sentence for the Crime?

Shall be sentenced to imprisonment and a fine of at least Dh.5000 (Five Thousand) or either:

1. Any person who forges a trademark registered according to law or imitates same in a way misleading the public and any person who uses with bad faith a forged or imitated trademark.
2. Any person who places with bad faith on his products a registered trademark owned by third party, or uses such mark without right.
3. Any person who deliberately sells, offers for sale or negotiation or acquires for sale products having a forged, imitated or illegally placed trademark, the same applies to any person who deliberately provides or offers the provision or services under a forged, imitated or illegally placed trademark.

Shall be punished for imprisonment for a period not exceeding a year and to a fine of no less than Dh.5000 (Five Thousand) and no more than Dh.10,000 (Ten Thousand) or either penalties:

1. Any person who uses a trademark which may not be registered as provided in the Law
2. Any person who illegally notes on his mark or commercial paper statements leading to believe that it has been registered or that it distinguishes products and goods other than the ones stated in the register.



Other relevant information:

Please note that in UAE practice trademark infringements are usually more often the subject of civil actions or actions initiated before the Ministry of Economy-Trademark Office (TMO) and/or Department of Economic Development (DED).

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UNITED KINGDOM

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

UK Trade Marks Act 1994 (UKTMA), Sections 92-96

<https://www.legislation.gov.uk/ukpga/1994/26/part/III/crossheading/offences>

What are the Elements of the Crime/How is the Crime Defined?

Section 92 UKTMA

- the unauthorised use of a sign either identical to or likely to be mistaken for a registered trade mark.
- applying a sign to goods/their packaging,
- selling/distributing such goods,
- stocking goods for that purpose, and
- applying the sign to advertising/business materials,
- as well as secondary acts such as
 - making an article to produce copies of such signs (knowledge is a required mental element of this secondary act required)

To be an offence, it is required that:

- a person must commit these acts "with a view to gain for himself or another, or with intent to cause loss to another," and
- the person to have applied the offending sign to goods "in respect of which the trade mark is registered", or
- for the registered trade mark to have a reputation in the UK such that the offending act "takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark" (per Section 92(4))

A potential defense:

Section 92 UKTMA (5) "show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark"

What is the typical Sentence for the Crime?

Section 92 UKTMA (6)

A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.



Other relevant information:

Section 92 UKTMA primarily is an issue regarding counterfeiting.

An overview of IP offences in the UK, and the relevant legal provisions:

<https://www.gov.uk/government/publications/intellectual-property-offences/intellectual-property-offences>.

There is a 'cartel offence' in the UK (Part 6 of the Enterprise Act 2002), that defines a criminal offence of entering into an agreement between competitors to rig bids, fix prices, share markets or customers, or limit production or supply.

<https://www.legislation.gov.uk/ukpga/2002/40/part/6>.

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UNITED STATES OF AMERICA (U.S.A.)

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademark Counterfeiting Act of 1984, 18 U.S.C. § 2320

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section2320&num=0&edition=prelim>

What are the Elements of the Crime/How is the Crime Defined?

"(a) Offenses. Whoever intentionally—

(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,

(2) traffics in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,

(3) traffics in goods or services knowing that such good or service is a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or to national security, or

(4) traffics in a drug and knowingly uses a counterfeit mark on or in connection with such drug, or attempts or conspires to violate any of paragraphs (1) through (4) shall be punished as provided in subsection (b)."

What is the typical Sentence for the Crime?

"(b) Penalties.

(1) In general. Whoever commits an offense under subsection (a)—

(A) if an individual, shall be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, shall be fined not more than \$5,000,000; and

(B) for a second or subsequent offense under subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(2) Serious bodily injury or death.

(A) Serious bodily injury. Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(B) Death. Whoever knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for any term of years or for life, or both, and if other than an individual, shall be fined not more than \$15,000,000.



(3) Counterfeit military goods or services and counterfeit drugs. Whoever commits an offense under subsection (a) involving a counterfeit military good or service or drug that uses a counterfeit mark on or in connection with the drug—

(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both, and if other than an individual, be fined not more than \$15,000,000; and

(B) for a second or subsequent offense, if an individual, shall be fined not more than \$15,000,000, imprisoned not more than 30 years, or both, and if other than an individual, shall be fined not more than \$30,000,000."

Other relevant information:

See also 18 U.S.C. § 2318 and § 2314. Note, the text included here is for counterfeit regarding trademarks. For copyright counterfeits, see 18 U.S.C. § 2319. For unfair competition, much is governed by common law and some state law. Agency Regulations under the Federal Trade Commission (16 C.F.R. Chapter 1) may also be relevant.

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URUGUAY

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Law 17.011

<https://www.impo.com.uy/bases/leyes/17011-1998/81>

<https://www.impo.com.uy/bases/leyes/17011-1998/83>

What are the Elements of the Crime/How is the Crime Defined?

Article 81: Those wanting to profit or cause damage by manufacturing, falsifying, adulterating or imitating someone else's registered trademark will be punished with six months in prison to three years under penitentiary arrest.

Article 83: Those knowingly manufacturing, storing, delivering or trading goods distinguished with the trademarks mentioned in the previous articles will be punished with three months in prison to six years under penitentiary arrest.

What is the typical Sentence for the Crime?

In the typical criminal sentence, the Judge orders:

- The destruction of the counterfeit merchandise seized.
- If there is a natural person identified as the infringer, the penalties could be from six months in prison to three years under penitentiary arrest, in accordance with articles 81 and 83 of the Law. 17.011.
- If there are other crimes associates with the trademarks infringement (Ex: smuggling, money-laundering, etc), the penalties could be more increase.
- The penalty also increases for a second or subsequent offense.

Other relevant information:

Please take into account the text included here is for counterfeit regarding trademarks.

For copyright counterfeits, there is apply the article 46 of the Law N° 9.739.

For the unfair competition, there is apply the article 10 of the Protocol of Paris.



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VANUATU

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademarks Act No. 1 of 2003

http://www.paclii.org/cgi-bin/sinodisp/vu/legis/num_act/ta2003121/ta2003121.html

What are the Elements of the Crime/How is the Crime Defined?

PART 11: INFRINGEMENT OF TRADEMARKS

73. (1) A person infringes a registered trademark if the person uses as a trademark a sign that is substantially identical with, or deceptively similar to, the trademark for goods or services for which the trademark is registered.

(2) A person infringes a registered trademark if the person uses as a trademark a sign that is substantially identical with, or deceptively similar to, the trademark for:

- (a) goods of the same description as that of the goods ("registered goods") for which the trademark is registered; or
- (b) services that are closely related to registered goods; or
- (c) services of the same description as that of the services ("registered services") for which the trademark is registered; or
- (d) goods that are closely related to registered services.

However, the person is not taken to have infringed the trademark if the person establishes that using the sign as the person did is not likely to deceive or cause confusion.

(3) A person infringes a registered trademark if:

- (a) the trademark is well known in Vanuatu; and
- (b) the person uses as a trademark a sign that is substantially identical with, or deceptively similar to, the trademark for:
 - (i) goods ("unrelated goods") that are not of the same description as that of the goods for which the trademark is registered ("registered goods") or are not closely related to services for which the trademark is registered ("registered services"); or
 - (ii) services ("unrelated services") that are not of the same description as that of the registered services or are not closely related to registered goods; and
- (c) because the trademark is well known, the sign would be likely to be taken as showing a connection between the unrelated goods or services and the registered owner of the trademark; and
- (d) for that reason, the interests of the registered owner are likely to be adversely affected.

(4) In deciding whether a trademark is well known in Vanuatu, a Court must take account of the extent to which the trademark is known within the relevant sector of the public, whether as a result of the promotion of the trademark or for any other reason.

74. (1) This section applies to a registered trademark if the registered owner, or an authorised user of the trademark having power to do so, has caused a notice ("notice of prohibition") prohibiting any act that is a



prohibited act in relation to the goods ("registered goods") for which the trademark is registered to be displayed:

- (a) on the registered goods; or
 - (b) on their package; or
 - (c) on the container in which they are offered to the public.
- (2) Each of the following is a prohibited act:
- (a) applying the trademark to registered goods, or using the trademark in physical relation to them, after the state, condition, get-up or packaging in which they were originally offered to the public has been altered;
 - (b) altering, or partially removing or obliterating, any representation of the trademark applied to registered goods or used in physical relation to them;
 - (c) if the trademark has been applied to registered goods, or used in physical relation to them, together with other matter indicating that the registered owner or authorised user has dealt with the goods—removing or obliterating, totally or in part, any representation of the trademark without totally removing or obliterating the other matter;
 - (d) applying another trademark to registered goods or using another trademark in physical relation to them;
 - (e) if the trademark has been applied to registered goods or used in physical relation to them—using on the goods, or on the packaging or container of the goods, any matter that is likely to injure the reputation of the trademark.
- (3) Subject to subsection (4), a person infringes a trademark to which this section applies if the person:
- (a) is the owner of registered goods; and
 - (b) in the course of trade, or with a view to a dealing with the goods in the course of trade:
 - (i) does an act that is prohibited under the notice of prohibition; or
 - (ii) authorises that act to be done.
- (4) The trademark is not infringed if the owner of the goods:
- (a) acquired them in good faith and without being aware of the notice of prohibition; or
 - (b) became the owner of the goods because of a title derived from a person who had so acquired them.

PART 12: OFFENCES

FALSIFYING A REGISTERED TRADEMARK

80. (1) A person must not falsify or unlawfully remove a trademark that:

- (a) has been applied to any goods that are being, or are to be, dealt with or provided in the course of trade; or
- (b) has been applied in relation to any goods or services that are being, or are to be, dealt with or provided in the course of trade;

knowing that the trademark is registered or reckless of whether or not the trademark is registered.

(2) A person falsifies a registered trademark if the person:

- (a) alters or defaces it; or
- (b) makes any addition to it; or
- (c) partly removes, erases or obliterates it;

without the permission of the registered owner, or an authorised user, of the trademark and without being required or authorised to do so by this Act, a direction of the Registrar or an order of the Court.



(3) A person unlawfully removes a registered trademark if the person wholly removes, erases or obliterates it:

- (a) without the permission of the registered owner, or an authorised user, of the trademark; and
- (b) without being required or authorised to do so by this Act, a direction of the Registrar or an order of the Court.

FALSELY APPLYING A REGISTERED TRADEMARK

81. (1) A person must not:

- (a) falsely apply a registered trademark to goods that are being, or are to be, dealt with or provided in the course of trade; or
 - (b) falsely apply a registered trademark in relation to goods or services that are being, or are to be, dealt with or provided in the course of trade;
- knowing that the trademark is registered or reckless of whether or not the trademark is registered.

(2) A person falsely applies a registered trademark to goods, or in relation to goods or services if the person applies the trademark or a sign substantially identical with it to the goods or in relation to the goods or services:

- (a) without the permission of the registered owner, or of an authorised user, of the trademark; and
- (b) without being required or authorised to do so by this Act, a direction of the Registrar or an order of a Court.

SELLING GOODS WITH FALSE MARKS

82. A person must not:

- (a) sell goods; or
- (b) expose goods for sale; or
- (c) have goods in his or her possession for the purpose of trade or manufacture; or
- (d) import goods into Vanuatu for the purpose of trade or manufacture;
- (e) knowing that, or reckless of whether or not:
- (f) a falsified registered trademark is applied to them or in relation to them; or
- (g) a registered trademark has been unlawfully removed from them; or
- (h) a registered trademark is falsely applied to them or in relation to them.

FALSE REPRESENTATIONS ABOUT TRADEMARKS

83. (1) A person must not make a representation to the effect that a trademark is a registered trademark unless the person knows, or has reasonable grounds to believe, that the trademark is registered in Vanuatu.

(2) A person must not make a representation to the effect that a part of a registered trademark is registered as a trademark unless the person knows, or has reasonable grounds to believe, that that part is registered as a trademark in Vanuatu.

(3) A person must not make a representation to the effect that a trademark is registered for goods or services unless the person knows, or has reasonable grounds to believe, that the trademark is registered in Vanuatu for those goods or services.

(4) A person must not make a representation to the effect that the registration of a trademark gives exclusive rights to use the trademark in circumstances in which, having regard to conditions or limitations



entered in the Register, the registration does not give those rights, unless the person has reasonable grounds to believe that the registration does give those exclusive rights.

(5) For the purposes of this section, the use in Vanuatu in relation to a trademark:

(a) of the word "registered"; or

(b) of any other word or any symbol referring (either expressly or by implication) to registration;

is taken to be a representation that the trademark is registered in Vanuatu for the goods or services for which it is used except if the trademark is registered in a country other than Vanuatu for those goods or services and:

(c) the word or symbol by itself indicates that the trademark is registered in that other country or in a country outside Vanuatu; or

(d) the word or symbol is used, together with other words or symbols of the same or a bigger size, to indicate that the trademark is registered in that other country or in a country outside Vanuatu; or

(e) the word or symbol is used for goods that are to be exported to that country.

FALSE ENTRIES IN REGISTER

84. A person must not:

(a) make a false entry in the Register; or

(b) cause a false entry to be made in the Register; or

(c) tender in evidence a document that falsely purports to be a copy of, or an extract from, an entry in the Register or a document in the Registrar's office.

What is the typical Sentence for the Crime?

PART 11: INFRINGEMENT OF TRADEMARKS

ACTION FOR INFRINGEMENT

78. (1) An action for an infringement of a registered trademark may be brought in the Court.

(2) The relief that the Court may grant in an action for an infringement of a registered trademark includes:

(a) an injunction, which may be granted subject to any condition that the Court thinks fit; and

(b) at the option of the plaintiff but subject to section 79, damages or an account of profits.

PART 12: OFFENCES

FALSIFYING A REGISTERED TRADEMARK

80.

Penalty:

(a) a fine not exceeding 2,000,000 Vatu; or

(b) imprisonment for a period not exceeding 2 years; or

(c) both a fine and a term of imprisonment.

FALSELY APPLYING A REGISTERED TRADEMARK

81.

Penalty:

(a) a fine not exceeding 2,000,000 Vatu; or

(b) imprisonment for a period not exceeding 2 years; or

(c) both a fine and a term of imprisonment.



SELLING GOODS WITH FALSE MARKS

82.

Penalty:

- (a) a fine not exceeding 2,000,000 Vatu; or
- (b) imprisonment for a period not exceeding 2 years; or
- (c) both a fine and a term of imprisonment.

FALSE REPRESENTATIONS ABOUT TRADEMARKS

83. (1)

Penalty: 200,000 Vatu.

(2)

Penalty: 200,000 Vatu.

(3)

Penalty: 200,000 Vatu.

(4)

Penalty: 200,000 Vatu.

FALSE ENTRIES IN REGISTER

84.

Penalty: Imprisonment for 2 years.

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VENEZUELA

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

- Industrial Property Law: http://sapi.gob.ve/wp-content/uploads/2019/05/ley_pi.pdf
- Venezuelan Criminal Code: <https://es.slideshare.net/heglesaudade/codigo-penal-45685581>
- Organic Law against Organized Crime and Terrorism Financing: https://www.bancrecer.com.ve/pdf/2_LOCDOFT.pdf

What are the Elements of the Crime/How is the Crime Defined?

(a) Offenses. Those who:

- (1) violate the rights of the legal holder or owner of a patent, by manufacturing, executing, transmitting or using fraudulent and intentional copies of the object of such patent for industrial purposes and monetary gain, without the express and tacit consent of the legal holder or owner
- (2) those who, seeking to harm the rights of the legal owner, use, manufacture or execute registered trademarks, models or drawings or others that may be mistaken for the originals,
- (3) name a business as a branch of another that was duly registered,
- (4) seek to take advantage of the industrial or commercial reputation that another has acquired, forge or alter the names, trademarks or distinctive signs of creative works or products of whatever industry,
- (5) use the registered names, trademarks or signs thusly forged or altered, even if the forgery or alteration was produced by a third party and
- (6) in order to conduct business, import to the country and sell, or somehow put into circulation, any creative works or products of any industry with forged or altered names, trademarks or distinctive signs, or with names, trademarks or distinctive signs that may mislead consumers regarding origin or quality thereof.

What is the typical Sentence for the Crime?

(b) Penalties.

- In general, whoever commits an offense under subsection (a) shall be sentenced to prison from one to twelve months.
- Also, according to the Organic Law against Organized Crime and Terrorism Financing, it is a severe criminal offense the illegal importation, trade and use of the trademarks by third parties.
- Therefore, whoever commits an offense under subsection (a) affecting the collective or common interests shall be sentenced to prison terms ranging from 6 to 10 years.
- The Law also provides that these crimes do not have a statute of limitations and it also establishes a special regime for the seizure and confiscation of goods.

Other relevant information:

In Venezuela, the violations to intellectual property are prosecuted as actions of groups of organized crime, and that the current regulations expand this protection to the owner of the trademark



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VIETNAM

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

The Criminal Code of Viet Nam, Law No. 100/2015/QH13

http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=183216

What are the Elements of the Crime/How is the Crime Defined?

- (1) A person who has criminal capacity simultaneously satisfy 3 factors that constitute crime:
 - (a) The person who commits an act deliberately; and
 - (b) The infringed object is a fake trademark or geographical indication; and
 - (c) Acts of infringement are committed on a commercial scale, or a person who earns an illegal profit
- (2) Corporate legal entity if simultaneously satisfy 3 factors that constitute crime:
 - (a) Corporate legal entity commits an act satisfy 4 conditions under Article 75 of The Criminal Code;
 - (i) The criminal offence is committed in the name of the corporate legal entity;
 - (ii) The criminal offence is committed in the interests of the corporate legal entity;
 - (iii) The criminal offence is under instructions or approval of the corporate legal entity;
 - (iv) The time limit for criminal prosecution specified in Clause 2 and Clause 3 Article 27 has not expired.)
 - (v) The infringed object is a fake trademark or geographical indication; and
 - (vi) Acts of infringement are committed on a commercial scale, or earns an illegal profit

What is the typical Sentence for the Crime?

Article 226. Infringement of industrial property rights

1. A person who infringes upon industrial property rights to a brand name or geographical indication protected in Vietnam and earns an illegal profit of from VND 100,000,000 to under VND 300,000,000 or causes a loss of from VND 200,000,000 to under VND 500,000,000 to the owner of such brand name or geographical indication or with the violating goods assessed at from VND 200,000,000 to under VND 500,000,000 shall be liable to a fine of from VND 50,000,000 to VND 500,000,000 or face a penalty of up to 03 years' community sentence.
2. This offence committed in any of the following circumstances carries a fine of from VND 500,000,000 to VND 1,000,000,000 or a penalty of 06 - 03 years' imprisonment:
 - a) The offence is committed by an organized group;
 - b) The offence has been committed more than once;
 - c) The illegal profit reaped is \geq VND 300,000,000;
 - d) The loss incurred by the owner of the brand name or geographical indication is \geq VND 500,000,000;
 - dd) The illegal goods are assessed at \geq VND 500,000,000.
3. The offender might also be liable to a fine of from VND 20,000,000 to VND 200,000,000, prohibited from holding certain positions or doing certain works for 01 - 05 years.



4. Punishments incurred by a corporate legal entity that commits any of the offences specified in this Article:

- a) Any corporate legal entity that commits an offence specified in Clause 1 of this Article despite the fact that it has incurred an administrative penalty or has an unspent conviction for the same offence shall be liable to a fine of from VND 500,000,000 to VND 2,000,000,000;
- b) A corporate legal entity that commits this offence in any of the circumstances specified in Clause 2 of this Article shall be liable to a fine of from VND 2,000,000,000 to VND 5,000,000,000 or has its operation suspended for 06 - 24 months;
- c) The violating corporate legal entity might also be liable to a fine of from VND 100,000,000 to VND 500,000,000, be banned from operating in certain fields or raising capital for 01 - 03 years.

Other relevant information:

See also (the Criminal Code of Viet Nam, Law No. 100/2015/QH13):

Article 192 Manufacturing and trading of counterfeit goods

Article 225 Infringement of copyrights and relevant rights

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YEMEN

Criminal Liability for Trademark-Related Offenses?

Yes

Applicable Statute, Law, or Rule:

Trademarks and Geographical Indications Law

https://agip.com/Agip_Country_Mainpage.aspx?country_key=7https://agip.com/Agip_Country_Mainpage.aspx?country_key=70

What are the Elements of the Crime/How is the Crime Defined?

The Yemeni legislator has expanded the scope of its protection for the trademark, as he not only considers the counterfeiter alone as the one who violates the protection of the trademark. Whoever puts on his products or associates his services with a registered mark for others with knowledge of that, or sells or offered for sale or for circulation, or even possesses with the intention of selling products bearing a trademark that has been counterfeited, all of these are considered to be in breach of the legal protection established for the trademark. The Yemeni legislator has decided ways to protect it in articles 47,48 and 49 of the enforceable Trademarks law.

Article (47):

- a- Committing a forgery or counterfeiting for a registered trade mark protectable under the provisions of this Act.
- b- Using in bad faith a forged or a counterfeited trade mark.
- c- Using in bad faith a trade mark owned by others.
- d- Rendering, offering or using services under a forged or a counterfeited trade mark.
- e- Knowingly selling, offering for sale, or possessing for purpose of sale, products bearing, or otherwise fixing without thus authorized, a forged or a counterfeited trade mark.

What is the typical Sentence for the Crime?

Article (47): Without prejudice to any greater penalty decided by any other law in force, every person committing any of the below acts shall receive a penalty of imprisonment not exceeding two years and a fine not exceeding one million Riyal, or by one of the aforesaid two penalties . . .

and in case of repetition any of the violations stated in this Article the penalty should be doubled and the establishment engaged in such activities shall be closed for a period not exceeding three months.

Article (48): Every person violating any provision in this Act shall receive a punishment not exceeding five hundred thousand Riyals fine.

Article (49): In line with the degree of violation, the Court may order against the violator one or more of the following complementary penalties:



- a- the confiscation of the attached products bearing a forged or a counterfeited trade mark, and the disposal of the same in a none commercial manner or even the destruction of the same when necessary.
- b- the destruction of the forged or the counterfeited trade marks.
- c- the confiscation of the machines and instruments used in the forgery or in the counterfeiting of the trade mark, and the disposal of the same in a none commercial manner or even the destruction of the same when necessary.
- d- banning the re-exportation of the products bearing a forged or a counterfeited trade mark without altering the condition of the trade mark used.
- e- publishing the award in one or more newspaper(s) on the account of the criminalized person.

Contact:

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