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## INDUSTRIAL PROPERTY RIGHTS AND THEIR ENFORCEMENT FOR THE SULTANATE OF OMAN

### Section 1: Definitions

For the purposes of this Act,

- **“Certificate”** means the title granted to protect a utility model, an industrial design, a layout-design (topography) of integrated circuit, a mark or a geographical indication.
- **“Certification Marks”** means signs or combination of signs capable of designating any specific characteristic, including quality, origin or methods of production, of goods and services and which are used by other persons under the control of the owner of the mark.
- **“Collective Mark”** means any marks that belong to a collectivity, such as a cooperative or an association or federation of industrialists, producers and merchants.
- **“Decision of the General Council of the WTO of August 30, 2003,”** means the Decision of the General Council of the WTO on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.
- **“Distinctive sign”** means a variety of designations and signs and slogans used by an enterprise to convey, in the course of industrial or commercial activities, a certain identity with respect to the enterprise and the products produced or the services rendered by that enterprise.
- **“Exclusive License”** means a license contract that confers on the licensee and, where it is established expressly therein, on the persons authorized by the licensee, the right to exploit the licensed industrial property right to the exclusion of all other persons (including the right owner).
- **“Geographical Indication”** means an indication that identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
- **“International Classification”** means, as regards patents and utility models, the classification for patents for invention, inventors' certificates, utility models and utility certificates, industrial designs and marks.
- **“Madrid Protocol”** means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, as signed at Madrid on June 28, 1989.
- **“Mark”** means any sign susceptible of being specifically represented graphically that is capable of distinguishing goods (“trademark”) or services (“service mark”) of one undertaking from those of other undertakings. A mark may, in particular, consist of words (including personal names), designs, letters, colors or combinations of colors, numerals or the shape of goods or their packaging, holograms, geographical indications, sounds, scents and tastes. Slogans, where they are not long enough to be protected by copyright, shall be protected as marks.
- **“Minister”** means the Minister of Commerce and Industry.

- **“Paris Convention”** means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised.
- **“Priority Date”** means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention.
- **“Registrar”** means the Director of the Industrial Property Office, as established by this Law.
- **“Trade Name”** means the name or designation identifying and distinguishing an enterprise.
- **“Washington Treaty”** means the Treaty on Intellectual Property in Respect of Integrated Circuits in Washington, D.C., on May 26, 1989.
- **“WTO”** means the World Trade Organization.

## **TITLE II: DISTINCTIVE SIGNS**

### **PART I: TRADE MARKS, SERVICE MARKS, COLLECTIVE MARKS, TRADE NAMES AND CERTIFICATION MARKS**

#### Section 36

1. The exclusive right to a mark, as conferred by this Act, shall be acquired by registration in accordance with the provisions thereof.
2. A mark cannot be validly registered:
  - if it is incapable of distinguishing the goods or services of one enterprise from those of other enterprises; the scent or taste or other material characteristic of goods shall not be deemed capable of distinguishing the goods when they result normally from the common composition of those goods;
  - if it is contrary to public order or morality; it shall be understood, however, that the nature of the goods or services to which a mark is to be applied shall in no case form an obstacle to registration of the mark;
  - if it is likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics; the provisions of Sections 57 and 58 shall apply;
  - if it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;

- if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Oman for identical or similar goods or services of another enterprise, or if it is well-known in Oman for goods or services which are not identical or similar to those in respect of which registration is applied for, provided, in the latter case, that use of the mark 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;
  - if it is identical with or similar to a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of identical or similar goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion;
  - if the application has been made in bad faith or where the sign, if registered, would serve unfair competition purposes.
3. Notwithstanding the provisions of subsection 2(1), the Registrar or the Court shall have the authority to decide whether a mark has acquired secondary meaning or distinctiveness through continued use. In that event the mark shall be registrable.
  4. In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper to do so, the Court or the Registrar may permit the registration of marks that are identical or nearly resemble each other in respect of the same goods or services or description of goods or services by more than one proprietor subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose, provided that such use does not result in misleading the public and is not contrary to the public interest.
  5. Where separate applications are made by different persons to be registered as proprietors respectively of trademarks that are identical or nearly resemble each other in respect of the same, similar or related goods or services or description of goods or services, the Registrar may refuse to register any of them until their rights have been determined by the Court.
  6. Words or expressions of common use by consumers and technical words or expressions that pertain to the field to which the goods and services belong shall be deemed as not having distinctive capability for the purposes of Subsection (2). However, any legal or regulatory measures mandating the use of the term customary in common language as the common name for a good or service (“common name”)
  7. For the purposes of Subsection (2), in determining whether a mark is well known, it shall be taken into account the knowledge of the mark in the relevant sector of the public in Oman, including knowledge which has been obtained as a result of the promotion of the mark.
  8. For the purposes of Subsection (2), in the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

9. The prior user of a mark which is not in the Register or which is not subject to a pending application under Subsection (2), may oppose an application for a registration by another person of a similar or identical mark for similar or identical goods, in accordance with this Section and the Regulations thereto, provided he:
- submits evidence that he has used that mark in good faith for at least six months prior to the filing date or the priority date, if applicable;
  - submits evidence that he has acquired clientele and that clientele attributes some reputation to the mark; and
  - he files an application for registration of his own mark prior to sending the Registrar the notice of opposition.
10. The registration by a third person of a similar or identical mark to one that has lapsed, under Section 41(2), or or been abandoned, under Section 44(1), for similar or identical goods or services shall be admitted only after a period of at least three (3) years has passed from the date on which notice of the termination of the mark was published in the Official Gazette. This Subsection does not apply to the licensee of the mark that is licensed and abandoned under Section 44(1).
11. Goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

## Section 37

1. (A) The application for registration of a mark shall be filed with the Registrar and shall contain a request, a reproduction of the mark and a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification. It shall be subject to the payment of the prescribed application fee.

(B) When the mark consists of a sign that is not visually perceptible, the application shall contain a graphical reproduction of the mark. Such reproduction shall be specific and may not consist merely of a general description of the sign.

(C) Where the applicant wishes to claim color as a distinctive feature of the mark, he shall submit a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color.

(D) Where the applicant wishes to apply for a three-dimensional mark, he shall submit a statement to that effect.

2. (A) The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of an earlier national or regional application filed by the applicant or his predecessor in title, in which case, the Registrar may require that the applicant furnish, within the prescribed time limit, a copy of the earlier application, certified as correct by the Registry with which it was filed. Consequently, the filing of that application in Oman before the expiration of the period referred to in subsection (c) shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession.

3. The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

### Section 38

1. (A) The Registrar shall examine whether the application complies with the requirements of Section 38(1) and the Regulations pertaining thereto.

(B) The Registrar shall examine and determine whether the mark is a mark as defined in Section 1 and is registrable under Section 37 (2).

2. (A) Where the Registrar finds that the conditions referred to in subsection (1) hereof are fulfilled, he shall forthwith cause the application, as accepted, to be published in the prescribed manner.

(B) Any interested person may, within the period of ninety (90) days and in the prescribed manner, give notice to the Registrar of opposition, which shall be reasoned and in writing, to the registration of the mark on the grounds that one or more of the requirements of Sections 1 and 37(2) and the Regulations pertaining thereto are not fulfilled.

(C) The Registrar shall publish a notice of the opposition in the Official Gazette, and, within the period of ninety 90 days and in the prescribed manner, the applicant may send to the Registrar a counter-statement of the grounds on which he relies for his application; if he does not do so, he shall be deemed to have abandoned the application.

(D) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the mark should be registered.

3. (A) Where the Registrar finds that the conditions referred to in Subsection (1) are fulfilled, and either:

(i) the registration of the mark has not been opposed within the prescribed time limit; or

(ii) the registration of the mark has been opposed and the opposition has been decided in the applicant's favor, he shall register the mark, publish a reference to the registration and issue to the applicant a certificate of registration. Otherwise, he shall refuse the application.

(B) The applicant shall be given a notice of the refusal and its motives without undue delay.

(i) The applicant may contest the refusal, by means of a reasoned statement in writing, within sixty (60) days from the receipt of the notice of refusal. If he so wishes, the appellant may appeal from the refusal directly to the Court, without the need for contesting it. The provisions of Section 111 shall apply.

(ii) In the event the applicant has contested the refusal but the Registrar has maintained it, the applicant may appeal from that decision to the Court, in accordance with the provisions of Section 111.

4. (A) Every mark duly registered in the territory or country of origin that is a Member of the Paris Union or of the World Trade Organization or that maintains a relation of reciprocity with Oman in this regard (“the country of origin”), shall be accepted for filing and protected in Oman, subject to the reservations indicated in this Subsection. The Registrar shall, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(B) Shall be considered the country of origin the country of the Union or the Member of the WTO where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union or in the territory of a WTO Member, the country where he has his domicile, or, if he has no domicile within the Union or in a territory of a WTO member but is a national of a country of the Union or of a WTO Member, the country of which he is a national.

(C) Trademarks covered by this subsection may be neither denied registration nor invalidated except in the following cases:

- (i) when they are of such a nature as to infringe rights acquired by third parties in Oman;
- (ii) when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
- (iii) when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of this Part, except if such provision itself relates to public order.

(D) The provisions of paragraph (c) of this Subsection are subject, however, to the application of provisions of Title III.

(E) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(F) The Registrar shall not refuse the registration of a mark under this Subsection for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

(G) No person may benefit from the provisions of this Subsection if the mark for which he claims protection is not registered in the country of origin.

(H) The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Section 38(2)(c), even if registration in the country of origin is effected after the expiration of such period.

## Section 39

1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including trade names and geographical indications, for goods or services related to those in respect of which the mark is registered, where such use would result in a likelihood of confusion, without prejudice to the provisions of Subsections 3, 4 and 5. The provisions of Section 37 (8) shall apply.
2. In accordance with Title IV, the owner of a registered mark shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the mark by using, without his consent, the mark as aforesaid or who performs acts which make it likely that infringement will occur.
3. The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in Oman by the registered owner or with his consent, and therefore shall be exhausted.

## Section 40

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.

2. If the importer fails to fulfill the purpose that justified the Minister's decision to consider the trademark rights exhausted, the Minister shall, ex officio, or at the request of the trademark owner, cancel the authorization.

If the conditions that gave rise to the Minister's decision to consider the trademark rights exhausted cease to exist, the Minister may, ex officio or at the request of the trademark owner, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

3. The provisions of subsection (1) shall not apply to the use of the registered mark by a third person with informative purposes, such as to promote sales or engage in comparative advertisement, provided such use is not made in a manner that deceives the public or constitutes unfair competition, under Title III.



4. The Minister of Health may take measures to limit the use of marks with the purpose of facilitating the prescription of and the access to generic pharmaceutical products and medical devices, or with the purpose of discouraging the public consumption of goods that are deemed prejudicial to health provided such measures do not impair the use or effectiveness of trademarks used in relation to such good or service to distinguish goods of one undertaking from those of other undertaking.

#### Section 41

- A. The registration of a mark shall be for a period of ten years from the filing date of the application for registration.
- B. The registration of a mark may, upon request, be renewed for consecutive periods of ten years, provided that the registered owner pays the prescribed renewal fee.
- C. A period of grace of six (6) months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge, otherwise the registered mark shall lapse. There shall be no restoration of lapsed registered marks.

#### Section 42

1. (A) Any interested person may request the Court to invalidate the registration of a mark.  
  
(B) The request of invalidation can be filed within a period of five (5) years from the date of issuance of the registration certificate, unless the registration was obtained in bad faith or in violation of Section 37(2) (vii), in which cases the request can be filed without any time limits.  
  
(C) The Court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of Sections 1 and 37 is not fulfilled, or the provisions of Sections 57 and 58 are not complied with.  
  
(D) Any invalidation of a registration of a mark shall be deemed to have been effective as of the date of registration, and it shall be recorded and a reference thereto published as soon as possible.
2. Any interested person may request the Registrar to remove a mark from the Register, in respect of any of the goods or services in respect of which it is registered, on the ground that up to one month prior to filing the request the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of three years or longer, provided that a mark shall not be removed if it is shown that special circumstances prevented the use of the mark, such as import restrictions or other government or market impediments to commercialization, and that there was no intention not to use or to abandon the same in respect of those goods or services.

#### Section 43

1. (A) Subject to subsections 2 and 3, Sections 37 to 41 shall apply to collective marks.  
  
(B) It shall not be required that the applicant of the registration of a collective mark possesses and industrial or commercial establishment anywhere in a Member of the Paris Union or a Member of the WTO.

(2) (A) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the Rules, if any, governing the use of the collective mark.

(B) Any changes made in respect of the Rules referred to in paragraph (a) shall be communicated to the Registrar.

#### Section 44

(1) Subject to Sections 44 and 45, the provisions of Sections 37 to 41 shall apply to certification marks. The application for the registration of a certification mark must designate the sign as a certification mark and shall be accompanied by the Rules governing its use. These provisions apply to all certification marks, including those that are owned by governmental agencies.

(2) The owner of a certification mark may not use the sign to identify or certify his own goods or services.

(3) In addition to the grounds provided in Section 41(1)(c), the Court shall invalidate the registration of a certification sign if the person requesting the invalidation proves that the owner of the certification mark uses it, or that he permits its use in contravention of the Rules referred to in Subsection (1) or that he permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned. Any interested person can file a request for invalidating certification marks, including, but not limited to, the Registrar, the Public Prosecutor, the competitors of the owner, the producers of the certified goods or services, as well as associations and organizations that legitimately represent the consumers concerned.

#### Section 45

1- (A) Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used, where such control is appropriate and/or necessary. If the license contract does not provide for such quality control or if such quality control is not effectively carried out, the license contract shall not be valid, and the Court may declare the mark as abandoned by its owner. Abandonment may be alleged as a personal defense in infringement proceedings.

(B) The abandonment of a mark shall be deemed to have been effective as of the date on which the license contract has become effective, and it shall be recorded and a reference thereto published in the Official Gazette in accordance with the Regulations.

2. The registration of a collective mark, or an application therefor, may not be the subject of a license contract.

3. The owner of a registered mark shall have the right to assign it without the transfer of the business to which the mark belongs. This provision shall not apply to certification marks.

## Section 46

### Limitations to the Rights in Certification Marks

Any person who has proved to comply with the technical standards and other conditions of the Rules mentioned in Section 43(1) shall not be refused the right to use the certification sign in the same conditions established by those Rules.

## Section 47

1. A name or designation may not be used as a trade name if by its nature or the use to which it may be 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.

2. (A) Notwithstanding any laws or regulations providing for any obligation to register the businesses identified by trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(B) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

## **PART II: GEOGRAPHICAL INDICATIONS**

### Section 48

For the purposes of this Part:

(A) “good” means any natural or agricultural product or any product of handicraft or industry;

(B) “producer” means:

(i) any producer of agricultural products or any other person exploiting natural products,

(ii) any manufacturer of products of handicraft, or industry, and

(iii) any trader dealing in the said products;

### Section 49

Protection under this Act shall be available

(A) against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

(B) against a geographical indication that is identical or similar to a trademark, for related goods or services, if the use of that geographical indication is likely to cause confusion, or to cause mistake, or to

deceive or risk associating the geographical indication with the owner of the trademark, or constitutes unfair exploitation of the reputation of the trademark.

#### Section 50

In the case of homonymous registered geographical indications for goods, protection shall be accorded to each indication, subject to paragraph (b) of Section 49. The Registrar, in cases of permitted concurrent use of such indications, shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

#### Section 51

The following shall not be protected as geographical indications:

- (A) indications which do not correspond to the definition in Section 1;
- (B) indications which are contrary to public order or morality;
- (C) geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country;
- (D) indications with respect to goods that are identical with the term customary in common language as the common name for such goods in Oman;
- (E) indications that may be confusingly similar to a mark currently registered or pending registration in good faith; and
- (F) indications that may be confusingly similar to a preexisting mark for which the rights have been acquired in accordance with national law.

#### Section 52

1. The application for registration of a geographical indication shall be filed with the Registrar. The following shall have the right to file an application:

(A) natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the goods specified in the application, as well as groups of such persons;

(B) any competent authority.

2. The Registrar may, ex officio or per request of any of the persons designated in Subsection 2(a), file for, obtain and enforce the registration of geographical indications with respect to goods where the producers of those goods are not formally organized or associated and therefore may not apply for, obtain and enforce the registration of geographical indications. In such an event, those geographical indications are governed by the other provisions of this Act except for the competence for seeking their registration and protection in Oman as well as in other countries. The Registrar shall be the custodian of those geographical indications until he or the Court is satisfied that the persons or entities entitled to own and enforce rights in geographical indications are organized under the applicable laws or regulations.

3. The rights conferred by the registration of geographical indications shall be without prejudice of the protection of geographical indications as trademarks, collective marks or certification marks as well as under the provisions relating to the repression of unfair competition, under this Act.

#### Section 53

1. The Registrar shall examine whether the application complies with the requirements of Sections 1, 51, 52 (2) and 53 and the Regulations pertaining thereto.

Where the Registrar finds that the conditions referred to in Subsection (1) hereof are fulfilled, he shall cause the application, as accepted, to be published in the prescribed manner.

Any interested person or competent authority may, within the prescribed period and in the prescribed manner, give notice to the Registrar of opposition, which shall be reasoned and in writing, to the registration of the geographical indication on the grounds that one or more of the requirements mentioned in Subsection (1) have not been met.

2. (A) The Registrar shall give notice of the opposition to the applicant, who, within the period of ninety 90 days from receiving that notice, shall send to the Registrar a counter-statement, in writing, of the grounds on which he relies for his application; if he does not do so, he shall be deemed to have abandoned the application.

(B) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the geographical indication should be registered.

3. Where the Registrar finds that the conditions referred to in subsection (1) are fulfilled.

The registration of the geographical indication has not been opposed within the prescribed time limit

The registration of the geographical indication has been opposed and the opposition has been decided in the applicant's favour,

He shall register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration. Otherwise, he shall refuse the application.

4. Both the decisions of refusal or of acceptance by the Registrar may be the subject of an appeal to the Court, in accordance with the provisions of Section 111.

#### Section 54

1. Producers carrying on their activity in the geographical area specified in the Register relating to a particular geographical indication shall have the right to prevent all third parties from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the geographical indication is registered.

2. The provisions of Section 40 apply mutatis mutandis to geographical indications.

## Section 55

1. Any interested person or any competent authority may request the Court to order:

(A) the invalidation of a registration of a geographical indication on the ground that it does not qualify for protection as such having regard to Sections 1, 51, 52(2) and 53;

(B) the rectification of a registration of an geographical indication on the ground that the geographical area specified in the registration does not correspond to the geographical indication, or that the indication of the products for which the geographical indication is used or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

2. In any proceedings under this Section, notice of the request for invalidation or rectification, shall be served on the person who filed the application for registration of the geographical indication or his successor in title and shall, by a publication in the Official Gazette, be given to all persons having the right to use the geographical indication under Section 54.

The persons and any other interested person may, within a period which shall be specified by the Court not less than 30 days in the said notice, apply to join in the proceedings.

## Section 56

The Court shall, ex officio or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in Oman is of such a nature as to mislead the public as to the true place of origin.

## Section 57

The registration of a trademark for goods which contains or consists of a registered geographical indication shall be refused or invalidated by the Registrar or the Court, ex officio or at the request of an interested party, with respect to such goods not having this origin.

## Section 58

1. Nothing in this Act shall prevent continued and similar use in Oman of a particular geographical indication of another country in connection with goods or services by any national or domiciliary of Oman who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of Oman for at least 10 years preceding April 15, 1994 or in good faith preceding that date.

2. Where a distinctive sign has been applied for or registered in good faith in Oman, or where rights to a distinctive sign have been acquired through use in good faith in Oman or through its having become well-known in Oman before November 9, 2000 or before the geographical indication is protected in its country of origin,

3. This Act shall not prejudice the registrability of or the validity of the registration of a distinctive sign, or the right to use a distinctive sign, on the basis that such a distinctive sign is identical with, or similar to, a geographical indication.

4. Nothing in this Act shall apply in respect of a geographical indication of any country with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in Oman or in respect of a geographical indication of any other country with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in Oman as of January 1, 1995.

5. Any request for relief made under Title IV of this Act in connection with the use or registration of a distinctive sign must be presented within five years after the adverse use of the protected indication has become generally known in Oman or after the date of registration of the trademark in Oman, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in Oman and provided that the geographical indication is not used or registered in bad faith.

6. This Act shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

#### Section 49

Subject to the provisions of Title IV, any interested person and any interested group of producers or consumers may institute proceedings in the Court to prevent, in respect of geographical indications,

(A) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(B) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention; or

(C) use of a registered geographical indication identifying any goods not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

### **TITLE III: PROTECTION AGAINST UNFAIR COMPETITION**

#### Section 60

1. The provisions of this Title 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) In addition to the acts and practices referred to in Articles 61 to 65, 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 Title, 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.

An act or practice that is contrary to honest practices, for the purposes of this Title, shall also mean acts of breach of legal duties in general when their purpose or their consequence is to obtain 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 Title IV.

#### Section 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

- (i) a trademark, whether registered or not or a trade name.
- (ii) any distinctive sign other than a trademark or a trade name
- (iii) the appearance of a product or the presentation of products or services as well as of the place of business

#### Section 62

1. 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's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

2. (A) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to

- (i) a trademark, whether registered or not;
- (ii) a trade name;
- (iii) any distinctive sign other than a trademark or a trade name;
- (iv) the appearance of a product;
- (v) the presentation of products or services as well as of the place of business;



- (vi) a celebrity or a well-known fictional character.

(B) For the purposes of these provisions, “dilution of goodwill or reputation” means the lessening of 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.

#### Section 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

- (i) the manufacturing process of a product;
- (ii) the suitability of a product or service for a particular purpose;
- (iii) the quality or quantity or other characteristics of products or services;
- (iv) the geographical origin of products or services;
- (v) the conditions on which products or services are offered or provided;
- (vi) the price of products or services or the manner in which it is calculated.

#### Section 64

1. Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another’s 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

- (i) the manufacturing process of a product;
- (ii) the suitability of a product or service for a particular purpose;
- (iii) the quality or quantity or other characteristics of products or services;
- (iv) the conditions on which products or services are offered or provided;
- (v) the price of products or services or the manner in which it is calculated.

## Section 65

1. Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others of undisclosed information without the consent of the person lawfully in control of that information (hereinafter referred to as “the rightful holder”) and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

For the purposes of this Section, “a manner contrary to honest commercial practices” 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.

2. For the purposes of this Section, information shall be considered “undisclosed information” if it has secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question or it has commercial value because it is secret and it has been subject to reasonable steps under the circumstances by the person lawfully in control of the information to keep it secret.

3. (A) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in

(i) an unfair commercial use by a governmental authority of undisclosed test or other data concerning safety and efficacy of the product which have been submitted to that authority as a condition of obtaining approval of the marketing of new pharmaceutical or agricultural chemical products, or

(ii) the disclosure of such data, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

(B) For the purposes of this Subsection, a pharmaceutical product shall be considered new if it contains a chemical entity that has not been previously approved in the territory of Oman for use in a pharmaceutical product; a new agricultural chemical shall be considered new if it contains a chemical entity that has not been previously approved in the territory of Oman for use in an agricultural chemical product.

4. (A) Subsection (4)(a)(i) shall be construed as precluding any governmental agency, without the consent of the person or entity who first obtained marketing approval of a pharmaceutical or agricultural chemical product in Oman (the originator) from relying on or referring to the undisclosed test data or other undisclosed data submitted by the originator, for the purposes of approving any other product, for at least five (5) years for pharmaceutical products, and ten (10) years for agricultural chemical products, from the date of marketing approval in Oman

(B) The provisions of paragraph (A) of this Subsection shall apply, mutatis mutandis, in the event Oman adopts the practice of granting marketing approval based on evidence of marketing approval granted in another territory.

(C) Where the competent authority of Oman requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information that is

essential to the approval of a pharmaceutical product, other than information related to bioequivalency, that competent authority shall not, without the consent of the originator, authorize another to market a same or a similar product based on the new clinical information submitted in support of the marketing approval or evidence of the marketing approval based on the new clinical information, for at least three years from the date of marketing approval in Oman.

(D) The provisions of paragraph (C) of this Subsection shall apply, *mutatis mutandis*, in the event Oman adopts the practice of granting marketing approval based on evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory.

(E) Where the originator's product is covered by a patent in force in the territory of Oman, the competent authority, notwithstanding the provisions of this Subsection, but without prejudice to the provisions of paragraph (e), shall not approve another product without the prior consent of the patent owner. If a request of marketing approval that requires or implies reliance on the originator's undisclosed data is submitted by another person during the term of a patent, the competent authority shall inform the patent owner of such a request.

## **TITLE IV: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **PART I: INFRINGEMENT PROCEEDINGS**

#### Section 66

1. Subject to Sections 11, 13 and 17, an infringement of a patent or a utility model shall consist of the performance of any act referred to in Section 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 compulsory licensee, or of a non-exclusive 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 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 in the general law or under Chapter 4 of this Title.

3. The 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 of August 30, 2003, 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 this Subsection *ex officio*. In this event, they shall notify the right holder of the suspension of release who shall have ten 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 Subsection (3), the same border measures that are available under Section 83 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 Subsection (3). Border measures under Section 89 may also be determined for the same purpose.

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 years from the date of filing of the patent application or three 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 other abusive practices, including anti-competitive 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 Section 15(3).

6. (A) With respect to a medical practitioner's performance of a medical activity that constitutes an infringement of a patent for a diagnostic, therapeutic and surgical methods for the treatment of humans or animals, the provisions of Title IV of this Act shall not apply against the medical practitioner or against a related health care entity with respect to such medical activity.

(B) For the purposes of this Subsection:

- (i) the term "medical activity" means the performance of a medical or surgical procedure on a body, but shall not include (i) the use of a patented machine, manufacture, or composition of matter in violation of such patent, (ii) the practice of a patented use of a composition of matter in violation of such patent, or (iii) the practice of a process in violation of a biotechnology patent;
- (ii) the term "medical practitioner" means any natural person who is licensed by a State to provide the medical activity described in paragraph (b)(1) or who is acting under the direction of such person in the performance of the medical activity;
- (iii) the term "related health care entity" shall mean an entity with which a medical practitioner has a professional affiliation under which the medical practitioner performs the medical activity, including but not limited to a nursing home, hospital, university, medical school, health maintenance organization, group medical practice, or a medical clinic;

## Section 67

1. Subject to Section 40(3), 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 Sections 40(1) and 46 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:

- (i) 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
- (ii) 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-days, the Court may grant an injunction to prevent infringement, or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Title.

The Court may also, on the request of any competent authority or any interested person, group association or syndicate, including producers, manufacturers or traders, grant the same relief where it is satisfied that an act of infringement referred to in Section 40 has been committed or is imminent.

## Section 68

1. An infringement of an industrial design registered under this Act shall consist of the performance of any act referred to in Section 25(2) by a person other than the owner of the industrial design and without his agreement.

2. On the request of the owner of the industrial design, or of an exclusive licensee, or of a non-exclusive 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 days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Title.

## Section 69

1. An infringement of a geographical indication protected under this Act shall consist of the performance of any act referred to in Section 55 or any use of a geographical indication by a person who has no right to use the geographical indication in accordance with this Act.

2. On the request of any interested person or of any interested group of producers or consumers, or any competent authority under Section 52, the Court may grant an injunction to prevent the unlawful use of the geographical indication, award damages and grant any other remedy provided for in the general law or under this Title.

#### Section 70

1. An infringement of a layout-design (topography) of an integrated circuit protected under this Act shall consist of the performance of any act referred to in Section 31(1) by a person other than the owner of the layout-design (topography) and without his agreement.

2. On the request of the owner of the layout-design (topography) of an integrated circuit, or of an exclusive licensee, or of a compulsory licensee, or of a non-exclusive 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 days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Title.

#### Section 71

1. The provisions of this Title shall apply to prevent or to remedy any act of unfair competition subject to the provisions of Sections 60 to 65.

2. Where an act under Section 65(4) and (5) is considered by the Court to constitute an act of unfair competition, the Court shall order:

(a) the government authority to cancel the marketing approval;

(b) the competitor of the undisclosed data holder not to market or to cease to market the products the registration of which has constituted an act of unfair competition because it was based on an authorized reliance of protected undisclosed test data or other data;

(c) the government authority to pay adequate damages for the unauthorized disclosure of the data;

(d) the competitor of the undisclosed data holder to pay adequate damages for the marketing of the products the registration of which has constituted an act of unfair competition.

#### Section 72

##### Time Limits

Civil proceedings under Sections 66 to 71 can be initiated within five years from the date on which the right holder knew or had reasons to know the infringing acts, except in case of infringing use of distinctive signs in bad faith or for unfair competition purposes, for which there will be no time limits to initiate the proceedings.

## **PART II: PROVISIONAL MEASURES**

### **Section 73**

1. The Court shall order, in accordance with the procedure prescribed in the Code of Civil Procedure or similar statute prompt and effective provisional measures to prevent an infringement or unlawful use referred to in Part I of this Title from occurring or to preserve relevant evidence in regard to an alleged infringement.

2. Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the Court shall order provisional measures without giving the other party an opportunity of being heard provided that the applicant has furnished:

- (i) any reasonably available evidence satisfying the Court that the applicant is the right holder and that the applicant's rights are being infringed or that such infringement is imminent, and
- (ii) any security or equivalent assurance required by the Court to protect the defendant and to prevent abuse; such security or equivalent assurance shall be reasonable in view of the circumstances and shall be set so as not to unreasonably deter recourse to such procedures.

3. (A) Where provisional measures have been ordered without having given the other party an opportunity of being heard, the Court shall give the parties affected notice of the decision, at the earliest after the execution of the measures.

(B) Requests for provisional measures without giving the other party an opportunity of being heard shall be acted upon expeditiously and shall, except in exceptional cases, generally be executed within ten days.

4. Where provisional measures have been ordered under Subsections (2) and (3), the defendant may file a request for review with the Court within two (2) weeks from the notification of the decision. In the review proceedings, the Court shall give the parties concerned an opportunity of being heard and shall confirm, modify or revoke the decision within a reasonable period after the notification of the decision.

5. Where the applicant does not initiate court proceedings leading to a decision on the merits of the case within 20 working days or 31 calendar days, whichever is the longer, from the notification of the decision ordering provisional measures or within any other reasonable period determined by the Court in the decision, the Court shall revoke the provisional measures upon the request of the defendant.

6. Where the provisional measures are revoked or where the Court decides on the merits of the case in proceedings under Subsection (5) initiated by the applicant that there has been no infringement or threat of an infringement, the Court shall order the applicant, upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

7. The measures of this Section aiming at preserving relevant evidence shall also be available before the granting of the pending registration, if the Court so deems necessary. In that event, the applicant shall

initiate Court proceedings leading to a decision on the merits of the case 20 working days or 31 calendar days, whichever is the longer, from the publication of the grant of the pending registration.

### **PART III: EVIDENCE; BURDEN OF PROOF**

#### Section 74

1. The Court may, where a party has presented reasonably available evidence sufficient to support the claims and has specified evidence relevant to substantiation of the claims which lies in the control of the opposing party, order that this evidence be produced by the opposing party, subject, in appropriate cases, to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the Court may make preliminary and final determinations, affirmative or negative, on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

3. (A) For the purposes of civil proceedings in respect of the infringement of rights of the patent owner, if the subject matter of a patent is a process for obtaining a product, the Court may order the defendant to prove that the process used to obtain an identical product is different from the patented process.

(B) Any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process in either of the following circumstances:

- (i) if the product obtained by the patented process is new, or
- (ii) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

4. 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.

5. In the event that the Court appoints technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Court shall seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.



## **PART IV: DAMAGES; OTHER REMEDIES**

### **Section 75**

1. (A) Where damages are awarded in accordance with Sections 66 to 71, the Court shall order the infringer to pay the right holder adequate compensation for the infringement of his intellectual property right.

(B) In the case of trademark infringement, the Court shall order the accounting of the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in paragraph (a). In civil judicial proceedings concerning trademark infringement, the Court shall establish or maintain pre-established damages, which shall be available on the election of the right holder. Pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.

(C) In determining damages for infringement of the rights established in this Act, the Court shall consider, inter alia, the value of the infringed-on good or service, measured by the suggested retail price or other legitimate measure of value submitted by the right holder.

(D) In civil judicial proceedings concerning patent infringement, the Court shall have the authority to increase damages to an amount that is up to three times the amount of the injury found or assessed

2. The Court may order the infringer to pay for damages relating to acts of infringement practiced:

- (i) on the date or subsequent to the date on which public notice, if any, of the application of the registration was given through the Official Gazette; or
- (ii) on the date or subsequent to the date on which the applicant of the registration gave notice to the alleged infringer of the contents of the application; or
- (iii) on the date or subsequent to the date on which the alleged infringer acquired knowledge of the contents of the application.

3. The request for the Court to order the payment of damages under Subsection (2) may be filed only after the title of industrial property right in question is granted.

### **Section 76**

1. Where goods have been found to be infringing, the Court shall order, without compensation of any sort, that these goods be destroyed, except in exceptional circumstances.

2. In respect of counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, to permit release of the goods into the channels of commerce.

3. The Court shall order that materials or implements the predominant use of which has been the creation of infringing goods be destroyed or, in exceptional circumstances, be disposed of outside the

channels of commerce without compensation of any sort in such a manner as to minimize the risks of further infringement.

#### Section 77

In civil judicial proceedings concerning the enforcement of the rights protected by this Act, the Court shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder. The Court shall order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services and of their channels of distribution.

#### Section 78

The Court shall order an applicant at whose request measures were taken and who has abused enforcement procedures to provide to a defendant wrongfully enjoined or restrained adequate compensation for the injury suffered by virtue of such abuse. Where this is considered adequate in view of the seriousness of the abuse, the Court shall also order the person having abused enforcement procedures to pay the other party expenses including appropriate attorney's fees.

### **PART V: BORDER MEASURES**

#### **CHAPTER I: BORDER MEASURES BY THE CUSTOMS DEPARTMENT**

#### Section 79

1. (A) Where the right holder requests that the Customs Service suspend the customs clearance procedures and release into free circulation of goods, the right holder shall provide sufficient prima facie evidence that the importation of counterfeit trademark goods is taking place or is imminent. The right holder shall also to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

(B) The application to suspend the release of goods shall remain in force for a period of one year from the date of application, or the period that the good is protected by the relevant trademark registration, whichever is shorter.

2. Where the release into free circulation was suspended on Customs own initiative, the Customs Department shall notify the right holder about the suspension of release into free circulation, and may require a security a security in accordance with Section 93 and to inform him that, if the required security has not been provided within three (3) working days from receipt of the notification, the goods will be released into free circulation.

3. Where the Customs Department is requested by the right holder to take action under subsection (1), Sections 92 to 94 shall apply mutatis mutandis.

#### Section 80

Where the Customs Department has suspended customs clearance in accordance with Section 83, it shall notify the importer and, where known, the right holder of the alleged infringement and of the suspension.

#### Section 81

Without prejudice to the protection of confidential information, the Customs Department shall allow the right holder and the importer to examine the goods the clearance of which has been suspended, and to remove samples for examination, testing and analysis, in order to substantiate their respective claims.

#### Section 82

1. Where the customs clearance of goods has been suspended by the Customs Department under Section 79, the Customs Department shall inform the right holder of the names and addresses of the importer, consignor and consignee and of the quantity of the said goods, and

2. Upon request, the Customs Department shall also, without prejudice to the protection of confidential information, provide the right holder with copies of documents lodged in respect of such goods or with any information or documents relating to any previous importation of identical or similar goods in which the same importer, consignor or consignee were involved.

### **CHAPTER II: BORDER MEASURES BY COURT ORDER**

#### Section 83

Border measures shall, where the conditions set out in this Chapter are met, be ordered by the Court to prevent the importation of goods which infringe intellectual property rights conferred in Oman under this Act.

Border measures shall also be granted to prevent the importation of goods the production and or the commercialization of which in Oman is an act of unfair competition, in accordance with this Act.

#### Section 84

The holder of an intellectual property right, who has valid grounds for suspecting that the importation of goods that infringe his rights may take place, may file an application with the Court requesting it to order the Customs Department to suspend customs clearance of those goods.

## Section 85

In accordance with Section 91, the decision by the Court to suspend the release into free circulation of goods alleged to be infringing goods may be rendered without giving the other party an opportunity of being heard. In its decision, the Court shall specify the period for which the Customs Department will have to take action.

The Court shall forward its decision granting the application by the right holder without delay to the Customs Department which shall be liable to take action in respect of the goods alleged to be infringing.

The application to suspend the release of goods shall remain in force for a period of one year from the date of application, or the period that the good is protected by the relevant trademark registration, whichever is shorter.

## Section 86

The Court may order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the detention of goods in bad faith or through the detention of goods released by virtue of failure to initiate proceedings leading to a decision on the merits of the case in accordance with Section 97.

## **CHAPTER III: PROCEEDINGS LEADING TO DECISIONS ON THE MERITS OF THE CASE**

## Section 87

If, within a period of ten (10) working days after the applicant has been notified of the suspension of the release into free circulation, no proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant and, where the Customs Department has taken the decision to suspend the release into free circulation of the goods, the Customs Department has not been notified accordingly, the goods shall be released, provided that all other conditions for importation have been complied with.

The Customs Department may, where it considers an extension of the said period to be appropriate under the circumstances, extend the period of suspension by a period not exceeding another 10 working days.

The Court may extend the period by any period it considers reasonable under the circumstances.

The owner, importer or consignee of the goods shall be entitled to their release on the posting of a security, in an amount sufficient to protect the right holder, where the period set out in Section 97 has expired without the granting of provisional relief by the Court and where all other conditions for importation have been complied with.

## Section 88

1. If proceedings leading to a decision on the merits of the case have been initiated, the Court or the Customs Department, whichever authority has taken the decision to suspend the release into free

circulation of the goods alleged to be infringing, shall review, upon the request of the defendant, the decision with the view to determining whether the measures shall be modified, revoked or confirmed.

2. Where the suspension of the release of goods is continued in accordance with a provisional measure ordered by the Court, the period of further suspension shall be determined by the Court. Where no such determination has been made, the said period shall not exceed twenty (20) working days or thirty one (31) calendar days, whichever is the longer.

#### Section 89

The following shall not be permitted:

- (i) re-exporting the infringing goods;
- (iii) placing the goods under a different customs procedure.

### **CHAPTER IV: GENERAL PROVISIONS AS REGARDS BORDER MEASURES**

#### Section 90

Small quantities of goods of a non-commercial nature contained in the traveler's personal luggage or sent in small consignments may be excluded from suspension from release into free circulation.

#### Section 91

The provisions on border measures in this Act shall apply not only to goods imported to or exported from Oman, but also to goods that are in transit in the territory of Oman. For the purposes of this Section, it shall be understood that "goods that are in transit" mean goods under "Customs transit" and goods "transshipped", as defined in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention).

#### Section 92

The aggrieved party may lodge an appeal against any decision or measure taken by the Customs Department on or in connection with the suspension of release into free circulation of goods alleged to be counterfeit or pirated. The appeal shall lie to the Court and shall be filed within sixty (60) days from the notification of the decision.

### **PART VI: CRIMINAL PROCEDURES**

#### Section 93

1. The Court shall have the authority to apply remedies that include sentences of imprisonment from a minimum of three (3) months up to a maximum of 2 (two) years as well as monetary fines from a minimum of 2,000 up to a maximum of 10,000 Riyals. In case of reincidence, the Court shall have the authority to double those remedies. In determining the remedies, the Court shall take into account that those remedies must be sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive;

2. fine or imprison, in appropriate cases, a party to a litigation who fails to abide by valid orders issued by such authorities; and

3. impose sanctions on parties to a litigation, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding

## **TITLE V: GENERAL PROVISIONS**

### Section 94

1. Any change in the ownership of a patent, or a utility model certificate, or the registration of an industrial design, or the registration of a layout-design, or the registration of a mark or collective mark or certification sign, or the registration of a geographical indication, or in the ownership of an application therefor, shall be in writing and shall, at the request of any interested party, to the Registrar, be recorded and, except in the case of an application, published by the Registrar. Except as regards trademarks, such change shall have no effect against third parties until such recording is effected.

2. Any change in the ownership of a trade name must be made with the transfer of the enterprise or part thereof identified by that name and shall be in writing.

3. A change in ownership of the registration of a mark or a collective mark shall, however, be invalid if it is likely to deceive or cause confusion, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

4. Any license contract concerning a patent, or a utility model, or a registered industrial design, or a registered layout-design, or a registered mark, or an application therefor, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto. Except as regards trademarks, the license contract shall have no effect against third parties until such recording is effected.

5. The Registrar shall refuse to record a contract for the transfer of ownership (assignment) or a license contract when it decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The Registrar shall hear the allegations of the parties to the contract, if one or both so request. The parties to the contract may submit evidence that is pertinent. Any of the parties or both may appeal from the Registrar's decision to the Court within [two] months from the date on which the Parties were notified of the Registrar's decision to refuse to record the contract.

6. (A) For the purposes of subsection (5), any limitations imposed on the assignee or the licensee that do not derive from the rights conferred by the registration of the licensed right, and that are not necessary for the safeguard of that right shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.

(B) Notwithstanding the provisions of paragraph (a) of this subsection, the license contracts may provide for the following limitations:

- (i) delimitation of the scope, geographical area and period of use;
- (ii) conditions required for the efficient control of the quality of goods and services, subject to the provisions of Section 44;
- (iii) obligation for the licensee to refrain from all acts that may cause damage to the reputation of the right owner or to the subject matter of the right.

7. Where the right that is the subject of an assignment or a license contract is invalidated after the contract becomes effective, the contract will cease immediately to produce effects. The parties may recover totally or partially any payments or other benefits paid under the contract, unless the party in favor of whom those payments or other benefits were paid has benefited in good faith from the contract and the invalidation does not impair or annul those benefits.

8. The Public Prosecution Office may initiate legal action ex officio with respect to the offenses described in this Title, without the need for a formal complaint by a private party or right holder.

#### Section 95

1. Where an applicant's ordinary residence or principal place of business is outside Oman, he shall be represented by a legal practitioner resident and practicing in Oman. That agent shall receive powers to receive communications and service as regards any process or proceeding, either judicial or other, in Oman, under this Act, relating to the application or title in question.

2. (A) An assignee of an application, an applicant, owner or other interested person may act himself before the Registrar for the following procedures:

- (i) the filing of an application for the purposes of the filing date;
- (ii) the mere payment of a fee;
- (iii) any other procedure as prescribed in the Regulations;
- (iv) the issue of a receipt or notification by the Registrar in respect of any procedure referred to in provisos (i) to (iii).

3. A maintenance fee may be paid by any person.

#### Section 96

1. The Industrial Property Registry shall maintain separate Registers for patents, utility models, industrial designs, layout designs, marks, collective marks, certification marks and geographical indications. Collective marks and certification signs shall be registered in a special section of the Register of Marks. All the recordings provided for in this Act shall be effected in the said Registers.

The Registers may be consulted by any person, and any person may obtain extracts therefrom, under the conditions prescribed in the Regulations.

2. Right holders may signal ownership of the subject of protection under this Act by means of particular signs.

#### Section 97

1. The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Industrial Property Registry or in any recording effected pursuant to this Act or the Regulations. Substantive errors, however, may only be modified by the Court, under due process. Substantive errors are those that, if modified, will affect the rights conferred.

2. Unless otherwise provided in this Act, if the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act and the Regulations, upon notice to the parties concerned and upon such terms as he may direct. The extension may be granted though the time for doing the act or taking the proceeding has expired.

#### Section 98

Any decision taken by the Registrar under this Act, in particular the grant of a patent or a utility model certificate or the registration of an industrial design or of a layout-design or of a mark or collective mark or certification sign or of a geographical indication, or the refusal of an application for such a grant or registration, may be the subject of an appeal by any interested party before the Court and such appeal shall be filed within sixty (60) days of the date of the decision.

Any decision taken by the Minister under this Act, in particular the grant of a compulsory license, and his decision relating to the remuneration provided in respect of a compulsory license, under Sections 13, 27 and 36, as well as the transfer of title, under Section 14, may be the subject of an appeal by any interested party before the Court and such appeal shall be filed within sixty (60) days of the date of the decision. These provisions also apply to all final decisions made by the competent authority under Section 65(4), (5) and (6).

#### SECTION 99

(A) Final judicial decisions and administrative rulings of general application pertaining to the enforcement of industrial property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based.

(B) Such decisions or rulings shall be published.

#### Section 100

1. Unless otherwise provided, the provisions of this Act shall be effective as from the date established in accordance with the Royal Decree promulgating this Act and apply to all applications that are pending on the date of their entry into force. However, any acts definitively performed by the Registrar relating to pending applications, such as the final examination of applications, and which have already produced effects, shall be maintained.

2. The provisions of subsection (1) shall apply mutatis mutandis to enforcement. All decisions by the Court, whether final or interlocutory, that have produced effects, shall be maintained.



3. Where this Act in any way expands rights or creates new rights, including extension of terms of protection, existing registrations shall benefit from such expansion or creation. But where this Act reduces or eliminates rights, existing registrations shall not be affected and shall continue existing as if this Act had not been enacted, except for the provisions on enforcement, which shall apply in accordance with subsection (2).

4. Where this Act provides for new systems of classification, existing registrations shall be reclassified only at the time of their renewal, if any. The procedures and the fees for the reclassification of existing registrations shall be established in the Regulations.