

# Commercial Activity Law No. 23 of 2010

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## Book Ten: Trademarks and Commercial Data

### Chapter One: Trademarks

#### Section One: General Provisions

- **Article (1228): Definition**

- A Trademark is any sign capable of distinguishing the product or services of one undertaking from those of other undertakings, including, distinctive names, signatures, words, letters, numerals, drawings, symbols, signboards of shops, fiscal and official stamps, pictures, protruded engravings, and combination of colors in a specific and distinctive form.
- A Trademark may be any combination of any of the mentioned elements; a trademark could also be a sound.

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- **Article (1229): Instance Causing the Property Rights**

- According to the provisions of this section, the sole proprietor of a trademark is the person who registers that trademark. He shall be the sole owner and entitled to the exclusive use of that trademark with regards to the products, goods or services for which it was registered, and always has the right to take all procedures including measures to ensure the protection of the trademark.
- The ownership of a trademark is not be a subject of dispute where it has been used by the person who had registered it for a continuous period of at least five years from the date of registration in the course of which no claim against it has been adjudged to be valid.

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- **Article (1230): Trademark Office**

- An office shall be established in the specialist sector to be called The Trademark Office which is competent in accepting applications, records keeping and granting certificates which evidences the registration, according to the provisions of this section.

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- **Article (1231): The Right to Register a Trademark**

- Any natural or juristic person and companies under formation have the right to file an application at the Trademark Office to register a trademark according to the provisions of this section. This right shall also be given to international bodies who have a real activity

center in one of the World Intellectual Property Organization member countries or who apply reciprocity to Libya.

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#### Article (1232): Registration Impediments

- The following shall not be entitled to registration as trademarks or elements thereof:
  - 1. Marks having no distinctive signs of authenticity or consisting of phrases, words or titles which are by custom assigned to the products or to any ordinary drawing or pictures thereof.
  - 2. Marks which are already registered or a similar registered trade mark, as well as logos and trade names owned by others or proved to be fake or forged.
  - 3. Marks which are inconsistent to public order or morality.
  - 4. Public emblems, flags and other emblems pertaining to a country or any other country, regional or international organizations, as well as any imitations thereof.
  - 5. Marks which are identical with or similar to symbols of purely religious character.
  - 6. Symbols of the Red Crescent or the Red Cross or other similar symbols and marks which are mere imitations thereof.
  - 7. Pictures or mottos of any other person unless the use thereof is approved by him.
  - 8. Descriptions of honorary titles to which the applicant cannot prove his legal title.
  - 9. Marks and geographical indications which may mislead the public or which contain any mis-statements about the origin or description of the goods and services.
  - 10. Official signs and stamps used by any country who applies reciprocity to Libya for the control or security of goods where the trademark containing such signs or stamps is intended for use on goods of the same or a similar kind.

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#### Article (1233): Historical Monuments

- Engineering drawings of buildings and other historical monuments, as well as various works of art may not be taken as a trademark, except with the permission of the right holder.
- However, if the engineering drawing as a famous historic monument indicating the source of a good or service, may be taken as a trademark by any person, provided that an amendment should be applied to distinguish it from other marks that carry the same historic monument.

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#### Article (1234): Famous Mark

- A mark is considered famous if it reminds the public of a product or service it represents, even if they are not its clients.

- However, this does not make the mark famous if it is well known only by its customers.

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#### Article (1235): Protection of a Famous Mark

- A famous mark is protectorate its owner in Libya even without legal filing and he may object the filing, or asks to invalidate the registration of a semi or similar mark during the five years from the date of filing of the mark if it was in good faith.
- He may claim compensation for the damages caused to him as a result of unfair competition, the mark should be filed with the provisions of the law in Libya in order to proceed with a criminal case if the famous mark is counterfeited or imitated in bad faith.

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#### Article (1236): Registration Refusal

- The Trade Mark Office shall reject the registration of a mark identical to a famous mark.
- The same provision shall apply to applications intended for goods or services which are not identical to those of the famous mark, where the use of the mark in relation to those non-identical products is meant to lead people to believe that a connection exists between the owner of the famous mark and those goods and services.

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#### Article (1237): Collective Mark

- Any moral person or a collective entity have the right to file a collective trademark to distinguish a product or service to a group of people even where such entity has no commercial enterprise of its own, and each member of this entity has the right to use the collective mark.
- A collective mark shall not be registered unless after that entity determining the organized conditions for this common use, and in particular to ensure the quality of products, and the rights and obligations of members and in sanctions resulting in case the use of the collective trademark in a way that does not observe the agreed terms.
- This mark is not transferable.

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#### Article (1238): Quality Mark

- An entity authorized by the competent authorities and involved in the control or examination of products has to register a mark which shall competent to give indications on the monitoring procedure in respect of their origin, components, method of manufacture, quality, authenticity or any other distinctive characteristic.

- The owner of a mark may authorize others to use his mark in accordance with the conditions specified by him, and also has the right to withdraw it which makes the use of the mark after withdrawal is illegal, and the penalties provided in this section shall apply to the violator.

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#### Article (1239): Associated Marks

- If marks owned by one person and the marks are the same or similar and dedicated for goods or products of the same or a similar kind, then marks considered as associated. Associate includes the mark and its distinctive character elements, which requires registration separately.

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## Chapter Two: Registration, Publication and Cancellation Procedures

#### Article (1240): Application for Registration

- Applications for the registration of a mark shall be submitted to the trademarks office in the manner and conditions by Law.

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#### Article (1241): Registration Range

- A mark shall be registered in respect of one or more of the categories of specified goods or services in accordance with this section.

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#### Article (1242): Registration Scope

- The legal protection of a mark includes the products and services mentioned in the application, as well as the similar products and services.
- The products and services are considered similar if converged at its function, or use, or the impression among the public as from the same source.

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#### Article (1243): Priority Filing

- Where an application for registration of a mark is filed in a country or an entity member in the World Intellectual Property Organization, or a country which extends reciprocity to Libya, the applicant, or his rightful successor, may, within six months from the date of filing the application, file at the Trademark Office in Libya a similar

application for the same mark, covering the same products and services included in the previous application, in accordance with the terms and conditions prescribed by this section and the regulations stipulated in article (1270).

- In such a case, the priority date shall be that of the first application in the foreign country.

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#### Article (1244): Filing Multiple Applications

- Where two persons or more apply for the registration of the same or nearly identical marks for the same of products or services, such application shall be suspended until one of them submits a duly authenticated deed of relinquishment from the other disputants or a res judicata judgement in his favour.

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#### Article (1245): Additional Requirements

- The Trademarks Registration Office shall limitation and amendments in order to define a mark and render them clearly for the purpose of avoiding misconception them for other previously registered marks.
- In the event of rejection or qualified acceptance the office shall notify the applicant by registered mail within thirty days as from the date of issue the grounds for its decision and the facts relating thereto.
- The applicant shall be deemed to have relinquished his claim where he fails, within a period of six months to fulfil the conditions required by the office.

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#### Article (1246): Complaint Against Decision

- The applicant may file a complaint against a decision of the trademark office within thirty days as from the date of receipt thereof. This period shall be deemed to run notwithstanding that the applicant had even declined receipt of such notice.
- The aforesaid complaint shall be submitted to a committee to be formed by the Competent Minister, and may file appeal against its decision before administrative Judicial at the Appellate Courts.
- The regulations stipulated in article (1270) shall prescribe the rules of establishing such a committee, as well as the procedures for the submission and consideration of such appeals and the decision thereon.

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#### Article (1247): Mark Publication

- In the event of acceptance of the trademark, the Trademark Office shall bring it to public notice in accordance with the provisions of this section.
- Any person concerned may submit to the office a written notification of his objection to the registration of the trademark together with the grounds thereof within the term prescribed under the implementing regulations stipulated in article (1270).
- The office shall serve on the applicant for registration a copy of the notification of objection within the term prescribed under the implementing regulations stipulated in article (1270).
- The applicant for registration shall submit to the office his written response on the objection within the term prescribed under the executive regulations stipulated in article (1270), otherwise shall be deemed to have relinquished his application for registration.
- The office shall, after hearing both parties, motivate its decision on the opposition. In its decision of acceptance, it may require the applicant to fulfill any requirements it may deem necessary to register the mark. The applicant and may file appeal against its decision before administrative Judicial at the Appellate Courts.

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#### Article (1248): Mark Registration

- The registration of a mark is approved by a decision from the office and the registration will take effect from the date of filing the application.
- The registration shall be published, in the manner prescribed under the implementing regulations stipulated in article (1270).

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#### Article (1249): Mark Registration Certificate

- The office shall grant its proprietor a certificate containing the following data:
  - 1. Serial number of the mark.
  - 2. Date of application and date of registration.
  - 3. Commercial name or the name, surname, domicile and nationality of the mark's proprietor.
  - 4. A true copy of the mark.
  - 5. Description of the products or services to which the trademark shall apply.

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#### Article (1250): Mark Amendments

- Any proprietor of a registered trademark may submit an application requesting any modifications that do not essentially affect the substance of the mark.
- He may also request a modification by deletion without any concomitant addition to the statement of products covered by the mark. The decision to accept or reject the request for modification shall be subject to the same conditions prescribed for the

acceptance of the original application for registration. The prescribed provisions for opposition, appeal and publication shall apply to such decisions.

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#### Article (1251): Consult the Marks

- Any person may apply to consult the registered marks or obtain extracts or copies of entries in the register, according to the rules, procedures and fees prescribed under the implementing regulations stipulated in article (1270).

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### Chapter Three: The Disposition of the Mark

#### Article (1252): Independent Mark Disposition

- The transfer of the mark's ownership, its mortgage or attachment can be made independently from the commercial enterprise or exploitation project.
- In the case of transmission of the mark alone, the assignor and the assignee must take the necessary actions to protect others in the manner prescribed under the implementing regulations.

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#### Article (1253): The Disposition Range

- Transfer of ownership of a commercial enterprise or exploitation project shall entail transfer of all marks registered in the name of the assignor or which may be deemed closely connected to the concern or enterprise unless otherwise is agreed.
- Should the commercial enterprise or exploitation project be transferred without the mark, the assignor may continue to produce and trade in the same products in relation of which such trademark was registered unless otherwise is agreed.

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#### Article (1254): Partial Transfer

- In cases where the mark is transferred to a third party may not be partially transfer or related to certain products or services covered by the transferred mark without the others and so for the same category or similar category.
- The transfer shall not be limitation geographically, but also the transfer of mark includes the every territory of the country.

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#### Article (1255): In Return of Transferring a Mark

- Transferring or replacing a mark may be done in return of a specific amount of money or certain percentage of the deal size amount, and both parties are free to determine the payment; whether by installments or in one lot.
- The trademark transfer and utilization contract should govern its added value once the contract between the two parties is finished.

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#### Article (1256): Evidence of Use

- Transfer of the ownership of a trademark or the right to benefit from its usage or mortgage thereof shall not be used as evidence against third parties until after it has been duly entered in the register and published according to the methods prescribed by the executive regulations.

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#### Article (1257): Protection Period

- The protection period of a registered trademark shall be ten years, renewable for an identical period or periods upon request of its owner and every time within the last year of the protection period.
- The owner of the mark may request a renewal within six months commencing from the date of expiry of protection thereof, the trademark office shall ex officio cancel the trademark.
- A trademark shall be re-registered in favour in of its owner exclusively within three years from the date of the cancellation according to the prescribed conditions and same procedure of registration.

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#### Article (1258): Cancellation of a Mark

- The court of first instance may, upon the application of any person concerned, order the cancellation of registration where it is satisfied that the trademark in question has not been seriously used for five consecutive years unless the proprietor of the marks shows a reasonable cause for non-use.
- Where cancellation of registration of a trademark has been duly entered, such trademark shall not be registered unless after a period of three years from the date of cancellation.

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#### Article (1259): Re-registration

- Where the cancellation is in response to an enforceable court order invalidating the registration of a mark, such a mark may be registered to the right holder soon after the cancellation.

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#### Article (1260): Registration in Bad Faith

- If a mark is registered in bad faith, such as the utilization of relations of concerned parties or pre-empt the outcome of the negotiations between them, the concerned person should claim a cancellation of the registration.

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#### Article (1261): Cancellation and Renewal Publication

- The cancellation of the registration or its renewal should be published in the manner which the implementing regulations shall stipulate for this law.

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#### Article (1262): Registration Corrections

- The court of first instance may, upon the application of any person concerned, order the addition of any entry which would have been omitted, or to delete or modify any entry incorrectly inscribed therein or contrary to the truth.
- The Trademark Office should obtain an order from the Judge of Provisional Matters to make corrections contained in the previous paragraph.

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### Chapter Four: Penalties

#### Article (1263): Counterfeiting Mark

- Any person shall be liable to a term of imprisonment not exceeding two years and of a fine not less than 1000 LYD and not more than 10000 LYD or to one of these penalties if he commits any of the following offences namely:
  1. Counterfeits a trademark which has been registered according to the law.
  2. Uses on his products any trademark owned by another person.
  2. Knowingly sells or offers for sale or circulation or holds for sale or introduces into the country for commercial purposes a counterfeited or forged trademark or any products carrying a counterfeited.

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#### Article (1264): Imitating Mark

- Any person shall be liable by the same penalty contained in the previous article that imitates or uses registered trademark in a bad faith.

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#### Article (1265): Precautionary Measures

- At any time, even if that was before filing civil or criminal action, the owner of the trademark or anyone who has the right of to dispose and use is allowed according to a petition supported by an official certificate proving the registration of the trademark, take out an order from the President of the Court of First Instance to take the necessary precautionary measures, and they in particular are:

- 1. An inventory list and a detailed description shall be made of the machinery and equipment used or which had been used in committing the crime together with the products, goods or addresses of shops or envelopes or papers or otherwise which bear the mark in question as well as the goods imported from abroad on their arrival.
- 1. Seizing of the objects mentioned in the preceding clause may not be imposed unless the applicant submits a deposit estimated by the judge as an initial remedy to the seized object, when necessary. After the imposition of the seizure, the sufficiency of the deposit provided by the applicant may be made pursuant to the provisions of the civil and commercial code of procedures.

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#### Article (1266): Expert Delegation

- The order passed by the judge may include the delegation of one expert or more to help the bailiff in his work. The precautionary measures taken by the proprietor of the trademark shall be considered void unless initiated within the ten days following the date of bringing the aforesaid civil or penal action. The time limit should be observed.

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#### Article (1267): Compensation of the Confined

- The defendant shall serve his action to the applicant and the court's clerks with whom the deposit is kept and a claim for compensation within ninety days from the date of expiry of the scheduled term stipulated in article (1266) if the applicant fails to institute his action or from the date of the issue of the conclusive judgement.
- In both cases, the deposit may not be paid to the applicant save after the issue of the final judgement or after the scheduled date for the institution of the action has elapsed.

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#### Article (1268): Order of Confiscation and Destruction

- The court shall be entitled, in any civil or penal action, to pass judgement providing for the confiscation of any goods attached or shall be attached in order that the proceeds of sale thereof shall be discounted from the damages or fines awarded or disposed of in any way which the court may deem appropriate. The court may also order the publication of the adjudication in one or more newspapers at the expense of the party against whom judgement has been recovered.
- It may also order the destruction of illegal trademarks or where necessary, order the destruction of any products, envelopes, packing equipment and addresses of shops and any other things which carry the aforesaid marks as well as any machines and instruments which are mainly used in forgery. The court may order all the foregoing even in the case of acquittal.

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## Chapter Five: Final Provisions

### Article (1269): The capacity of Investigation Officers

- The officers appointed by the Prime Minister shall have the capacity of investigation officers to detect the crimes contained in this law and the relevant regulations.

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### Article (1270): Implementing Regulations of Trademarks

- The competent authority shall issue implementing regulations for the application of this Law which shall particularly provide for the following:
  - 1. Organization of the office of registration of trademarks and the keeping of the relevant register.
  - 2. Methods and conditions relating to administrative measures.
  - 3. Division of all products or services for the purpose of registration into categories according to kind and quality.
  - 4. Methods and conditions relating to publication set forth in this section.
  - 5. Fees payable for the delivery of copies and certificates and any other stipulated fees.
  - 6. Statement of the various procedures set forth in this section.

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### Article (1271): Temporary Protection

- Temporary protection is granted to marks used on products displayed at national or international exhibitions. Such protection shall not benefit from the extension period provided for in Article (1257) of this section.
- The implementing regulations stipulated in article (1270) shall prescribe the terms, conditions and procedure for the grant of such a protection.

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## Chapter Two: Commercial Data

### Section One: Commercial Data Provisions

#### Article (1272): Commercial Data

- For the implementation of the provisions of this section, every explanation directly or indirectly related to the following is considered commercial data:
  - 1. Number, amount, size, quantity, capacity, weight, production date or of expirydate of the products.
  - 2. The territory or country where the products was manufactured or produced.
  - 3. The method of their manufacturing or production.
  - 4. Components used.
  - 5. Manufacturer or producer data.
  - 6. The presence of patent rights, other intellectual property rights or any other concessions, prizes or or commercial or industrial distinctions.
  - 7. Name or form or identity number which usually distinction some products.

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#### Article (1273): Data Compatibility

- The commercial data should be true in all aspects whether it is laid down on the said products themselves, on the shops, on the stores, on the addresses, on packaging, in invoices, on letters, in means of advertisements, or any other means used in displaying of the goods to the public.
  - In all cases, the following data should be stated:
    - 1. Product name or commodity supplier.
    - 2. Contact details.
    - 3. Country of origin.

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#### Article (1274): Prevention of Misleading the Public

- The seller may not use his name or address on products coming from countries other than those where the products are manufactured or produced, unless it is accompanied with a precise statement written in clear letters indicating the country or place where the products are manufactured or produced.
- Persons who reside in places of special reputation in producing or manufacturing some products and they trade in similar products of different origin are not allowed to put their marks on such products if this is liable to mislead or confuse the public as to the source of such products even though such marks do not contain the names or addresses of those persons unless measures to avoid confusion were taken.

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#### Article (1275): Cases Where One Manufacturer Having More Than One Factory

- The manufacturer may not use the name of a party where he has a major factory in relation to products manufactured for him by a third party unless such name is accompanied by the data of the latter third party in a manner to prevent any confusion.

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#### Article (1276): Using Geographical Names

- Some products may be given geographical names that have come to basically indicate, according to the commercial tradition, the genre of the product other than its geographical origin.

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#### Article (1277): Using Distinctions

- No mention may be made of medals, diplomas, awards or honorary distinctions, whether gained from exhibitions or matches or granted from heads of country or government or public interests or scientific communities or scientific societies, except in relation to the products acquired these distinctions.
- For trade names, persons, or the successors in title thereof, upon whom such distinctions were conferred should include in a clear manner history or date or kind or exhibitions or matches which they were granted.
- A person who participates with others in exhibiting products may not use for his own products the distinctions granted jointly to the exhibited products, unless he indicates in a clear manner the source and nature of such distinctions.

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#### Article (1278): Factors Contributing to the Evaluation Products

- If the amount, size, measure, capacity, weight, source, elements of composition, manufacturing date or expiry date of the products or characteristics of manufacturer or products are among the factors contributing to the evaluation thereof, the sale, offer for sale or importation of such products may be prohibited, upon a decision of the competent Minister, unless such products bear such data. This decision should determine the manner of affixing such data on the products in the Arabic language, and the alternative procedures, when necessary.

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#### Article (1279): Products Related to Health and Environment

- If the goods or products are relevant to human or animal health or the environment, the data must include the elements that go in the component parts as follows:
    - 1. Indicate these elements and their existing proportions.
    - 2. Statement whether the item (modified) and genetically modified or contains some of that.
    - 3. Statement that whether the item contains hazardous materials and how serious they are.
    - 4. Statement whether the Item is processed by radiation.
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#### Article (1280): Penalties

- Any person shall be liable to a term of imprisonment not exceeding one year and of a fine not less than 1000 LYD and not more than 5000 LYD or to one of these penalties if he commits any the provisions of Articles (1273 – 1274 – 1275 – 1277 – 1279), and in case of recurrence, the penalty shall be imprisonment and publish or paste the judgement and the closure of the factory or commercial shop for not less than fifteen days and not exceeding six months and in all cases the infringing goods should be confiscated.
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#### Article (1281): The Investigation Officers

- The officers appointed by the Prime Minister shall have the capacity of investigation officers to detect the crimes contained in this sections.
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#### Article (1358): Cancellation of Laws

- The following Law shall be null and void: Trademarks Law No. 40 of 1956 and its amendments.
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#### Article (1359): Law Enforcement

- This Law shall enter into force on the date of its publication in the Official Gazette. Any interested party shall commit to regularize their status in compliance with its provisions within six months from the date of its publication.