
Protect Your Intellectual Property Rights in Myanmar/Burma – Key Steps to Take Now

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With the relaxation of sanctions regimes around the world in 2012, Myanmar (also known as Burma) offers opportunities for both small businesses and the largest and most recognized companies around the world. Large or small, companies are finding that Myanmar's intellectual property (IP) laws generally do not recognize their trademarks and other property. It is necessary to take steps locally to establish and protect IP rights. Implementation of a strategy for protective measures should be at the top of the list of actions for companies considering entry into this opening market.

Myanmar/Burma generally does not recognize trademarks or copyrights from other countries. While infringement of IP rights is common, visitors to Yangon or Nay Pyi Taw in 2012 will note the general absence of familiar brands, franchises, cars and product lines. It is like stepping back in time. However, with the re-entry of Myanmar into the international community, and the concomitant investment by foreign companies entering the market, the legitimate as well as illegitimate uses of IP for business are expected to expand. There are certain key steps which companies should take now to plan for future business in this opening market.

Trademarks

First, companies should take steps in-country to protect their trademarks. Myanmar's trademark regime is the most accessible and reliable of the available IP protections. In order to seek protection, companies are advised to register trademarks under Section 18(f) of the Registration Act of 1908 pursuant to Direction 13. Registration is followed by publication of a cautionary notice in a Myanmar newspaper advising the public of the registration. Enforcement can thereafter be pursued (a) against passing-off under Sections 478-480 of the Myanmar Penal Code; and (b) against infringement under Section 54 of Myanmar's Specific Relief Act and under the Myanmar Merchandise Marks Act. This registration should be repeated every three years under local practice.

Companies which have taken recent steps to protect their trademarks in Myanmar include – HBO, Johnson & Johnson, Marriott, GlaxoSmithKline, Pizza Hut, KFC and Victoria Bitter. Companies with valued

trademarks should consider taking trademark protection steps as soon as possible to establish their position and prevent competing claims to or misuse of their IP.

Copyright

Copyright for written work, film, music or software may be difficult for foreign companies to enforce in Myanmar under the current Myanmar Copyright Act of 1914. Copyrights from other countries are not recognized and there are no procedures for registering foreign copyrights in Myanmar. The Myanmar Copyright Act of 1914 provides for copyright for original literary, dramatic and artistic work if: (a) in the case of a published work, the work was first published within Myanmar; and (b) in the case of an unpublished work, the author was a citizen of Myanmar or “within” Myanmar when the work was created.

However, there may be strategies to protect IP in lieu of traditional copyright rules and companies should determine whether some combination of trademark rules and existing laws such as the Television and Video Law of 1996 may be used to protect certain rights. For example, taking key characters out of video product, and protecting said characters via trademark, may afford protection of some IP content. This may especially be effective if one is working within an animated world.

Patent

There is presently no functioning system of patent protection in Myanmar. Companies should be aware of this limitation and discuss with counsel what strategies may be available.

Looking Ahead

There is reason to hope that IP protections may be addressed by new legislation as the economy opens, although there are no specific plans at present. The country is a member of the World Intellectual Property Organization (WIPO), although it only has signed the basic WIPO treaty thus far. Myanmar is also a member of the World Trade Organization and a signatory to the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights). In 2004, the Myanmar government began to draft a law addressing patent, copyright and trademark issues which appeared designed to bring the country into compliance with the TRIPS Agreement. This draft law was never adopted or implemented. The U.S. State Department has mentioned improved IP protection as a goal for Myanmar in its economic reforms and, as investment enters the country, it is possible that IP protection will be pursued by the reformist government.

With 55 million people and a strategic location between India, China and Thailand, Myanmar presents a rare untouched market for global brands, franchises, manufacturers and media companies. Advance planning and strategic IP protection will be important given the lack of recognition of foreign IP rights. There are paths to IP protection, however, and companies are encouraged to explore how the options available may fit with their business plans.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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