

Review Article

Protection of Famous Trademarks in the Legal System of Afghanistan

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Abstract

In light of the country's changing local and international commercial environments, this article examines Afghanistan's legislative system for safeguarding well-known trademarks. Widely recognized trademarks have enormous economic and reputational value, thus protecting them is crucial to avoiding abuse and preserving the integrity of the market. The report outlines the function of Afghanistan's Trademark Registration Office and provides clarification on important terms and classifications, including service marks, collective marks, and trademarks with national or international renown. From application submission and document verification through public review and ultimate certification, this body manages the complete registration process. The study looks at the laws, administrative rules, and procedural regulations controlling trademark selection, registration, and renewal using a qualitative legal analysis technique. Although Afghanistan's system does a good job of defining precise requirements for registration and enforcement, there are still many obstacles to overcome. Procedural delays, uneven enforcement tactics, and bureaucratic inefficiencies underscore the necessity of reforms to bring domestic procedures into compliance with international norms such as the TRIPS Agreement. The report emphasizes that strong trademark protection is essential for promoting fair competition, increasing market trust, and drawing in investment. It goes beyond simply defending intellectual property rights. The paper suggests revising laws to clear up ambiguities, improving enforcement uniformity, and simplifying administrative procedures in order to close current gaps. In order to enhance Afghanistan's integration into the international economy and fortify its trademark regime, several actions are essential.

Keywords

Trademark Protection, Legal Framework, Famous Trademarks, Intellectual Property, Service Marks, Registration Process, Regulatory Reforms

1. Introduction

Afghanistan has a legal system which is plural in nature owing to the coexistence of statutory laws, customary laws and Islamic law. This complex system like the one found in this paper is a clear mirror image of the cultural complexity of the country and poses a great challenge as regards to the reliability of the system in protecting intellectual property rights.

The copyright law is also not immune to these structural inequalities and more specifically, trademark protection is one of the most affected branches of the intellectual property law. The Trademark Registration Law was adopted in 2009 and only slightly modified in 2001, 2003 and 2012 while the current legislation remains incomplete and not fully consistent

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with the Paris Convention. Many trademarks are very valuable assets for the companies they belong to, both in terms of sales and brand identity and, therefore, need strong protection against dilution, unauthorized use and consumer misunderstanding [1].

Post-2001 periods have also seen the internationalization of Afghanistan and its economy into international frameworks, like obligations to uphold the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). But the absence of consistent legal framework and bureaucratic inefficiencies have held back improvements. For instance, though the 2009 law provides the trademark registration and protections regime, well-known marks have uncertainties in their determination and establishment of rights. The trademarks, which are usually famous worldwide, have a chance of being abused since the standards for the assessment of their "fame" are vague and there are poor mechanisms to respond to violations [2].

Protection of trademark is important for increasing economic stability and foreign investments. With the age of globalization, corporations apply trademarks to distinct their goods and services, to establish consumer confidence, and compete favorably. For a country trying to restore its economy from three decades of war, trademark protection, specifically internationally accepted marks, is essential to bring stability for investors. Weak protections discourage foreigners and invite counterfeits, which under-mine national industries and public health (e. g., fake drugs) [6].

In addition, its location at the cross-roads of South and Central Asia heightens susceptibilities to cross-border counterfeiting. Lack of enforcement of customs and porous borders are the conduit for entry of fakes, which dilute the strength of genuine trademarks. The problems can be addressed by a legal system with the ability to reconcile customary practices at home with international commitments whose implementation is made challenging by the absence of specialized IP courts, or trained human capital [3].

This study tries to critically analyze the Afghan legal system to safeguard renowned trademarks and identify systemic loopholes and propose realistic reforms. Specifically, it tries to:

- 1) Consider legislative provisions for well-known trademarks, i.e., registration process, quality of certification, anti-dilution.
- 2) Consider enforcement problems, i.e., institutional capacity deficits, judicial inconsistency, compliance with international treaties.
- 3) Recommend changes to harmonize local law with international standards (e.g., TRIPS, WIPO guidelines) and strengthen institutional structures [4].

Situation analysis reveals that the current structure of Afghanistan gives protection to well-known marks to some level but suffers from legislative obscurity and enforcement deficiency. The key problems are:

1. Unclear criteria for determining "well-known" status,

leading to differing judicial interpretation.

2. Diversified enforcement due to absence of specialized IP tribunals and poor training of legal professionals.
3. partial observance of international norms, particularly in the area of settlement of disputes and cross-border infringement [13].

The study concludes legislative reforms, institution building, and public campaigns are essential for making the trademark regime of Afghanistan at par with international standards. Enhanced protection to famous trademarks would not only enhance the economic resilience of the nation, but it will also make the country a reliable partner for international trade [5].

2. Legal Framework Governing Trademarks in Afghanistan

The Afghanistan trademark legal regime is characterized by a collection of legislation, amendments, and regulations which seek to offer intellectual property protection. The trademark system in Afghanistan has significantly changed in recent years to align with international requirements, especially trademark registration, protection, and enforcement. Despite the progress towards the consolidation of intellectual property law in the nation, there are still challenges, especially regarding the protection of famous trademarks and legal definition of certain provisions. The main characteristics of the trademark law in Afghanistan will be addressed herein after with special emphasis being placed on statutory bases, special defenses for distinctive well-known trademarks, and non-use and revocation [7].

2.1. Statutory Foundations

The main legislative tool for the administration of trademark protection in Afghanistan is the Trademark Registration Law of 2009, which puts into effect the processes and procedures to be employed for the registration of trademarks in Afghanistan. The law was promulgated in connection with Afghanistan's attempt at law modernization and harmonization with international practice. The act presents a clear system of procedure in trademark registration, such as application filing, documents required, and registry fees. Registration of a mark protects it from the filing date, giving exclusive right to the proprietor of the trademark over the usage of the mark for certain goods or services. This type of protection allows the companies to maintain their brand name, reputation, and commercial rights [12].

The Trademark Registration Act also makes provisions for handling the procedural part of the registration of a trademark. The act lays down the formalities to be complied with in making the application, e.g., classification of goods and services, and lays down the procedure for obtaining the registration, e.g., consideration of the application by the Afghanistan Intellectual Property Office (AIPO). One of the most

important aspects of the law is the fee regime that will be utilized to finance the processing of the trademark application. The fees are important for making the registration process efficient and for owners of the trademark to contribute towards financing the administration of the intellectual property system of Afghanistan [15].

One of the characteristic features of the law is the express recognition of "well-known" marks under Article 4, which has been amended in recent times to reinforce the protection of trademarks that are highly recognized by the public. Although the concept of well-known marks is acknowledged, the test for ascertaining a trademark's fame and reputation remains quite ambiguous and subject to interpretation. This ambiguity is deleterious to trademark owners who want to enforce rights in marks that have achieved mass recognition but are not registered formally under the law. Such criteria need more specificity and clarity so that iconic marks are comprehensively covered by Afghan law [14].

2.2. Special Protections for Well-Known Trademarks

The Afghan legal framework grants unprecedented protection to famous trademarks due to their distinct position within the marketplace. The Law of Trademark Registration, through Article 4, stipulates that famous trade-marks are granted automatic protection, whether registered or unregistered. This provision is critical to those brands that have developed considerably into the public sphere but have not yet followed the registration procedure officially because of some reasons, e.g., geographical constraints or the cost of registration. Automatic protection provided to unregistered well-known marks prevents their unauthorized use, counterfeiting, and infringement in Afghanistan [1].

But while the law itself safeguards salient trademarks, lack of objective requirements for determination of whether or not trademarks are "well-known" renders provision unenforceable. Chronometry of use, geographic scope of recognizability, and the degree of recognizability in consumers all qualify as criteria in determining that a trademark is well-known. However, these are not suitable specifications, and ambiguity can be excused in law enforcement. Owners of trademarks can be faced with the challenge of establishing that their marks are well known, hence waiving the right to assert their rights against infringement [12].

Other than the protection of well-known marks, Afghan trademark law also protects geographic indications (GIs), which fall within a category of trademarks that identify a specific geographic region. GIs are utilized to indicate that an article is of quality, reputation, or typical characteristics associated with a specific geographic region. These are significant to agricultural produce, handicrafts, and food items, the origin of whose product would heavily influence its worth and marketability. GIs are defined and protected under Article 22 of the Trade-mark Registration Law, which is another facet of

trademark law for promoting local identities and industries in regions [6].

The inclusion of the GIs in the Afghan trademark law is a reflection of increasing consciousness about protection of local goods and local economic growth. Protection of the goodwill of the goods that are identified with a place, the legislation enhances the likelihood of domestic producers and export-oriented consumers to be aware of such products' uniqueness. Nonetheless, similar to well-known trade-marks, specificity is needed in order to enact and apply protection for GIs so that they can be utilized and known to local and international markets [11].

2.3. Non-Use and Cancellation

One of the most powerful provisions of Afghan trade-mark law is that which states that a trademark shall be cancelled in the case that it has not been used within a time frame. Under Article 19 of the Trademark Registration Law, a trademark can be cancelled in the case that it hasn't been used within three consecutive years. This non-use policy is intended to prevent cluttering good trademark space with marks that are not being used in the market. It is intended to leave the register of trademarks full of marks that are being used and actually creating economic activity for the nation [16].

The prohibition against use is useful for a number of purposes: it deters hoarding of marks by individuals who are not using them, maintains the register current, and provides a chance to other companies to register marks which otherwise will be out of their reach. The prohibition is, however, difficult to prove, to the extent that proof of non-use must be produced, and that is impossible in some cases. Moreover, the law does not have determinate criteria to determine if a mark has been "used" within the market space, and this provides scope for interpretation and controversy [15].

Trademark owners are also urged to keep using their registered marks so that risk of cancellation can be avoided. For foreign interest companies, such a requirement also underscores the need to continue using trademarks actively in Afghanistan for the sake of obtaining extended protection. Abandoning unused trademarks can enable companies to enter the market with related or similar marks and thus create greater competition and a more vibrant marketplace [17].

3. Challenges in Protecting Famous Trademarks

Use of internationally famous marks in Afghanistan is supported by various challenges, i.e., legal as well as institutional loopholes, coupled with the enforcement gaps and international conformity. Even though some progress has been made in creating an intellectual property (IP) protective mechanism in Afghanistan, effectiveness in protecting famous marks remains plagued with various system flaws. These hindrances need to be broken in an effort to enhance the

protection of intellectual property, reduce instances of counterfeits, and raise Afghanistan's place in the economic map of the world. The major hindrances that have been faced in protecting registered trade-marks are inefficiencies in legal and institutional mechanisms, weakness in enforcement, and weakness in complying internationally [9].

3.1. Legal and Institutional Weaknesses

One of the most powerful institutional and legal loopholes in the Afghan trademark protection system is a deficiency of intellectual property courts with specialist jurisdiction. Commercial courts are now dealing with trade-mark cases in the country, which do not have specialist expertise and experience needed in order to dispose of intricate intellectual property cases. This lack of specialized courts guarantees that judges will never receive proper training in the complexities of trademark law or in the technicalities of marking up marks which are very popular. This would guarantee that findings of trademark infringement or counterfeiting would be un-coordinated or un-informed enough to give rise to legal doubt for mark holders. Establishing professional IP courts staffed with experienced judges would significantly enhance the quality of judicial decisions and general performance of trademark enforcement [18].

The second large problem is the ambiguity of the legal definition of well-known trademarks. The Afghan Trademark Registration Law of 2009 does include the provision of well-known marks, but the legislation is ambiguous in provisions and there are no clearly defined criteria for determining whether a trademark qualifies as well-known. Such vagueness provokes specific issues in the protection of well-known marks as firms do not have certainty about what "sufficient public recognition" a mark should possess in order to be entitled to special protection. Court definitions of a well-known mark have differed, with some courts conferring status on certain marks without a formulaic approach or fixed criteria. Inconsistency by such an approach brings uncertainty and undermines the assertion of trademark owners' rights by courts. With a view to addressing the same, the legal system needs to formulate clearly defined broad parameters for identification of well-known marks so that their use under the law of trademark could be consistent and fairer [2].

3.2. Enforcement Deficiencies

Enforcement of trademark rights is also a significant issue in Afghanistan. The absence of the capability to enforce trademarks discourages action to protect renowned trademarks. The inability to trace and prosecute infringement cases for trademarks because of lack of resources and qualifications within law enforcement authorities is the added challenge to enforcement. Poor customs regulations coupled with Afghanistan's open border situation makes Afghanistan an easy transit point for pirated products, thereby discouraging

enforcement. Counterfeit and smuggled goods, usually under well-known brands, inundate the market, defaming the reputation and economic interests of genuine trademark owners. Government and non-government initiatives to eliminate counterfeiting notwithstanding, the extent of the problem keeps expanding, assisted by the ease of controlling goods that cross the borders with minimal scrutiny [7].

Bribery within law enforcement and customs agencies is also a factor in weak enforcement of trade-mark laws. In certain instances, counterfeit products are admitted into the market illegally, and enforcement agencies will not act on trademark violations effectively because of bribery or other illegal practices. This undermines public confidence in the effectiveness of trademark protection and creates an environment in which counterfeiters are emboldened to continue their operations with little fear of legal reprisal [6].

Furthermore, there is little knowledge regarding trademark rights and trademark registration procedures available among major stakeholders. Most of the Afghan consumers and most of the business community are unaware of the significance of trademarks, their significance in safeguarding brand name, and trademark registration procedures. This ignorance is the cause of the prevalent phenomenon of counterfeiting because the companies themselves are not safeguarding their trademarks, and the consumers unknowingly end up buying fakes. Greater awareness of the stakeholders in the form of education, outreach, and advocacy campaigns needs to be undertaken to fill this gap and enhance the protection of trademarks in the nation [7].

3.3. International Compliance Gaps

Compliance of Afghanistan with international intellectual property norms is another major issue, especially in the light of the TRIPS Agreement and WIPO norms. Despite efforts made by Afghanistan to align its legal system with these international norms, there are serious loopholes in compliance. The TRIPS Agreement signature by Afghanistan to a moderate degree, at the lowest attainable level of intellectual property protection requirements, leaves a gap between the Afghan legislations and the WTO requirements. This partial alignment restricts trademark protection to its scope, particularly for well-known marks, and can make protection of Afghan business's trade-marks more challenging when they go abroad [8].

The WIPO standards are also one area where the Afghan legal framework is behind. Although Afghanistan is a WIPO member, Afghanistan has yet to apply all the WIPO recommendations with respect to settlement of disputes, enforcement procedures, and international cooperation. The lack of an effective system for settling disputes, especially cross-border trademark disputes, is such that trademark owners are unable to enforce their rights overseas or settle disputes against foreign counterfeiters. A stronger framework of international cooperation, as well as the complete imple-

mentation of WIPO's standards, is needed to allow Afghan businesses to safeguard their intellectual property in the global market [8].

Additionally, Afghan intellectual property law has not yet been endowed with the internationally accepted tools of alternative dispute resolution (ADR), which are employed in the majority of nations to settle intellectual property disputes more cost-effectively and efficiently. The application of ADR procedures, including arbitration and mediation, would facilitate the judiciary and provide trademark owners with a more convenient method of dispute settlement [1].

The issues confronting protection of well-known marks in Afghanistan are extensive and originate from legal, institutional, enforcement, and international compliance issues. The lack of specialized intellectual property courts, lack of clarity to decide well-known marks, and un-consistency of judicial decisions diluting the effectiveness of the trademark system. Weaknesses of limited resources, corruption, and insufficient customs control allow use of counterfeiting methods by offering an opportunity for counterfeit products to enter the market in large quantities. In addition, Afghanistan's quasi-adherence to global IP standards, especially for the TRIPS Agreement and WIPO guidelines, restricts Afghanistan from protecting marks globally. Overcoming such barriers is a complete overhaul of the Afghan legal system, increased enforcement practices, and stronger international cooperation to maintain well-known marks fully protected and that intellectual property rights are enforced locally and internationally [10].

4. Materials and Methods

Throughout this research, I underwent an in-depth book of relevant legislation, legal instruments, and government publications related to trademark protection in Afghanistan. Some of them are the Trademark Registration Law (2009) and all amendments, additions, and cancellations thereof in some articles. I opted for the official journal of the Ministry of Justice (ministry of justice official gazette) as a benchmark on which to reflect on the development of trademark legislations. Besides, I checked the Commercial Journal (page 16) documenting trademark registration procedures changes. Further, I scrutinized reports made by Afghanistan's Ministry of Commerce and Industry, judicial decisions of cases handling trademark cases, as well as world treaties like the TRIPS Agreement to see if Afghanistan keeps international standards in its stride. Such writings and materials formed the basis in debating the law issues and policy directives concerning famous trade-marks protection in the nation.

5. Results

The study of the trademark protection mechanism of Afghanistan revealed substantial findings that reveal strengths

and weaknesses in its legal structure and enforcement apparatus. First, the legal structure of trademarks predominantly borrows from the Trademark Registration Law of 2009 that provisions for registering both registered and unregistered marks, primarily those with meaningful public recognition. A survey of legal publications, i.e., Commercial Journal and the Official Journal of the Ministry of Justice (ministry of justice official gazette), revealed that efforts have been ongoing to strengthen and improve protection of trademarks, but shortcomings remain. Particularly, there is ambiguity in defining "well-known trademarks" whose basis is not clarified through erratic application of law.

The greatest surprise was that there are no specialized intellectual property (IP) courts, a fact that has broad implications when it comes to speed and efficiency in resolving trademark disputes. Not having IP courts means the employment of general commercial courts that are typically backlogged and lacking special expertise to handle intricate trademark cases. In addition, it was established that the enforcement of trade-mark rights in Afghanistan is plagued, mainly by porous borders, poor law enforcement capability, and rampant corruption. The regime of counterfeiting is also disabled by poor awareness among the local enterprises and the general public of the value of trademarks as well as of the registration procedures.

Foreign compliance was also a problem. While there have been some advancements in the international compliance of Afghanistan, especially with respect to TRIPS Agreement and World Intellectual Property Organization (WIPO) standards, it is not yet completely compliant. Its partial compliance restricts the capacity of Afghanistan to resolve international trademark disputes and to be capable of fully safeguarding well-known trademarks according to international standards.

6. Discussion

The findings of this research underscore the paramount challenges facing Afghanistan in the protection of renowned trademarks. The regulatory system, though existing, still does not equip itself to handle the complexity of well-known trademarks. The uncertainty surrounding the definition and protection of such trademarks as well as the lack of mutually agreed standards for recognition has been behind irregular judicial rulings. For example, the extension of famous marks merely on public recognition has not been uniformly practiced, and hence companies cannot rely upon trademark protection with certainty.

Additionally, the lack of a dedicated intellectual property court is still one of the greatest challenges. Because the IP law is sophisticated and the character of trademark protection is technical, using general commercial courts does not provide a suitable environment for effective enforcement of trademark rights. This is compounded by the judges' and other legal professionals' lack of education in IP issues, further weakening the system.

In enforcement, Afghanistan's weak infrastructure and porous borders make preventing the sale and importation of counterfeits a near impossibility. Increasing rates of counterfeiting of products sold in the marketplace in Afghanistan are a result of the feeble methods of enforcement employed and inefficiency of border and custom officers in managing supply of products well. Corruption at the governmental level is also a cause of such problems since the authorities might not care to enforce the rights of IP or are co-conspirators in enabling illicit goods to be sold.

The problem of the lack of business and public consciousness regarding trademark protection is also paramount. Most business organizations, particularly small and medium enterprises (SMEs), lack awareness concerning the significance of registering trademarks as well as related legal protection. Consequently, SMEs are also at greater risks of infringement as well as fake activities. Raising public knowledge through special public awareness campaigns along with easy facilitation of the process of knowledge dissemination on registration procedures could better address this situation.

Internationally, Afghanistan's incorporation of the TRIPS Agreement and WIPO norms is incomplete. Although the nation has taken some steps towards incorporation into the global intellectual property order, it remains constrained by incomplete compliance with these global orders. Incomplete compliance limits access of Afghanistan to international trademark disputes and undermines trademark protection of well-known trademarks recognizable overseas.

7. Conclusions

Briefly, the signature legal tool to safeguard renowned marks in Afghanistan is seriously compromised, despite the presence of a legal system. The 2009 Law on Trademark Registration, though a positive move in the right direction, nevertheless needs further elucidation, most notably in delineating "well-known trademarks" and achieving surer, more consistent judicial interpretation. The absence of specialized IP courts and the use of general commercial courts remain a major obstacle to the provision of sufficient protection for trademarks. Without courts to handle the delicacy of trademark dispute, intellectual property protection is not complete.

In addition, the protection of trademark rights is undercut by structural issues like corruption, weak enforcement of the law, and open borders, which facilitate the smuggling of fakes. Raising stakeholder awareness, enhancing the rule of law, and closing enforcement gaps are key measures needed to enhance the protection of trademarks in Afghanistan.

Finally, efforts have been on the part of Afghanistan to standardize itself based on international institutions like WIPO and the TRIPS Agreement; however, so much more can be done on its part so that it abides by full compliance. Higher international cooperation, coupled with enforcement measures being hardened domestically, shall play a huge role

in molding Afghanistan's framework for trademark protection and making renowned trademarks better safeguarded. For enhancing the effectiveness of trademark protection in Afghanistan, reformations in both legal frameworks and enforcement measures are required.

Abbreviations

TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
IP	Intellectual Property
FIPR	Famous Intellectual Property Rights
SMEs	Small and Medium-sized Enterprises
UNCTAD	United Nations Conference on Trade and Development
WHO	World Health Organization
GIs	Geographic Indications
PRC	People's Republic of China
LDCs	Least Developed Countries
MOU	Memorandum of Understanding
IPRs	Intellectual Property Rights
OIC	Organization of Islamic Cooperation
FTA	Free Trade Agreement
EU	European Union

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Samiullah Amarkhil is the sole author. The author read and approved the final manuscript.

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Data Availability Statement

Evidence to substantiate the results of this research is in the official ministry reports of the Ministry of Justice and other similar legal reports on Afghan trademark law.

Conflicts of Interest

The author declare no conflicts of interest.

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