

Customs Law in Jordan

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By virtue of Article 41 of the Customs Law, infringing products are prohibited from being imported into Jordan. Article 41 lists the courses of action in relation to imported infringing goods. Specifically, seizure and notification of the holder of the right by virtue of Article 41(D) of the Customs Law, which states that:

“The director or a customs officer duly authorized by the director may halt the procedures of clearing and releasing of goods, if he is convinced based on clear evidence that there is an infringement of intellectual property right in cases of copyright infringement and trademark counterfeiting

It is also imperative to note that Article 171 of the Customs Law states that Customs Department officials, while carrying out their duties, shall be considered as Judicial Officers, within the limits of their specialities.

In the event that a shipment is imported containing infringing goods, then such shipment would be seized and the clearance and release procedures would be halted by the Customs officials with the holders of the right being notified of the same. There are two Customs Departments in Jordan that a right-holder must register with in order to fully be protected: One is the Central Customs Department and the other is the Aqaba Special Economic Zone Authority's Customs Department. Each has a separate registration system, as follows:

1. Jordanian Customs Department:

The authority covers all Jordan and all its borders except for Aqaba. The privileges and protection afforded to trademarks registered with the Customs Department allows the same to carry out an inspection on any goods entering Jordan, for the purpose of verifying the authenticity of the imported goods. Should any doubts arise in relation to the authenticity of the goods, the department will seize the goods and notify the registered legal representatives of such goods. The registration with this authority shall stay valid as long as the mark is valid.

2. Aqaba Special Economic Zone Authority (“ASEZA”).

Registration with ASEZA may prove especially useful in protecting any registered trademark, in light of it being the only sea port point of entry into Jordanian Territories. Registration with ASEZA allows for the notification of the owner of a trademark, via their registered legal representative, of any suspected counterfeit goods imported into the area. Further, a registration certificate is granted to any trademark registered in ASEZA to testify the same. However, unlike the Jordanian Customs Department, the registration with ASEZA would require annual renewal.

Registration with one of the above authorities does not extend the protection cover granted thereby to the other, as the Aqaba Special Economic Zone is a separate zone from any other Jordanian territory, governed by a specific and differentiated set of laws. Therefore, it is recommended to record the trademarks with both authorities in order to ensure a wider protection that covers all entry points to the country.

The following documents are required to carry out registration with the above-mentioned authorities:

- Duly notarized Power of Attorney, appointing the legal representative.

- Certified copy of the registration certificate of the relevant trademarks.
- CD including a soft copy of the trademark.

A registration request is then submitted to the Jordanian Customs Department and ASEZA Customs Authority, containing the number of trademarks and their classes for the purpose of registering the trademarks. This should also include the logo(s).

The Customs authority would, after halting the procedures, notify the importer and right-holder, as per the contact information recorded, of the decision to suspend the clearance and release procedures. The contacted legal representative of the right-holder is then shown the suspected goods and the same shall have the right to photograph the suspected goods for the purposes of confirming the suspicion by the right-holder.

According to Article 41(D)(2) of the Customs Law, if the Customs Department is not notified that a case has been filed within eight days from the date of notifying the right-holder (or their legal representative) of the decision to suspend the clearance and release procedures, then the goods shall be released after it is confirmed that all legal importation requirements have been met.

Therefore, a right-holder must register a claim before the competent court within this period in order to be protected. A letter will then be issued by the court, informing the Customs Department to not release the goods until a final and binding decision has been issued regarding the claim.

The claim registered in court would be based on Article 37 of the Jordanian Trademark Law No. 33 of 1952, which states the offences and punishments as follows:

“1- Whomever commits any of the following deeds, with the intention to deceive, shall be penalized by an imprisonment term of no less than three months and no more than one year, or a fine of no less than 100 Jordanian Dinars and of no more than 6000 Jordanian Dinars or both penalties:

- counterfeits a trademark registered under the law, imitates it in any other way that misleads the public, or affixes a counterfeit or imitated mark on the same class of goods for which a trademark had been registered.
- illegally uses a trademark owned by another on the same class of goods for which that trademark is registered.
- sells, possesses for the purpose of selling or offers for sale, goods bearing a trademark whose use is regarded as an offense under paragraphs (A) and (B) of this Article if they had knowledge of the same beforehand.

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

In the event that the claim succeeds, a penalty in the range set out above will be imposed. Additionally, in practise, the court also orders that the goods which are the subject matter of the claim be destroyed, with the costs of such destruction being usually borne solely by the infringing party.

There is currently a new draft Customs Law currently being discussed in Parliament. The proposed law shall extend the legal period to file a claim after being notified, from eight days to ten working days as of the day following notification. This is an important change as it would afford right holders more time to confirm and communicate with their legal representatives and would no longer count weekends and holidays as part of the legal period, further protecting intellectual property rights.