

Aspects of Trade Mark and Data Exploitation and Protection in Oman

Data Protection Considerations in Oman

Overview

There is no specific data protection legislation in the Sultanate but elements of the Cyber Crime Law and Electronic Transactions Law apply.

The Information Technology Authority (“ITA”), which oversees such matters, has announced in previous years that it plans to prepare a data protection law but the current status of such proposed legislation is unclear.

Beyond the general principle of tortious harm contained in the Omani Civil Code, Article 48 of the Electronic Transactions Law prohibits prejudicing a data subject’s interests and this could form the basis of an action before the Omani courts.

Specifics

The Cyber Crime Law makes it an offence to violate the privacy of individuals using technology, but does not impose any obligation on those who collect private data.

The Electronic Transactions Law has some data protection measures that only apply to those who deal with electronic transactions (defined widely as ‘Any action or contract concluded or to be partially or wholly executed by electronic message’) but not those who collect personal data in any other context or collect non-electronic data.

Chapter 7 of the Electronic Transactions Law provides that government bodies and authentication service providers (persons expressly so licensed) can use personal data only for the specified purpose it has been submitted for, by the data subject, unless express consent of the data subject is obtained (Article 43). The following matters form exceptions to the prohibition on collateral use:

- investigation of crime
- collection of tax
- order of the court; and
- protection of the data subject’s interests.

Article 48 provides that no processing that prejudices the data subject’s rights is allowed.

Articles 49 stipulates that consideration of the security of the data must be made when transferring such data abroad, expressly considering:

- nature of personal data
- source of information and data
- purpose and duration of processing
- destination country and its international obligations
- relevant rules in destination country; and
- security measure employed in destination country.

Extra-territorial effect

Article 2 of the Cyber Crime Law provides that 'The provisions of this law shall apply to cyber crimes, even if committed wholly or partially out of the Sultanate whenever damage to its interests is ensued, or if the criminal result is ascertained within its territories or being intended to be ascertained therein even though not yet ascertained'.

Worthy of note, however, is that foreign authentication service providers under the Electronic Transactions Law will only have their certificates recognised if a ministerial decision has confirmed such recognition.

Enforcement and Sanctions:

The employees of the ITA have quasi-judicial powers in the application of the provisions of the Cyber Crime Law and the Electronic Transactions Law.

The Cyber Crime Law provides that juristic persons shall be subject to double the maximum limit of the fine applicable to natural persons but extreme caution should be exercised in terms of authorised managers and directors being personally liable for offending acts of juristic entities. Assisting and abetting are punishable in the same way and to the same extent as actual commission of the crimes.

Trade Mark Registration in the Sultanate for brand owners appointing distributors and agents

Overview

The impact of changes to the law, made in 2014 but now becoming apparent, relating to the appointment of commercial agents and distributors, should alert brand owners to the increased importance of registering all their relevant trade marks in the jurisdiction in order to ensure certainty as to the terms on which any such trade mark is licensed to the local agent or distributor.

Specifics

Agency and distributorship agreements in Oman are governed by the Law of Commercial Agencies promulgated by Royal Decree ("RD") 26/77 and the amendments thereto (the "Law") contained in RD 73/96, RD 66/2005, and RD 34/2014. Commercial Agency is defined in the Law as -

"any agreement whereby a manufacturer or supplier outside Oman assigns one or more merchants or commercial companies in Oman to sell, promote or distribute goods and products or supply services whether in his capacity as an agent, representative or intermediary for the product of the original supplier who has no legal presence in Oman, against a profit or commission."

The original law, established in 1977, contained numerous provisions protective of agents/distributors. The commercial agency regime was significantly liberalised in 1996, when amendment of the law removed the restrictions against the appointment of multiple agents and appointments on a non-exclusive basis. Further significant changes to the Law were introduced to the Law by Royal Decree 34/2014, effective from 21 July 2014, which amended the law in three major ways:

- The Law no longer expressly provides for compensation on termination of registered agents. The parties to relevant agreements can now decide the terms of renewal and termination of those agreements. The parties can expressly exclude liability for/entitlement to compensation on termination in accordance with the contract terms. Agents can, of course, still mount claims for breach of contract.
- A registered agent no longer has rights to claim commission from parallel imports and the agent no longer has a right to demand commission from the principal in respect of such imports.
- Although the power was not previously used due to WTO treaty obligations, the Minister of Commerce and Industry no longer has the statutory authority to ban the import of goods where a dispute between

the registered agent/distributor and the principal results in termination of the agency without cause.

Article 11 of the Law sets out a requirement for registration of any agency/distributorship agreement with the Commercial Agencies Department at the Ministry of Commerce and Industry. Failure to so register a relevant agreement would render it enforceable only as a civil contract between the parties and not in accordance with the Law.

Conclusion

Notwithstanding the current more principal-friendly provisions of the Law and the Article 11 obligation, relevant agreements often expressly provide that registration of the agreement is prohibited. Whether relevant agreements contain any such negative stipulation and regardless of well drafted termination and non-exclusivity provisions being included in all agreements, brand owners should:

- ensure their trade marks are registered in the Sultanate; and
- consider stand-alone licences of such trade marks to any agent.

While such advice is broadly protective of principals, well-advised distributors and agents should benefit from the contractual certainty secured by such contractual discipline.