

PROTECTION OF INTELLECTUAL PROPERTY IN CYPRUS

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List of further publications prepared by Andreas Neocleous & co

1.0 INTRODUCTION

Cyprus' strategic geographic location, excellent commercial infrastructure, political stability, favourable tax incentives and high European life-style are among the factors which have contributed towards the development of the Island as an important financial centre in the Middle East.

The fact that Cyprus today is a booming regional financial centre, is due partly to the Island's system of organised administration and civilized Western traditions. To a large extent, these were inherited by the British who controlled Cyprus before it became an independent sovereign republic in 1960.

The Turkish invasion of 1974, which left about thirty seven percent of the northern part of the island under Turkish occupation, did little to interrupt the unparalleled period of growth, prosperity and commercial expansion which followed independence. However, due to the authorities' expansionary economic policy and the initiative and enterprising spirit of the private sector, social and political security continue to form the cornerstone of Cypriot society. The rule of law and political stability are guaranteed by the efficient functioning of democratic institutions and by dynamic economic development.

The authorities in Cyprus realised the fact that legal entities which are active internationally will not allow certain technologies or other intellectual property to be sold in countries that will not protect the owners's intellectual property rights. In order to ensure that international legal entities are offered adequate legal protection, intellectual property legislation has been enacted in Cyprus which fosters investment and trade effectively.

Over the last 70 years 1500 patents were registered in Cyprus. Since 1911 about 33.000 trade marks were registered in Cyprus out of which about 15.000 were abandoned and today there are 18.000 on the Register. About 60% of the existing trade marks belong to foreign proprietors and 40% belong to Cypriot nationals.

Cyprus has applied to become a member of the European Union. Therefore, in an attempt to bring Cyprus closer to the European standards, existing legislation relating to all areas of law, including intellectual property is being updated continually and new legislation is in the progress of being implemented. In addition, Cyprus has ratified various international conventions and others are being considered. The courts and authorities in Cyprus adhere strictly to the relevant provisions of the Law so as to ensure the protection of intellectual property rights against piracy and infringement.

Today the authorities are demonstrating more clearly than ever before that they are seriously committed to refining and expanding the legislation and regulations in terms of which intellectual property rights in Cyprus are protected.

2.0 WHAT IS INTELLECTUAL PROPERTY?

The constant flow of judicial decisions and the renewed international interest in the subject have made "intellectual property" an increasingly difficult term to define. In practice intellectual property can be divided in two main branches:

- (a) The Industrial Property
i.e Patents, industrial designs, trade marks service marks and trade names.
- (b) The Copyright

3.0 INTELLECTUAL PROPERTY LEGISLATION

3.1 Domestic Law

Intellectual Property in Cyprus is regulated by statutory legislation and the general principles of Common Law. The most important statutes are:

- a. The Patents Law, 16(1)/98
- b. The Trade Marks Laws CAP. 268 as amended by Law 63/62, Law 69/71 and Law 206/90
- c. The Partnerships and Trade Names Law, CAP 116
- d. The United Kingdom Designs (Protection) Law, CAP. 269
- e. The Intellectual Property Law 59/76 as amended by Law 63/77 and Law 18/93.

These laws are to a large extent modelled on their English counterparts and are tailored to promote and provide sufficient protection to proprietors.

3.2 International Conventions

Cyprus is a party to the following international conventions whereby reciprocal arrangements are in force in respect of intellectual property rights:

- a. Paris Convention for the protection of Industrial Property (Lisbon Act) Law 63/65 and (Stockholm Act) Law 66/83.
- b. Convention establishing the World Intellectual Property Organisation WIPO Law 36/84.

- c. Berne Convention for the Protection of Literary and Artistic Works (Paris Act 1971) Law 86/79.
- d. Universal Copyright Convention Law 151/90.
- e. Nairobi Treaty on the Protection of the Olympic Symbol.
- f. Geneva Trade Marks Law Treaty 1994, Law 12(III)/96
- 7. Patent Cooperation Treaty, 1970, Law 16(1)/98
- 8. European Patent Convention 1973, Law 16(1)/98

4.0 TRADE MARKS AND SERVICE MARKS

4.1 Registration

The registration and protection of marks in relation to goods and services is governed by the Trade Marks Law, CAP 268 as amended by Law 63/62, 69/71 and 206/90 and by the Regulations of 1951-1992. The international classification of goods applies whereby goods and services are categorised into 34 classes and 8 classes (ie 35-42) respectively. The register is divided into Parts A and B and marks are entered according to their distinctive nature.

For a mark to be registrable and protected it must be original not a copy, from another existing mark and distinctive. This means that it must not refer to the quality and the nature of goods or services.

(a) The application for registration

In order to register a mark a lawyer authorised to practise in Cyprus must file with the Trade Marks Registrar on behalf of the applicant:

- i. a fully completed application containing all relevant details including the name address and occupation of the applicant, the name and/or picture of the mark, the required class of the Registry applicable and a description of the mark.
- ii. a form signed by the applicant authorising the lawyer to file the application.

(b) Examination of the application by the Registrar

On receipt of the application forms, the Registrar appoints a filing date and a number to the mark and conducts a search to establish the registrability of the mark. Where the mark is not registrable, (for example, a confusingly similar mark has been registered prior to the applicant's application in respect of the same class of goods or services) the Registrar may either object to such registration or impose conditions.

The applicant has the right to present his case and his arguments prior to the Registrar deciding upon the application.

If the Registrar does not object and the application is accepted, either with or without conditions, the Registrar publishes the mark in the Official Gazette of the Republic of Cyprus. Anyone wishing to oppose the registration is invited to do so within two months. The applicant is automatically notified of any opposition and given the chance to reply.

In the event of the Registrar not giving his consent to the registration, the applicant may apply for judicial review of the decision under Article 146 of the Constitution at the Supreme Court of Cyprus (in its revisional jurisdiction). It should be noted that the Supreme Court has shown reluctance to interfere with the Registrar's exercise of discretionary powers.

4.2 Protection against infringement

If a person infringes the registered mark of another person and refuses and/or fails to stop after the infringement has been drawn to his attention an action can be brought to restrain infringement.

The relief usually sought is an injunction restraining the further use of the mark by the unauthorised party or an inquiry as to damages. If the infringement is in large scale, the court may order the delivery up of the spurious marks for destruction or order the defendant to tender an account of the profits made through the sale of the goods or the provisions of services in respect of which the proprietor's trade mark was infringed.

Proceedings can not be instituted under the Trade Mark Law CAP. 268 in respect of infringement of an unregistered mark but the tort of passing off could offer relief. There are certain acts such as forging or falsification

of marks and application of any false trade description to goods or services which are punishable by fine and/or imprisonment.

4.3 Duration of Registration and Protection

Trade marks and service marks are registered for an initial period of 7 years which may be renewed on application for fourteen years periodically.

4.4 Assignment

(a) Registered marks

Section 24 of the Trade Marks Law CAP 268 a registered mark allows the assignment of a trade mark on transfer of a business either with the

entire or the remainder goodwill. A registered mark is assignable and in respect of either all or some of the goods or services.

Section 26 provides that the registered proprietor of a mark has the power to assign it and give effectual receipts for any consideration for an assignment thereof.

(b) Unregistered marks

According to Section 24(3) of the Trade Marks Law CAP 268, an unregistered mark is assignable as a registered marks provided that at the time of its assignment the unregistered mark is used in the same business as the registered mark and is assigned at the same time and to the same person as the registered mark.

4.5 Licensing

(a) Registered marks

The Cyprus Trade Marks Law, CAP 268 is identical to the British Trade Marks Act 1938 and the same principles which are applied under British Law for the licensing of trade marks apply also in Cyprus.

Section 28 of the Trade Marks Law (which corresponds to Section 26 of the British 1938 Trade Marks Act) contains provisions for the registration of persons other than the proprietor as users of registered marks and provides that where this is done the mark is

to be treated as still used only by the proprietor.

The 1938 Act left the prohibition of licensing of marks traditionally existed in British Law unaffected providing that cases where the licence was duly registered should be deemed not to be cases of licensing at all. The courts, however, held that under the 1938 Act any licensing arrangement which could properly be registered is legitimate whether registered or not. By registering the licensing the approval of the Registrar is obtained.

(b) Unregistered marks

As regards licensing of unregistered marks it seems that it is permissible as if the marks were registered.

5.0 PATENTS

5.1 Registration

In Cyprus, the registration of Patents was regulated by the Patents Law, Cap. 266. A new Patents law, recently passed by Parliament (Law 16(I) 1998) and came into force on 01/04/98. The new law departs from the old Chapter 266 to a great extent. First it provides for the establishment of an independent local authority for the registration of patents, thereby rendering the registration of a patent in Cyprus independent from the registration of the same patents in the UK. The new law therefore provides for a direct patent application in Cyprus. This enables not only English patents, but also patents granted under the European Patent Convention or under the International Corporation Treaty to be recognised in Cyprus upon registration. Moreover, the new law requires the patents to be published in the official gazette of the Republic of Cyprus, thereby giving the right to any person to object to it. Under the new law, a Register of Patents is to be maintained to record the names and addresses of the patentees as well as any other information which is considered necessary by the registrar for the identification of the owner of the patent. Finally, the new legislation requires the annual renewal of the patents registered in Cyprus.

5.2 Protection against infringement

Once a patent has been registered and a certificate of registration is granted and published, any persons other than the patentee are expressly prohibited from manufacturing, selling importing or otherwise commercially exploiting either the patented product or the product obtained by a patented process. Currently, the time period for which the state agrees to prohibit third parties from using an invention is 20 years from the date of filing the application. In the event of infringement the patentee may commence an action in Court seeking an injunction and/or damages.

The most important grounds upon which any action for infringement of a patent may be defended or a patent may be invoked are that:

- (i) the patent is not for an invention within the meaning of the law;
- (ii) the invention was not novel;
- (iii) the invention was obvious;
- (iv) the invention is not capable for industrial application;
- (v) the invention belongs to a category of excluded subject-matter such as methods of treating humans and animals;
- (vi) the claims of the complete specification are ambiguous;
- (vii) the complete specification is insufficiently explicit;
- (viii) the application for the patent was not in order;

5.3 Duration of Protection

According to Section 26 of the new Patents Law the duration of protection is 20 years from the date of registering the application. It should be noted that the duration of protection depends on the payment of an annual renewal fee.

5.4 Exhaustion of Rights

The new law is also in line with the latest European Union case law drawing limited on the rights granted to patent owners. For example, once a product has been put on the market by the patent owner or with his express consent, he cannot restrict the use or the resale of the product. Nor can the patents owner prevent private acts that do not substantially affect the financial benefit of the right holder, i.e. the acts are done for non-commercial purposes.

5.5 Assignment

Patents rights can be sold by the patentee to anyone who is willing to buy them.

5.6 Compulsory Licensing

Compulsory licensing constitutes a major achievement of the new law on the road towards the European Union. An application for a compulsory licence can now be filed with the Registrar at any time after the expiration of four years from the date on which the patent was granted (or after some other period described by the Registrar). When making its decision the patent office must consider the need to work inventions as well as the need for the inventor to receive reasonable remuneration.

5.7 Supplementary Protection Certificate

The new law provides for an application of a supplementary protection certificate for pharmaceutical products which was not available under the old law. The certificate confers the same rights as the basic patent. The length of the period of protection offered by the certificate is calculated in relation to the period for

which protection was lost due to the authorization process but it cannot exceed five years.

5.8 Treaties

Cyprus became a member of the Patent Cooperation Treaty (PCT) and the European Convention (EPC) as from 1/4/98. The ratification of both treaties was a prerequisite for the enactment of the new Law since it contains provisions for the registration of patents under the PCT and the EPC.

6.0 DESIGNS

6.1 Registration

In Cyprus there is no independent machinery for the registration of designs. According to Section 2 of the United Kingdom Designs (Protection) Law CAP. 269 in order that a design should be protected in Cyprus it must first be registered in the United Kingdom.

The registered proprietor of any design registered in the UK enjoys the same privileges and rights in Cyprus as if the registration in the UK was issued with an extension to Cyprus.

6.2 Protection against infringement

When a registration certificate is issued the proprietor of the registered design acquires an exclusive right. As with patents, the right is given to stop other persons from using it, including manufacturers and importers of articles bearing the registered design or a design substantially the same. If the design is infringed then the registered proprietor may commence a legal action seeking an injunction and/or damages. According to Section 3 of CAP. 269 the innocent infringer of a design, who at the date of the infringement was not aware nor had any reasonable means of making himself aware of the existence of the registration of a design, will not be liable for damages. However, this will not affect any injunction proceedings.

6.3 Duration of registration and protection

Registration and protection of designs lasts for five years from the original date of application. It may be extended for two further five year periods on payment of a fee.

6.4 Assignment

Any person registered as the proprietor of a registered design has the

power to assign it and to give effectual receipts for any consideration in respect of such assignment.

6.5 Licensing

The registered proprietor of a registered design may grant licences under the design and give effectual receipts for any consideration . Due to the lack of any special provisions as to the form of licences of registered designs, the granting of licences may be verbal or in writing. Licences may be registered.

7.0 TRADE NAMES

7.1 Registration

Trade names may be registered in Cyprus under the provisions of the Partnerships and Trade Names Law, CAP 116. Registration of a trade name is made by sending to the Registrar of Companies, within one month of the date the business in Cyprus is commenced, an application containing the following particulars:

- the business name
- the general nature of business
- the principal place of business in Cyprus
- the date of commencement of the business
- the name, residence and nationality of the applicant.

The Registrar may refuse to register a business name which is comparatively similar to an existing one or is considered to be misleading or confusing. After the name is entered into the Register it is published in the Official Gazette.

7.2 Protection against infringement

In the event of infringement of the business name by a third party, no statutory remedies are provided and the only remedy is an action for passing off according to Section 35 of the Civil Wrongs Law, CAP 148. The available remedies are for damages and/or injunction.

7.3 Duration of Registration and Protection

Once registered, a trade name remains on the Register until an application for removal is filed by the trader. Section 57 of the Partnerships and Trade Names CAP 116 provides that where a firm, individual or corporation has registered a trade name and ceases to carry on business, the Registrar must be informed within one month after the

business has ceased to carry on. The Registrar will then remove the trade name from the Register.

7.4 Assignment

Generally the rights in a trade name pass with the goodwill of business as a whole and cannot in general be assigned.

8.0 COPYRIGHT

8.1 The scope of the Right of Intellectual Property Laws 59/76, 63/77, 18/93

Copyrights in Cyprus are regulated by the Right of Intellectual Property Law, 59/76 as amended by Law 63/77 and 18/93. The protection afforded by the Law covers the following:

- a. Physical persons who are citizens of the Republic of Cyprus or ordinarily resident in Cyprus.
- b. Legal persons registered under the Laws of Cyprus.
- c. Foreigners ordinarily but not necessarily permanently resident in Cyprus.
- d. Cyprus registered offshore companies.

Although no protection is afforded to works whose authors are not citizens or habitual residents in, the Republic, or which are not first published in the Republic, section 18 of the Law extends the protection to works of non Cypriot origin by providing that the Law shall apply also to works which would be eligible of protection by virtue of International Treaties or Conventions binding the Republic. Such Treaties are eg the Berne Convention and the Universal Copyright Convention.

8.2 Remedies

The Right of Intellectual Property Law provides remedies for copyright infringement. Section 14 of Law 18/93 sets out a range of offenses committed by those who infringe copyright. Penalties include fines or imprisonment for a term up to three years. The criminal court may order copies of the work in possession of the alleged offender, which appear to be infringing copies, to be destroyed or delivered to the owner of the copyright regardless of whether the alleged offender is finally not convicted.

In addition to the above remedies, The Right of intellectual Property Law provides that infringement is actionable per se independently of any contractual remedies which may be available by virtue of the copyright contract. Section 13 sets out the civil remedies which may be sought in the event of copyright infringement. They fall into two categories, namely: preventive and compensatory.

The preventive remedies are:

- (a) the power of search and seizure of infringing material
- (b) anticipatory injunctions

The compensatory remedies are:

- (a) the award of damages to the plaintiff
- (b) orders for destruction or delivery up of the infringing copies and the equipment by which copies are produced
- (c) accounts

8.3 Duration of Protection

The term of protection is the life of the author and 50 years after his death. However, there are shorter minimum terms prescribed for certain types of works. The copyright for cinematographic work or a television work is 50 years after the work has been made available for the public. The term of protection of photographs is 25 years from the making of the work as is the term for works of applied art.

9. TAXATION

9.1 The Cyprus Income Tax Law

The taxation of income derived from intellectual property rights depends on the tax position of the individual or entity entitled to the income, ie the individual is liable to tax rates up to 40% and the local entity to rates of 20 per cent.

According to Section 30 of the Income Tax Laws 10% rate of tax is applied to the gross amount of any royalty, premium, compensation or other income derived from sources within the Republic by any individual

who is not ordinarily resident in the Republic or by any body or persons not engaged in the Republic in any trade of business in consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trademark, know-how or any other like property or in consideration for technical assistance.

9.2 The Double Tax Treaties

Cyprus has concluded double taxation agreements with twenty six countries which provide important tax advantages. Of particular interest is the fact that the double tax treaties concluded by Cyprus provide for a "nil" withholding tax for royalties. Offshore companies established to receive royalties are thus very attractive. Restrictions provided in some treaties for offshore companies may be avoided by having a minimal local participation; the Cyprus company would lose its offshore status and pay tax at the normal rate of 20% on its net income and not on the gross amount of the royalties.

APPENDIX

**FEEES FOR LEGAL SERVICES RENDERED IN RESPECT OF
TRADE MARKS, TRADE NAMES AND PATENTS**

1.0 TRADE MARKS

(d)	Reply	CYP 50
(e)	For each affidavit necessary to support the objection or reply	CYP 50
(f)	For each hearing before the Registrar of Trade Marks	CYP 100
(g)	Preparing and filing a written address to the Registrar	CYP 100
(h)	Obtaining consent of the owner of a similar mark for the registration of the mark	CYP 50
1.4	Renewal of the Registration of a mark	
	Renewal including search in the Register of Trade Marks	CYP 100
1.5	Assignment	
	Registration of assignment	CYP 75
1.6	Registration of User	
(a)	Application for registration in case of a registered mark	CYP 75
(b)	Application for registration in case of an unregistered mark	CYP 75
1.7	Other	
(a)	Change of name and address of applicant	CYP 50
(b)	Amendment of mark registration	CYP 50
(c)	Cancellation of registration	CYP 50

2.0 DESIGNS

Registration of a design	CYP 100
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(Note: The fees for the registration of the design in England which is a prerequisite for the registration of the design in Cyprus are not included.)

3.0 TRADE NAME

3.1 Obtaining approval of one name	CYP 25
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3.2 For each additional name	CYP 10
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3.3 Filing application for registration	CYP 50
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* The figures above are exclusive of VAT, the rate of which is currently fixed at 8%.

* Official fees, travel and courier expenses, photocopying and international telecommunications etc., all charged in addition to the fees stated above.

* The above fees do not include our fees for the translation of documents or for any additional services rendered in case of complexity of the case and which are calculated on an hourly basis. Our hourly charge out rate is CYP 50.00 (approx. USD 100.00)

