



National Group: Egypt

**Plain Packaging Questionnaire
Trademarks Committee**

- 1) **If the general conditions of registerability are met, does the product or service in relation to which a trademark is used or proposed to be used have any effect on the ability to:**
- Register the trademark; and**
 - Use it once so registered?**

The Intellectual Property Law No. 82 of 2002 ("Intellectual Property Law") does address specific regulations for the registration or use of trademarks with certain goods or services. It limits itself to ensuring that the general conditions of registerability are met. However, nothing prohibits the legislator from enacting legislation affecting the ability to register or use trademarks with certain products or services.

- 2) **What rights are derived from trademark registration?**

Registration of a trademark grants the registrant the following exclusive rights: (a) ownership of the trademark; (b) preventing others from importing, using, selling or distributing goods distinguished by the trademark; (c) licensing others to use the trademark; and (d) protection of the trademark against forgery and/or counterfeit.

- 3) **What rights exist in relation to a sign used as a trademark but not registered? What is the basis of such right?**

According to Article 65 of Intellectual Property Law, a user of an unregistered trademark enjoys priority over the owner of a similar registered trademark, if such user proves his precedence in using the trademark. In this case, the user has the right to seek annulment of registration within five years from the date of registration. This statute of limitation does not apply if the trademark has been registered in bad faith.

- 4) **Is it possible to:**
- obtain; or**
 - maintain;**
- registration of a trademark that is not:**
- used; or**
 - intended to be used?**

Article 65 of the Intellectual Property Law grants protection to the owner of a registered trademark, provided that the owner uses the trademark within five years from the date of registration. Article 91 of the same law allows any interested party to request from the competent court to issue a judgment directing the Trademark Office to delete the registration of a trademark, if it is established that the trademark has not been earnestly

used for five consecutive years without acceptable cause. The court has discretion in determining what constitutes acceptable cause.

5) If yes to 4) above, are the rights derived from such trademark registration the same or different to registered trademarks that are used?

Owners of registered trademarks have identical rights regardless of whether the trademark has been used. Once a trademark is deleted as explained in (4) above, the owner of the deleted trademark ceases to have any rights.

6) Are rights in unregistered trademarks dependent on use? Whether yes or no, please explain the basis for your answer.

Yes. In order to enjoy any rights, the unregistered trademark must be used. There are two cases that confer rights on the user of an unregistered trademark:

(a) As per Article 65 (discussed above), the user of an unregistered trademark has the right to request the annulment of registration of a similar trademark that has been registered subsequent to the user's use of the trademark.

(b) Article 68 provides that the owner of an unregistered trademark that is famous both in Egypt and internationally enjoys the same rights enjoyed by the owner of a registered trademark.

7) Is there any basis to restrict the use of:

- a) A registered trademark; or
- b) A sign used as a trademark?

If yes, please explain any relevant laws or precedents.

To the best of our knowledge, there is presently no legal basis to restrict the use of a registered trademark or a sign used as a trademark. However, nothing prohibits the legislator from enacting legislation restricting the use of registered trademarks or signs used as trademarks.

8) Is there any basis for the state or any state controlled body to expropriate?

- a) a registered trademark;
- b) a sign used as a trademark; or
- c) the rights deriving from either (a) or (b)?

if yes, please explain any relevant laws or precedents.

There is presently no legal basis to expropriate a registered trademark or a sign used as a trademark.



It is worth noting that the Egyptian Constitution provides that expropriation of private property is prohibited except pursuant to a court judgment. This provision, however, is unlikely to be applied in the context of trademarks.

- 9) If yes to 7) or 8) above, do public interest considerations provide any basis for such restriction or expropriation ("Restriction/Expropriation")? Please explain any applicable public interest considerations, and any relevant laws or precedents.**

N/A

- 10) If yes to 7 or 8 above, are trademarks different from other intellectual property rights in this regards?**

It is worth mentioning that Intellectual Property Law allows the competent minister to expropriate a patent for reasons related to national security or extreme necessity. In addition, Patents Office is entitled to grant compulsory license to use a patent in certain events; such as facing state of emergency and protection of national security, health or environment.

- 11) If yes to 7 or 8 above, are any treaty or other international obligations relied on to provide a basis for such Restrictions/Expropriation (as applicable)? If yes, please explain the international obligations, and how those obligations are reflected in or received into your country's law.**

N/A

- 12) Is your country a signatory to the WHO Frame Convention on Tobacco Control ("FCTC") If yes, has your country ratified the FCTC?**

Yes, Egypt signed the FCTC on June 17, 2003 and the Egyptian Parliament ratified it on January 3, 2005.

- 13) If yes to 12 above, has the FCTC been implemented in your country? If yes, please explain its legal impact, if any, including by reference to Guidelines for Implementation of Articles 11 and 13 of FCTC.**

Yes. On June 21, 2007, Law No. 154 of 2007 was issued amending Law No. 52 of 1981 Regarding Prevention from Damages of Smoking ("Law 154/2007"). Law 154/2007 added new provisions including: (a) banning terms that may attract individuals to use tobacco such as "low tar," "light" or "ultra light"; (b) adding the following sentence on tobacco packets: "Smoking destroys health and leads to death"; (c) the previous warning and any other image emphasizing damages of smoking should occupy not less than 50% of display areas of the packet; (d) complete ban on smoking in health, education, public, sports or social institutions; and (e) adopting pricing and taxing policies that limit the use

of tobacco. However, Law 154/2007 did not address trademarks or their presentation on tobacco packets.

14) Is the FCTC received directly into your country's domestic law or is domestic legislation required to give it effect in your country's law?

Conventions are received directly into the domestic laws of Egypt once they are properly signed and ratified by the legislator. However, the FCTC, because of its broad nature, requires additional legislative action to be implemented. This has resulted in the issuance of Law 154/2007.

15) If there is presently a legal basis in your country for permitting any Restriction/Expropriation, please answer the following questions in relations in relation to both registered trademarks and unregistered trademarks (if your country recognizes/protects the latter).

- a) What are the parameters for such Restriction/ Expropriation? For example, the nature of any stated public interest public interest considerations, the proportionality of the proposed measure to the Restriction/Exploration.
- b) Is it relevant that such Restriction/Expropriation only applies in relation to a particular class of products, eg tobacco products, foods deemed to be unhealthy or alcohol?
- c) What are the financial consequences for the state and the trademark rights holder respectively? For example, is a rights entitled to or eligible for any compensation in respect of Restriction/Expropriation? If yes, what type of rights holders are so entitled or eligible? If not, why is no compensation available?
- d) If compensation is available, how is it calculated?
- e) Does a trademark rights holder affected by Restriction/ Expropriation have any other claims or remedies against the state? If yes, please explain the basis and nature of any claims or remedies.
- f) In the event of Restriction/Expropriation, could a trademark remain registered?
- g) If yes, what is the consequence of any restriction/Expropriation on a well known trademark that was registered prior to the Restriction/Expropriation on well known trademark that was registered prior to Restriction/Expropriation?

N/A

16) If there is presently no legal framework in your country permitting Restriction/Expropriation, please answer the following questions in relation to both registered trademarks and unregistered trademarks (if your country recognizes / protects the latter).

- a) What legislative changes would be necessary in your country to implement a plain packaging regime for a specific class or classes of products such as those previously mentioned? For example, amendments to existing domestic trademark legislation, changes to yours country's constitution, multilateral or supranational treaty obligations.



A plain packaging regime would require amendments to domestic legislation. Such legislation, as with any legislation, would be subject to review by the Supreme Constitutional Court.

- b) Could a plain packaging regime be implemented in your country without providing compensation to affected trademark rights holders? If no, what type of rights holders would be entitled to or eligible for compensation? If yes, why would no compensation be payable?**

Yes. As stated above, a plain packaging regime requires amendments to domestic legislation. The State does not compensate for affects resulting from change of legislation. If such legislation is constitutional, affected trademark rights holders would have no right to compensation.

- c) Would a trademark rights holder affected by restriction/Expropriation have any other claims or remedies against the state? If yes, please explain the basis and nature of any claims or remedies.**

The only remedy available to trademark rights holders in case of legislation imposing a plain packaging regime is to challenge the legislation before the Supreme Constitutional Court.