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The Compliance with Intellectual Property Laws and their Enforcement in Jordan- A post-WTO Review & Analysis

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Annex 5



وزارة الصناعة والتجارة

٥٦١٠/ ٢٣/٢/١٩

٢٠٠٩/٠٢/٢٨

الرقم

التاريخ

الموافق

معالي وزير الخارجية

الموضوع: حقوق الملكية الفكرية
(تقرير ٣٠١)

بالإشارة الى كتاب معاليكم رقم ٤٧٧١/٢٨٤/٨ تاريخ ٢٠٠٩/٢/٢ ومرفقاته والمنضمين طلب تزويدكم بتقرير علم مشترك عن جهود الحكومة الأردنية خلال العام ٢٠٠٨ لحماية وإنقاذ حقوق الملكية الفكرية في الأردن وذلك ضمن اطار الاجراء السنوي Special 301 والذي سبقتم الى مندوب الولايات المتحدة لتجاري.

أرفق لاطلاع معاليكم صورة عن التقرير المشار اليه أعلاه والذي تم اعداده بالتعاون مع الجهات التالية:

- وزارة العدل.
- وزارة الزراعة.
- الجمارك الأردنية.
- مؤسسة المواصفات والمقاييس.
- المؤسسة العامة للغذاء والدواء.
- دائرة المكتبة الوطنية.
- هيئة الاعلام المرئي والمسموع.

راجيا معاليكم التكرم بالايحاء لمن يلزم لتزويده للسفارة الامريكية في عمان.

وتفضلوا معاليكم بقبول فائق الاحترام،،،

وزير الصناعة والتجارة
م. عامر الحديدي

الأمانة العامة
و: منتصر لانتقطة



Ministry of Industry and Trade

February, 2009

Protection of Intellectual Property Rights in Jordan

This report sheds the light on developments in protection of Intellectual Property Rights in Jordan during 2008 in response to the USTR 301 review process for the year 2008 as communicated by the Embassy of the United States of America in Jordan.

The measures taken by the Government of Jordan and its relevant institutions to strengthen protection of intellectual property rights and their enforcement pursuant to the TRIPS Agreement of the World Trade Organization (WTO) and Jordan-US FTA are explained below.

GoJ Efforts in 2008 against the piracy of optical media (music CDs, video CDs, CD-ROM's, and DVDs), including on the internet.

The Audiovisual Commission, in cooperation with the IP Unit at the Public Security Department, carried out 180 inspection raids over the private entities involved with optical media, from which 62 violation cases were revealed and transferred to courts.

GoJ Efforts in 2008 to prevent the unauthorized procurement/ use of computer software.

- According to the Fifth Annual BSA Report, Jordan has managed to reduce the percentage of software piracy to 60% in 2007, compared to 61% in 2006 and 63% in 2005.
- The Department of the National Library has formulated a National Committee in order to issue draft amendments to the Copyrights Law in order to comply with its commitments under the Jordan-US FTA. The Committee held several meetings with representatives from USTR Office and agreed on the articles that needed to be amended to comply with the agreement. For protection of computer programs and their use, the draft of the amended Copyright Law included an article requiring government agencies to use original copies of software. The draft of the amended Copyright Law is now under discussion at the Legislation Bureau / the Prime Ministry.
- Upon the request of the Department of the National Library, H.E. the Prime Minister issued Circular No. 7/2007, following Circular No. 8/2004, concerning the use and acquisition of only original and authorized copies of computer software by all government agencies.



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GoJ Efforts in 2008 on data protection, especially protection of proprietary pharmaceutical and agricultural test data against unfair commercial use.

Since the adoption of the Unfair Competition and Trade Secrets Law in 2000, Jordan Food and Drug Administration (JFDA) has provided five years protection for new chemical entities in compliance with TRIPS Agreement and Jordan-US FTA, and three years protection for new indications in compliance with its obligations under Jordan-US FTA. To date, more than 335 products have been granted a five year data protection.

In order to effectively communicate the status of applications submitted and notify originators of all applications of concern to them, JFDA posts on its website (www.jfda.jo/customs/topics/24.pdf) names of products submitted for marketing approval in Jordan. In addition, JFDA and the Ministry of Industry and Trade are working on exchanging information through a common database to ensure effective implementation of Jordan-US FTA commitments in this regard.

JFDA has been implementing Jordan's obligation to provide three year protection to new indications since December 17, 2004, and has approved new indications for more than 40 products.

As for the requirement of minimum one year of marketing in the country of origin prior to accepting the product submission file for registration; the one year requirement is a safety concern for Jordan, as the Pharmacovigilance system in Jordan is still in its infancy stage. Nevertheless, JFDA has been implementing a standing operative policy to accept complete registration files during the one year period to provide the Jordanian public with innovative drugs as quickly as possible.

JFDA confirms its commitment of calculating the period of data protection from the date of registration.

GoJ efforts in 2008 against the production, import and export of counterfeit goods, and the number of prosecutions related to counterfeit goods.

Jordan Institution for Standards and Metrology (JISM) is currently operating a reactive market surveillance system to complaints received from representative agents on IPR issues and from consumers, traders or industrialists on fake/ unsafe products, where visual inspections are performed and samples are drawn from the market and production lines in the local factories and sent to accredited laboratories as well as to legal representatives of the trademarks. JISM may also ban the sale of any goods under suspicion of being counterfeit or unsafe; and they are confiscated and destroyed in accordance with the current Law on Standards and Metrology No. 22 of 2000 when these goods are proved to be counterfeit or unsafe, by the mere claim that they do not fulfil the



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requirements of the mandatory technical regulations or that consumers are subject to deceptive practices.

As a result of market surveillance activities and control on borders, more than one hundred forged trademarks were detected during 2007 and 2008, and thousands of items were seized and destroyed accordingly (*see Annex 1*). In addition, JISM inspectors were trained by IPR experts and specialist from US Patent and Trade Office and were also provided with limited training sessions by local consultants and from owners of trademarks such as Daimler Chrysler and Nokia on how to detect counterfeit products relevant to their agents' products and their products respectively.

On the other hand, JISM had to reinforce its capacity in market surveillance in terms of legislative framework, systems and resources, and for that reason, JISM amended its current Law to include new provisions on market surveillance and IPR issues. JISM also concluded several Memorandums of Understanding with other market surveillance authorities, and participated in workshops and seminars relevant to IPR matters. Moreover, the establishment of a National Market Surveillance Council was also included in the Amendments of the Law in an attempt to set strategies and policies regarding market surveillance and to coordinate the work of public authorities in this field. An electronic system will be used to report on dangerous/counterfeit products and for exchange of information among different authorities.

The Draft Amendment of the Law on Standards and Metrology was forwarded to the Parliament since December 2008.

IPR Provisions in the Draft Amendment provide the following:

- JISM authorized officers have the right to inspect any location in which a product is manufactured, displayed, sold, circulated, stored, or distributed, including distribution by vehicles, to take samples from it and to confiscate the product that is suspected to bear fake or forged trademarks, and all the materials used to commit this violation for a maximum period of 15 days until the product is verified. The cease can be in the place where the violation took place or is relocated in any other place deemed appropriate. The violator has to provide financial guarantee not to transport the seized product and JISM's Director General has the power to order the closure of the shop or the place where the product is seized until the product is verified or in case of no provision of financial guarantee.
- However, in case the product is found to bear fake or forged trademarks, JISM is authorized to prevent the violator from displaying, vending, renting, or distributing the product including gratis distribution. A notice is issued in writing demanding adherence to desist from the sale, circulation or placing the product on the market, or its withdrawal from the market within the period specified in the warning.



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- In all respects, the Director General is authorized to order the destruction of fake or forged products.
- JISM has the power to oblige the manufacturer, importer, trader and distributor to keep documents, information and data on the product so as to trace it back to its source, thus JISM will be able to detect all quantities of the product that bear fake or forged trademarks and has entered the Jordanian market.
- Harsher penalties are introduced to the law; the fine is one thousand JDs as a minimum and not more than ten thousand JDs; the imprisonment is for a term of no less than four months and no longer than six months and both punishments can be executed if a product that bear a fake or forged trademark is manufactured, displayed or circulated with the intent of vending or rent, or if forged or fake packages or product labels are printed. In case of recurrence of violations, the punishments and penalties are doubled. Additionally, JISM may publish the names of convicted persons in the media.

Any specific information available on enforcement and prosecution efforts in 2008 - civil, criminal, and administrative, as well as border enforcement by customs authorities - including statistics, such as:

- Number of operational initiatives or raids undertaken in 2008;
 - Number of IPR cases prosecuted to court in 2008;
 - Number of prosecutions and types of sentences in 2008
- By the end of December 2008, the Copyright Office at the Department of National Library initiated 354 legal cases, raising the number of total cases initiated by the office since its establishment in 2000 to 2347 cases. Around 90% of the cases were initiated through the Ex-Officio enforcement authority under article 36 of the Copyright Law.
 - 101 legal cases were raised due to IP violations exposed by the Customs Department.
 - The Ministry of Justice reported that the Public Prosecution dealt with 841 criminal cases of IPR violations in 2008, from which 98% were proved to be guilty. The sentences ranged from 3 months to one year jail and/or 100-1000 JDs fines.
 - Furthermore, the courts recoded 34 cases raised by IP holders in 2008 appealing compensations on IPR violations.

2008



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Any legal or organizational changes made in 2008 to strengthen the IPR framework in Jordan, i.e. creation of new IPR divisions in GoJ agencies, changes to laws, or progress towards creation of an IPR umbrella organization.

- A Special Committee was reformulated from: Ministry of Justice, Ministry of Industry and Trade, Department of National Library, Customs Department, Audio-Visual Commission, Anti-Fraud Department, Public Security Department and Amman Greater Municipality to follow up and activate IPR enforcement and to secure full compliance with the Copyright Law.
- An IP Unit was established in the Public Security Department in the beginning of 2008, and is in close cooperation with the Department of National Library in performing inspection raids and several cases were referred to the Public Prosecutors in this regard.
- The Department of National Library, in cooperation with WIPO, conducted specialized training programs and seminars for relevant parties (Judiciary, Police, Customs,...) to increase awareness and update them with the recent developments in the field of IP.
- Furthermore, the Department of National Library, in cooperation with USPTO, arranged visits for a number of Judges, public prosecutors, Customs Officials, Police officers and Copyright Officers to Washington, to attend and participate in specialized training programs.
- The Copyright Office in the Department of National Library was supported by two more officers during 2008, and inspection teams were raised to four teams.
- Jordan Customs conducted several training workshops on IPR issues in cooperation with the private sector and related Arab organizations. Jordan Customs also signed several MOUs with different entities to cooperate in the field of IPR.
- Jordan Customs prepared draft amendments for Article 41 of the Customs Law concerning IPR enforcement. The draft amendments are inline with Jordan's international obligations and aim at providing additional protection for IPR.
- The Ministry of Agriculture concluded a cooperative MOU with the Arab Federation for Protection of Intellectual Property Rights in order to set up programs to in build capacities of the Ministry in the IPR field.

Any markets or areas in Jordan notorious for IPR violations, including virtual (online) markets and traditional physical markets.

Information not available

Any IPR public awareness activities in 2008.

- The Industrial Property Protection Directorate (IPPD) of the Ministry of Industry and Trade (MIT) conducted in collaboration with WIPO a workshop on the Patent cooperation treaty (PCT) with the objective of raising awareness in respect of the above treaty.



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- IPPD of MIT, in cooperation with the EU funded Twining Project conducted several workshops to create awareness among the business community on government functions and services related to industrial property protection laws.

GoJ implementation of obligations in the WTO agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

The following industrial property laws have been amended and / or drafted in compliance with TRIPS agreement:

1. The Trademarks Law No. (33) Of 1952, that was amended by the Trademark Law No. (34) Of 1999.
2. The Patents and Designs Law No. (22) For the year 1953 was annulled by the Patents of Inventions Law No. (32) Of 1999, and its amendments by Temporary Law No. (71) For the Year 2001.
3. Industrial Designs & Models law No. (14) For the year 2000.
4. Geographic Indicators law No. (8) for the year 2000
5. Unfair Competition & Trade Secrets Law No. (15) For the year 2000
6. The Law for the Protection of Integrated Circuits Designs Law No. (10) For the Year 2000.
7. The Protection of New Varieties of Plants Law No. (24) Of 2000.

GoJ compliance with obligations under other international agreements to which the United States and Jordan are parties; (including the US-Jordan Free Trade Agreement).

Ongoing Amendments to existing legislations in compliance with the JUSFTA:

1. The Trademark Law No. (34) for the year 1999 has been amended to give effect to the joint recommendation concerning provisions on the protection of well known marks (1999) and paragraph (9) the recordal of license agreements. The amendment to the Trade Mark law has been ratified by the parliament and published in the Official Gazette no. 4900 dated April 16, 2008.

Currently IPPD is working on the amendments of the Trademark Regulations. Moreover, the IPPD, through the USAID-funded economic development program (SABEQ) in Jordan, is working with the USPTO on the development of new software that will support the directorate in its responsibilities in relation to the implementation of Madrid protocol.



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2. The Patents of Inventions Law No. (32) for the year 1999 has been amended in compliance with Paragraph (2) - Article 4 of JUSFTA to accede to the Patent Cooperation Treaty (1984). The Patents of Inventions Law No. (28) for the year 2007 has been ratified by the Parliament and published in the Official Gazette No. 4823 dated May 1st, 2007.

Moreover, a draft of the Patent Law was introduced to the Parliament for ratification in order to allow for an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process.

IPPD in collaboration with a reputable law firm, supported by SABEQ Program, will work together on drafting a new Patent Regulation that sets the detailed aspects relevant to implementing the PCT.

Acceding to international treaties & agreements:

On August 14, 2008 Jordan submitted to the World Intellectual Property Organization (WIPO) its instrument of accession to the following treaties:

1. The International (Nice) Classification of Goods and Services for the Purposes of the Registration of Marks.
2. The International Classification of the Figurative Elements of Marks under the Vienna Agreement.
3. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

All the above agreements entered into force in respect of Jordan on November 14, 2008