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LEGISLATION

REPUBLIC OF TOGO

I (Translation)

Law on Trade Marks

(No. 60-38, of 28th December, 1961)

SECTION I

The Law on the Ownership of Trade Marks

Article 1

The following shall be considered as to be trade marks: names in a distinctive form, descriptions, emblems, imprints, stamps, seals, vignettes, letters, figures, envelopes and all other distinguishing marks that identify industrial or commercial products.

Industrial or commercial trade marks shall be optional.

Nevertheless, decrees issued by the Council of Ministers may, in certain cases, declare them exceptionally to be obligatory for such products as the said Council shall stipulate.

Article 2

No person shall have the right to claim exclusive ownership of a trade mark unless and until he has deposited with the Clerk of his local Commercial Court:

- (1) three copies of the replica of the trade mark;
- (2) the printing block of this mark.

If several trade marks belonging to the same person be deposited, only one notification shall be prepared, but replicas in triplicate and printing blocks for reproduction shall be deposited for each of the different trade marks.

One of the copies of the trade mark deposited, duly endorsed by the Registrar and showing the date and time of the deposit, shall be returned to the depositor.

Blocks may not exceed 12 centimetres each way.

Blocks will be returned to depositors after the trade marks have been officially published by the Minister of Finance and Economic Affairs.

Article 3

The period of validity of the deposit shall be not more than ten years.

Ownership of the trade mark may be renewed for a further period of ten years by a new deposit.

Article 4

A fixed fee, in accordance with the scale of fees in civil and commercial proceedings shall be payable for the preparation of the certificate of deposit of each trade mark and for postage, exclusive of stamp duty and registration fees.

Additionally, a State tax of 5,000 francs shall be levied in respect of each deposit, or renewal of deposit of a trade mark.

SECTION II

Provisions affecting Foreigners

Article 5

Foreigners who own industrial or commercial establishments in Togo shall enjoy the benefits of the present law in respect of the products of their establishments, subject to their complying with the formalities therein prescribed.

Article 6

Foreigners whose establishments are situated outside Togo shall also enjoy the benefits of the present law in respect of the products of these establishments, providing that the country in which they are situated is a party to Diplomatic Conventions or legislation which grant reciprocity for Togolese trade marks.

SECTION III

Penalties

Article 7

The following shall be punishable by a period of imprisonment of from three months to three years, and a fine of from 100,000 to 10,000,000 francs, or either:

- (1) persons who infringe a mark, or make use of an infringing mark;
- (2) persons who fraudulently apply a trade mark, the property of another, to their own products, goods or merchandise;
- (3) persons who knowingly sell or offer for sale one or more products bearing a counterfeit or fraudulently applied trade mark.

Article 8

The following shall be punishable by a period of imprisonment of from two months to one year, and a fine of from 100,000 to 5,000,000 francs, or either:

- (1) persons who, without actually infringing a trade mark, make a fraudulent imitation of it of such a nature as to be liable to mislead a purchaser, or who make use of a fraudulently imitated trade mark;
- (2) persons who make use of a trade mark bearing indications liable to mislead the purchaser as to the nature of the product;
- (3) persons who knowingly sell or offer for sale one or more products bearing a fraudulently imitated trade mark, or bearing indications liable to mislead the purchaser as to the nature of the product.

Article 9

The following shall be punishable by a period of imprisonment of 15 days to six months and a fine of 100,000 to 2,000,000 francs:

- (1) persons who fail to apply to their products a trade mark that has been declared obligatory;
- (2) persons who sell or offer for sale one or more products that do not bear the trade mark declared obligatory for this type of product;
- (3) persons who contravene the provisions of the Decrees issued in conformity with Article 1 of the present Law.

Article 10

The penalties prescribed in Articles 7, 8 and 9 may be doubled in the event of a repetition of the offence.

Article 11

Offenders may, in addition, be deprived of the right to present themselves for election to the Chamber of Commerce for a period that shall not exceed ten years.

The Tribunal may, moreover, order the verdict to be posted in such places as it shall determine, and published in full or in part in such newspapers as it shall designate, the convicted person bearing the charges for all such posting or publication.

Article 12

The Tribunal may, even in cases of acquittal, order the confiscation of products whose trade mark has been found to contravene the provisions of Articles 7 and 8, and of any instruments and tools expressly used for the purpose of committing the offence.

The Tribunal may also order that the confiscated products be handed over to the owner of the trade mark infringed, or fraudulently applied or imitated, independently of further damages, if any.

The Tribunal shall, in all cases, order the destruction of trade marks found to contravene the provisions of Articles 7 and 8.

Article 13

In cases provided for in the first two paragraphs of Article 9, the Tribunal shall always order the trade marks that have been declared obligatory to be applied to the products which are subject to them.

The Tribunal may order the confiscation of the products if the accused has been convicted during the preceding five years of one of the offences provided for in the two first paragraphs of Article 9.

SECTION IV

Jurisdiction

Article 14

Civil actions relating to trade marks shall be brought before civil Courts and dealt with summarily. If, in an action brought for minor offences, the accused in his defence raises questions regarding the ownership of the mark, the Court of Summary Jurisdiction shall give a decision.

Article 15

The owner of a trade mark may appoint a bailiff to prepare a detailed description, either with or without seizure, of the products that he claims to have been trade marked to his prejudice in contravention of the provisions of the present law, by virtue of an order issued by the President of the Court of Modern Law of First Instance of Lomé, or by the judge of the Court in whose jurisdiction the products to be described or seized are located.

The order shall be granted on request and on presentation of the certificate of the deposit of the trade mark. If necessary

it shall contain the nomination of an expert to assist the bailiff in his description.

When seizure is requested, the judge may demand security from the applicant which he is required to deposit before making the seizure.

A copy of the order or of the document certifying the deposit of the guarantee shall be left with the holders of the objects described or seized, under penalty of nullification and damages against the bailiff.

Article 16

If the applicant should fail to pursue the matter, either through the Civil Courts or through a Court of Summary jurisdiction, within a period of a fortnight, the description or seizure shall be null and void, without prejudice to any damages which may be claimable.

SECTION V

General or transitional provisions

Article 17

All provisions of the present law shall apply to animals, grains, flour and, in general, to all agricultural products.

Article 18

Any deposit of trade marks effected with the Clerk of the Commercial Court previous to the present law shall be valid for ten years from the date of promulgation of the said law.

Article 19

A decree issued by the Council of Ministers shall determine the formalities to be completed for the deposit and public notification of trade marks and any other measures which may be necessary for the application of the law.

Article 20

The present law shall be executed as a law of the Republic of Togo.

II

(Translation)

Decree

establishing the procedure for application of the Law of 28th December, 1961, on Trade Marks

(No. 62-66, of 20th April, 1962)

SECTION I

Deposit of Trade Marks

Article 1

The enjoyment of rights resulting from the Law of 28th December, 1961, by the deposit of trade marks at the Office of the Commercial Court of their place of residence by manufacturers, merchants or agriculturalists is subject to the provisions contained in the following articles.

Article 2

The deposit must be made by the party concerned or by his legal representative.

The power granted to the representative may be under private seal, but it must be registered; it shall be left at the Office of the Court.

Article 3

Under Article 6 of the Act of 28th December, 1961, foreigners whose places of business are situated outside Togo and who are able to deposit their trade marks in Togo are allowed to make the deposit only at the Office of the Registrar of the Commercial Court at Lomé.

Article 4

The depositor shall supply a replica of the trade mark which he is depositing, in triplicate, on blank paper.

This replica shall consist of a drawing, picture or print executed to show the trade mark clearly and not likely to deteriorate.

The paper on which this replica is drawn or stuck shall be of a shape 18 centimetres square; the trade mark must occupy the centre, so as to leave the space required to insert the information referred to below.

Article 5

If the trade mark consists of a simple sign or a collection of signs used simultaneously, a replica of which would be too large to go on to a single sheet of paper 18 centimetres square, such replica should be reduced to the size required.

If the trade mark is small in size, the replica may be shown as an enlargement.

Article 6

If the trade mark is engraved or embossed on the products, if it has had to be reduced in size so as not to exceed the prescribed area, if it has been enlarged or if it shows some other special feature connected with its representation or its method of use on the products for which it is intended, the depositor must indicate the fact on the three copies, either by means of one or more drawings or by an explanatory note.

This information must occupy the left-hand side of the paper, on which the trade mark is drawn or to which it is affixed. The right-hand side shall be used for the information required under Articles 11 and 12.

The copies deposited must contain no other information.

Article 7

The Registrar shall verify that the three copies are in accordance with the provisions stated above.

If the copies are not in order, the Registrar shall return them to the depositor for correction or replacement and shall issue the deposit certificate only on delivery of the three copies prepared in accordance with the above-mentioned regulations.

The Registrar shall proceed similarly:
if the three copies are not identical;
if the replica of the trade mark is not properly affixed to the paper to which it is applied;

if the replica is drawn in pencil;

if the replica is of metal, or wax or stands out in such manner that it damages the records to which the copies have to be affixed;

if the printing block is not produced together with the three copies of the trade mark.

Article 8

The printing block supplied by the depositor with the three copies of the trade mark must be of metal and similar to the blocks normally used in typographic printing.

If the trade mark consists of a band more than 12 centimetres long or a group of signs, only one block showing this group in a reduced form shall be produced.

The depositor shall write his name and address on one side of the block.

Article 9

The Registrar must affix the Court's stamp to the three copies of the replica. When the replica is only stuck to the paper and not drawn on it, the Registrar must affix the stamp in such a way that the imprint overlaps both the replica and the paper.

Article 10

The Registrar shall affix one of the three copies to a sheet of the register which he keeps for that purpose; the replicas shall be arranged therein consecutively according to the chronological order in which they were presented. The register shall be furnished by the Registrar; it shall be of blank paper 24 centimetres wide and 40 centimetres high. The register shall be numbered and initialled by the President of the Commercial Court.

Article 11

The Registrar shall then enter on to a stamped record, numbered and initialled in the same way as the register mentioned above, the certificate of deposit in order of presentation. He shall state:

- (1) the date and time of deposit;
- (2) the name of the owner of the trade mark and, if necessary, the name of the legal representative; the occupation of the owner, his address and the type of industry or trade for which he intends to use the trade mark. Further, the Registrar shall affix a serial number to each certificate. He shall reproduce this number on each of the three copies and also the name, address and occupation of the owner of the trade mark and, if necessary, of his legal representative, the date and time of deposit and the type of industry or trade for which the trade mark is intended.

The certificate and replicas shall be signed by the Registrar and by the depositor or his legal representative.

Article 12

When the deposit is made in order to maintain a trade mark already deposited for a further period of ten years, this circumstance shall be mentioned on the record of the deposit and on the three copies of the replica.

Article 13

One of the three copies and also the printing block of each trade mark shall be sent within five days of the date of the certificate to the Chief Registrar of the Court of Appeal.

The copies sent to the Office of the Court of Appeal shall remain deposited there for inspection by the public free of charge.

Article 14

When the depositor intends to relinquish the use of his trade mark, he shall make a declaration to that effect to the Office of the Court at which the trade mark was deposited. The Registrar shall enter this declaration in the margin of the record of the deposit and immediately inform the Chief Registrar of the Court of Appeal thereof, who shall arrange for it to be published in the *Journal officiel* of the Republic of Togo.

Article 15

At the beginning of each year the Registrar shall prepare on blank paper, and in accordance with the form laid down by the Ministry of Economic Affairs, an index of the trade marks deposited with him during the preceding year.

The Registrar shall be authorized to issue to the depositor certificates of identity for his trade mark against payment of the official fee by way of remuneration for preparing the certificates issued by the Registrar in the circumstances covered by the laws and regulations.

Article 16

The trade marks deposited shall be published, after they have been received by the Registrar of the Court of Appeal, in the *Journal officiel* of the Republic of Togo.

Article 17

Apart from the fees for stamping and registration, there shall be paid to the Registrar of the Commercial Court, in accordance with the tariff of legal fees in civil and commercial matters:

- (1) for the preparation of the records of the deposit:
84 francs;
- (2) for special fees: 84 francs;
- (3) for the index: 35 francs.

For the deposit or renewal of the deposit of a trade mark there shall be presented to the Chief Registrar of the Commercial Court the receipt delivered by the Treasurer for the payment of the fee of 5,000 francs charged by the State in accordance with Article 4 of the Law of the 28th December, 1961.

Article 18

The Chief Registrar of the Court of Appeal shall receive for the acts which he is called upon to carry out in accordance with the provision of the present Decree the fees provided for in Article 1, paragraph 62 (a) of the debate 20th September 1949 regarding the tariff of legal fees in civil and commercial matters.

For the expenses of stamping, registration, correspondence and publicity, he shall be paid a sufficient allowance which he must justify after carrying out all the formalities relating to the deposit of marks.

SECTION II

Entries and References in the Special Trade Mark Register

Article 19

As specified in Article 13 of the present decree, one of the copies of each trade mark deposited shall be sent to the Chief Registrar of the Court of Appeal. It shall be inserted in the special register of industrial and commercial trade marks kept by the said Registrar under a separate serial number, which, together with the number of the entry of the Registrar of the Commercial Court, shall be notified in the *Journal officiel* of the Republic at the time of the publication of the trade mark.

The Trade Mark Register shall contain a record, opposite and after the replica of each trade mark, of any modifications to the original references and of any changes of ownership, transfers or grants of the right to exploit and to pledge and, in general, of any information and notifications respecting the ownership of the mark.

Article 20

All entries regarding assignment of ownership, transfer or grant of a right to exploit or to pledge in respect of a trade mark which has been deposited shall be made on presentation of one of the originals, or of the original, of the deed of transfer or of the grant of a right, if it is under seal or drawn up by a notary, or on presentation of a copy, if it is authentic, and on production, in the event of transfer by succession, of an attested affidavit or an abstract of inventory.

Two written memoranda on blank paper shall be attached, one of which may be affixed to the original or to the copy of the certificate.

These memoranda shall contain:

- (1) the surname, first names, occupation and address of the transferer or of the *de cujus*, and of the transferee or concessionaire, or of the rightful owner, or of the creditor or debtor;
- (2) the number, date and place of deposit of the trade mark and the products to which it applies;
- (3) the nature and extent of the right transferred or granted or assigned and its duration;
- (4) the date and nature of the certificate transferring or granting the right or the date of decease causing the change of ownership;
- (5) if necessary, the amount of the debt stated in the certificate, the terms of interest and the conditions under which the claim may be enforced.

The entry shall be made in the Trade Mark Register in accordance with the information contained in the memoranda, one copy of which shall be retained in the Office of the Court of Appeal.

Article 21

Requests for entry in the Trade Mark Register shall be deposited or sent by post under registered cover to the Office of the Court of Appeal; they shall indicate the surname, first names and address of the applicant and of his proxy, if necessary, and shall be accompanied by the documents mentioned in Article 20 above.

Article 22

Entries regarding trade marks given as security shall be cancelled on production of either a final decision or a decision awarded in *res judicata*, or of a deed assenting to the cancellation given by the creditor or his transferee proving his right.

Article 23

The documents supplied to the Chief Registrar of the Court of Appeal in support of any request for the purpose of entry or cancellation shall be returned to the depositors after inspection.

Article 24

Any provisions contrary to the present Decree shall be null and void.

Article 25

The Minister of Finance and Economic Affairs shall be responsible for the execution of the present Decree, which shall be published in the *Journal officiel* of the Republic of Togo.

GENERAL STUDIES

The Protection of Industrial Property in the States Members of the African and Malgasy Organisation for Economic Cooperation (OAMCE)

By Guillaume FINNISS

Inspector-General of Industry and Commerce
Chairman of the Consultative Committee of the Paris Union

The international registration of a trade mark gives rise to an independent right to protection of the mark, with international priority valid in all States members of the Madrid Arrangement

By Dr. Joseph PUŽMAN, Prague

**The Law of Unfair Competition
and the Common Market *)**

By Professor Dr. Eugen Ulmer, Munich

CONGRESSES AND MEETINGS

International Federation of Patent Agents

General Assembly

(Vienna, 19th and 20th June, 1962)

The International Federation of Patent Agents held its General Assembly in Vienna from 18th to 21st June, 1962. The Assembly was attended by 200 participants from 19 countries.

The Assembly was welcomed by Mr. W. Hamburger (Austria) in the name of the *Verband der Oesterreichischen Patentanwälte*, and heard addresses by Mr. Arne Kolster (Helsinki, President of the Federation), Dr. C. Broda (Minister of Justice) and Dr. F. Bock (President of the Patent Office).

Mr. P. O. Langballe (Denmark) having retired as Secretary-General was unanimously elected a "Président d'honneur" of the Federation and is to be succeeded by M. Guido Jacobacci (Italy).

The International Federation of Patent Agents, as an Association having a consultative capacity in relation to the Council of Europe, had been invited to submit its observations on the subject of two drafts of conventions prepared by the Committee of Experts on Patents and the Sub-Committee of Directors of Patent Offices practicing a preliminary examination, following the debates in the General Assembly of the Federation. On the 19th and 20th June, 1962, the Executive Committee adopted the two following "vœux":

1. that the coexistence of a national patent and a European patent should be interpreted both as the coexistence of two legislative systems and the power to protect the same invention by a national patent and a European patent;
2. that the competent authorities of Egypt, party to the Union Convention of 1883, should consider their position in relation to this Convention and agree henceforth to grant the benefits of Article 4 for patents or patents of addition.

BIBLIOGRAPHY

Direction des entreprises et brevets d'inventions (Management of businesses and patents of invention), by *André Bouju*. One bound volume, 187 pages, 25 × 16 cm. Published by Editions de l'Entreprise Moderne, Paris. Price: 26 NF.

The study by André Bouju is interesting in that it deals with one of the less known aspects of patents of invention i. e. the *economic aspect*.

The *legal aspect* has been the subject of studies by jurists for over a century. The *technical aspect* is examined daily by patent advisors and its codification is based on the legal aspect.

Few beads of businesses, however, have thought of establishing a *patent policy* within their enterprise and consequently do not enjoy the full benefits of the patent system.

The author examines the major problems presented by patents of invention. Tables, figures, diagrams and charts illustrate the text clearly and practically.

This work is to the advantage both of specialists in industrial property matters and industrial leaders who will find therein new, stimulating and dynamic ideas.

I. S.