

## PART I

### General Overview of Items (A) – (F)

#### **COUNTRY: MYANMAR**

#### **(A-B) PATENT AND DESIGN RELATED**

In Myanmar, there is presently no law or at least no law in operation on patents and industrial designs. This means that production, (commercial) use and trade in goods is possible without permission of the people/companies who may hold the patents or design rights outside Myanmar. Consequently, most entrepreneurs have to invest large amounts in their trademarks so that they can be registered under the present Act to protect them from any illegal action related to their business. Patent and design legislation is not enforced in Myanmar although the Burma Patents and Design Act and the Burma Patents and Designs (Emergency Provisions) Act were enacted as Burma Act No.5 of 1945 and Burma Act No.1 of 1946. The Preamble to the 1945 Act states: Whereas it is expedient to make legislative provision for the protection of inventions and designs, it is more essential for the present day than the time it was passed. The interesting point found in the 1945 Act is that, though section I (2) of that Act provides: “It shall come into force on such date as the President of the Union may, by notification, direct”., in the footnote it is mentioned that the Act was published in Commerce and Supplies Department Notification No.8 dated August 3, 1945 and republished in Burma Gazette 1946, Part I, Page 136, this Act had not yet come into force. But it came into effect later when it was repealed on March 31, 1993 for the second time and replaced with law No. 4/93 passed by the present Government.

Having repealed the Patent and Design Act of 1945, the only law relating to patents and designs still in force is the Burma Patents and Designs (Emergency Provisions) Act 1946. It has been enforceable retrospectively due to section I (2) of this Act since July 1, 1941. Though section 2 of this Act provides “Until the Burma Patents and Designs Act, 1945 comes into operation, the India Patents and Designs Act 1911, shall continue to have effect in Burma, as if, notwithstanding the separation of India and Burma, Burma had continued to be a part of India and accordingly references in that Act to the Advocate-General, the High Court and to the District Court, shall be deemed to include references to the Attorney-General of the Union of Burma, the High Court and the District Courts in the Union of Burma and the President of the Union of Burma shall be regarded as one of the authorities to whom certain documents are to be sent under section 72 of that Act”, nothing has been applicable since the replacement of the substantive Act of 1945.

With regard to pharmaceutical products, the national Drug Law has been promulgated since October 1992 and notifications were issued in August 1993 pertaining to drug registration, drug manufacturing, importing, selling and distribution, labeling and advertisements. In January 1995, The Food and Drug Administration Department was established under the Department of Health, Ministry of Health and there are two committees namely the Drug Advisory Committee to supervise drug registration

matters and the Central Food and Drug Supervisory Committee to supervise drug manufacturing and importation. The highest Authority is the Myanmar Food and Drug Board of Authority which was formed to enable the public to buy high-quality, safe and effective drugs, to register drugs systematically, to enable the public to purchase high-quality, safe food, to control and systematically regulate manufacture, import, export, storage, contribution and sale of food and drugs. Importers of medicines need separate drug importation licenses from the Ministry of Health. Licensing requirements and procedures for medical suppliers may need to be streamlined to allow for more suppliers to compete. Requirements for suppliers are that imported medicines should first be registered. However, these laws do not include patenting in the field of pharmaceutical process and products.

Therefore, it is currently not possible to apply for patent and design registration in Myanmar. Drafting the new legislation for patents and industrial designs to come into line with the TRIPS Agreement has been carried out by the Attorney General's Office in cooperation with Ministry of Science and Technology. However, patent protection in the pharmaceutical area may not be possible,-at least-until the year 2016. Within Myanmar there are no restrictions on the use of pharmaceutical technology because of the total absence of pharmaceutical patent protection.

Besides the Patent and Design Law, which is not enforced, Myanmar has a legislative framework for science and technological development and technology transfer based on industrial development policy. New IPR legislation will have to be drafted in line with this framework.

### **The Science and Technology Development Law**

In 1994, a new law entitled The Science and Technology Development Law was enacted to cope with the changing situation and development of the market economy and to enhance its further development. The Law provides that each contract for technology transfer must be registered; failing which there will be no provision for instituting a suit based on it. The objectives of the Law are prescribed in Section 3, which states as follows:

- i. to develop science and technology and promote industrial production so as to contribute to the National Economic Development Plan;
- ii. to carry out research and development for the increased extraction and utilization of domestic raw materials and the promotion of industrial production based on modern science and technology;
- iii. to effect technology transfer for the promotion of production processes and the improvement of the quality of goods;
- iv. to train the experts required for the development of science and technology and for research and development and to improve existing qualifications;

- v. to communicate and cooperate with domestic and foreign research institutes and organizations for the development of science and technology and research and development; and
- vi. to honor and grant appropriate benefits to outstanding experts and inventors in the field of science and technology.

The National Council for Science and Technology Development which is a high-level body headed by a chairman assigned by the Government and consisting of ministers or deputy ministers from the relevant ministries, heads of government departments and organizations mainly responsible for the development of science and technology, and appropriate experts was set up to implement the objectives of the above Law.

The Council has been responsible for technological development nationwide. It laid down the policies for the successful implementation of the objectives of the Science and Technology Development Law. It also provides guidance and supervision for the development of science and technology and R&D activities conducted by government departments and government organizations. Moreover, the Council takes responsibility for coordinating the activities conducted by government departments and government organizations, non-governmental organizations, co-operative societies and private individuals. The Council also has the following tasks:

- i. nurturing of luminaries for the successful implementation of the development of science and technology and R&D and making provision for the improvement of their qualifications;
- ii. making arrangements to improve communication and co-operation with foreign research departments in the field of science and technology;
- iii. providing guidance for the formation of science and technology-related associations;
- iv. forming scientific organizations and work committees as may be necessary and determining the functions and duties thereof;
- v. providing guidance for the convening of, and participation in conferences, seminars and meetings of domestic and foreign science and technology agencies;
- vi. submitting advice to the Government from time to time on matters relating to national and foreign technology transfer;
- vii. recommending the presentation of awards and titles by the State to outstanding luminaries and inventors in the field of science and technology;
- viii. awarding gratuities to outstanding luminaries and inventors in the field of science and technology;

- ix. submitting reports to the Government from time to time on the activities of the Council.

In order to enhance the development of science and technology and to reinforce state development more effectively, the State Law and Order Restoration Council established the Ministry of Science and Technology in 1996. Its major aims are as follows:

- i. to carry out R&D for national economic development.
- ii. to utilize national resources so as to develop the economy, and raise the living standards of the people.
- iii. to disseminate the technological know-how obtained from R&D to the Industrial and agricultural sectors in order to enhance their production.
- iv. to plan and carry out human resource development programs so as to train specialists and professionals in science and technology
- v. to analyze and test raw materials and finished products, and to implement quality control and standardization of industrial products.
- vi. to coordinate research, development and use of atomic energy.

The Ministry of Science and Technology has established five departments, namely the Myanmar Scientific and Technological Research Department, Department of Technical and Vocational Education, Department of Advanced Science and Technology, Department of Atomic Energy and Department of Technology Promotion and Coordination in order to fulfill its remit.

### **Rules for Transfer of Technology**

Another important subject dealt with by the Law is technology transfer. According to its provisions it provides that a person or an organization that has conducted research and successfully developed a new technology may transfer the right to use it to any person or organization upon payment of a fee or free of charge under a licensing contract. The manner and conditions relating to the export and import of technology shall be determined by the Government. The law also prescribed terms and conditions to be contained in contracts for technology transfer. Every contract for transfer of technology must be registered with the Registry established by the Department. There shall be no right to institute a suit based upon a contract which is not registered. However, the law provides that the provisions relating to technology transfer shall not apply to the transfer of a right to patent or design, for which separate specific laws are expected to be introduced in the very near future. However transfer of computer technology, according to Section 40 of the Computer Science Development Law promulgated in 1996 is to be carried out in accordance with the provisions of the Science and Technology Development Law, as mentioned above.

## (C) Trademarks

As Myanmar does not have a trademark registration act, no trademark registration office exists. Under these circumstances, protection of trademarks is not yet available in Myanmar. Therefore the rights of parties setting up rival claims to ownership of a trademark are determined in accordance with the principles of common law. The registration of a trademark is a relevant factor for the purpose of determining the date from which a party had intended to claim the marks as his own. On the other hand, a decision between two competitors who are each desirous of adopting a mark which is distinctive in character is entirely a question of who gets to the market first.

The present situation in Myanmar regarding trademarks is:

- i. registration of the ownership of the trademark with the Register of Deeds and Assurances;
- ii. issue of a Caution Notice in the local newspapers, possibly to be printed before the expiry of three years;
- iii. renewal of Registration and re-publication every three years.

As explained above, a plaintiff may bring a common law civil action for “passing off” or a civil action for infringement of a trademark and may seek damages for losses incurred. An injunction stands as the most effective relief as it is a specific order of the court directing the defendant to refrain from continuing the act of infringement or passing off in Myanmar.

### **Trademark Act and Regulations for Myanmar**

In Myanmar, registration of trademarks/service marks accompanies the Registration Act Direction No.13 of the Inspector General of Registration which explicitly provides that, trademarks may be registered under section 18 (f) of the Registration Act. Trademarks/service marks can be registered in the form of words, images, devices or logos in any color or any combination of colors, with the Office of the Registrar of Deeds and Assurances by means of a “Declaration of Ownership of Trademark” in the name of an individual or business organization.

To file a trademark application in Myanmar, a Declaration of Ownership of Trademark, Power of Attorney and ten specimen prints of the mark are necessary. A Declaration of Ownership of Trademark can be filed for only one trademark. A specimen of the mark is to be affixed or reflected thereon, either of goods or services, but without limit to the number or class covered. To qualify for registration, applications must be filed within four months from the date of execution of the Declaration according to the Registration Act, section 23. In the case of a foreign trademark, both a Power of Attorney and a Declaration must be signed and notarized and the signature and seal of the Notary in turn must be attested by the Myanmar Embassy in the country concerned

Registration plays one of the most important roles in protecting trademarks. It offers strong protection for the mark. Registration is afforded in order to introduce an action against a third party which has passed off similar goods bearing the offending mark and so misleading the public. Additionally, registration gives an evidential value in case of a legal dispute.

After registration, there usually follows publication of a Trademark Cautionary Notice in the local newspapers, preferably for international marks in English-language newspapers, such as the Government-owned The New Light of Myanmar and The Myanmar Times which is a private joint venture. Such notice would contain the name or a specimen and particulars of the trademark, the name and address of the owner, the goods or services covered as well as a short warning against infringement of the mark. The Cautionary Notice also plays a very important role in case of trademark conflict. It is neither compulsory nor stipulated by any law but it is an established practice in Myanmar. However, it is also an established practice to make known to the public the ownership of the trademark. The aim of the Cautionary Notice is to raise public awareness and warn any potential infringer. Publication of a Cautionary Notice is usually repeated every three years. Additionally such a publication has a clear trade advertising and commercial value.

In Myanmar, there is no provision in the Registration Act for the validity or renewal periods, Therefore registration once made it is for ever. However, in case of any material changes in the proprietor's name, device, address or goods/services covered in the registered declaration, it should be re-registered. Even so, the owner can maintain the earliest registration date of the mark over subsequent registration dates. At present, most of the IP owners renew registration of their trademarks/service marks once every three years although renewal of registration is not promulgated by any law. Renewal of registration every three years shows the continuance of prior ownership rights. In case of litigation current use of the registered trademark is one of the main facts the Court usually takes into consideration in its decision.

The most effective way to establish the ownership of a trademark in Myanmar is by putting the goods bearing the mark on the local market, advertising, registering and renewing the registration and publication every three years. In case of litigation, mere registration does not decide, but priority in the local market does. In Myanmar, a civil suit is maintainable for infringement of a trademark, and a perpetual injunction may be sought under Section 54 of the Specific Relief Act.

There is no trademark act at present. Regarding the infringement of a trademark, the Acts in which the word 'trademark' appears are:-

i. Myanmar Penal Code:

- Section 478 - "A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trademark".

Section 479 - “Whosoever marks any goods or any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked are the manufacture or a person whose manufacture or merchandise they are not, is said to use a false trademark”.

Section 482 to 489 - “are punishment sections for various infringements of trade or property marks”.

Consequently, criminal prosecution for infringement of a trade mark or property mark in any manner whatsoever may be instituted under the Penal Code.

ii. Civil Action: - A civil suit is maintainable for infringement of a Trademark, and a perpetual injunction may be sought under Section 54 of the Specific Relief Act, which states as the relevant portion of the Section) “When the defendant invades or threatens to invade the plaintiff’s right to, or enjoyment of property, the Court may grant a perpetual injunction”.

Explanation - For the purpose of this section a trademark is property.

Illustration - Improper use of the trademark of B. B may obtain an injunction to restrain the user, provided that B’s use of the trademark is honest.

ii. Criminal Action - Criminal action under the Penal Code is also possible against a person using a false trademark or counterfeiting a trademark, or making or possessing any instrument for counterfeiting a trademark or selling goods marked with a counterfeiting trademark, respectively under sections 482, 483, 485 and 486 of the said Code. According to the exemptions to Section 486 of the Penal Code, the accused can be exempted from sanctions if she/he can prove:

- He/she acted innocently due to lack of knowledge of the difference between counterfeit and genuine.
- He/she can identify the main source of counterfeit.

Punishments range from a fine to three years’ imprisonment, and seizure and destruction of infringing articles and goods can be imposed by court order.

The right to use a trademark is dependent upon the general principles of commercial law. The right which a manufacturer has to his trademark is the exclusive right to use it for the purpose of identification as to where, or by whom the article to which it is

affixed was manufactured. The right of parties setting up in opposition to owners of a trademark must be determined in accordance with the principles of common law. The courts in Myanmar have been applying trademark laws as they stood in the United Kingdom prior to 1875 and in India prior to 1940, (when the Trademarks Acts were first introduced in the United Kingdom and India respectively). It will therefore be necessary to examine what the law on trademark was in those countries at the relevant time. If a person appropriates a trademark, he will be committing an actionable offence whether he acts innocently or fraudulently. Illustration (W) to section 54 of the Specific Relief Act sets out the consequences when a defendant improperly uses a plaintiff's trademark.

### **The Myanmar Merchandise Marks Act**

The Myanmar Merchandise Marks Act supplements relevant provisions in the Penal Code. The Act empowers the Court, *inter alia*, to confiscate all goods by means of, or in relation to, which the offense has been committed. According to the Myanmar Merchandise Marks Act, the term "trademark" has the meaning assigned to that expression in section 478 of the Penal Code and that of a trade description, statement or other indication, direct or indirect, as to any goods being the subject of an existing patent, privilege or copyright.

In section 6 of the said Act, the penalty for applying a false trade description is given. In such manner, penalties for selling goods to which a false trade description has been applied and unintentional contravention of the law relating to marks and descriptions are given in sections 7 and 8, respectively. Regarding forfeiture of goods, this is provided for in section 9. Section 22 provides for the punishment for aiding and abetting.

### **The Sea Customs Act and Land Customs Act**

The Sea Customs Act prohibits export or import by land or sea of goods with a counterfeit trademark. The same applies in the area of trade and commerce. Under sections 18 and 19 of the Sea Customs Act, importation into the country by land or sea of goods with a counterfeit trademark within the meaning of the Penal Code or a false trade description within the meaning of the Myanmar Merchandise Marks Acts and goods made or produced outside the limits of the Union of Myanmar and having affixed thereto any name or trademark being, or purporting to be, the name or trademark of any person who is a manufacturer, dealer or trader in the Union of Myanmar is prohibited. Any goods, imported in contravention of this provision shall be liable to confiscation, and in addition any person involved in any such offence is liable to pay a fine under sections 19A and 167 respectively. In sections 170 and 171, a Customs officer is authorized to stop and search any person, vessel or vehicle on the grounds of reasonable suspicion. In section 9 of the Land Customs Act, it is laid down that the provisions of the Sea Customs Act including those above-mentioned are applicable.



## Legal Principles

As mentioned above, although there is no specific law, officially reported rulings of the Supreme Court define and prescribe legal principles of trademark ownership. To summarize:

- i. In Myanmar, there is no system for registration of trademarks nor for a statutory title to a trademark. So, the rights of the parties setting up rival claims to ownership of a trademark must be determined in accordance with the principle of common law.
- ii. It will be sufficient in law to prove imitation if there exists such similarity between the two marks, which could, in certain circumstances be considered to be calculated to deceive those persons for whom the goods are intended.
- iii. A trade mark or name which is primarily descriptive of an article, of its composition or mode of manufacture, must be open to everyone and cannot be claimed for exclusive use by one trader.
- iv. Deeds of sale of a trademark do not transfer or assign it if the business connected with it was not transferred along with the mark.
- v. Geographical indications which are not connected to the origin of goods and are not indicative of the place of manufacture are in fact distinctive names and may be allowed even on evidence of little use.
- vi. It is a principle in law that in Myanmar there is no method by which a trademark may be registered, but property in or right to a mark may be acquired by a user.
- vii. An owner of a trademark has no right to prohibit other persons from the use of such mark in connection with goods of a totally different character:
- viii. Action on infringement has been embodied in section 54 of the Specific Relief Act, there being no requirement to prove fraudulent purpose in an infringement suit.
- ix. Two marks at issue need not be identical; similarity though slightly different between them is sufficient to claim infringement.

Admittedly, these case laws would not sufficiently cover the present important global issues, namely, domain names, protection of well-known international marks, matters of parallel import, cybersquatting, rights of trade dress, trademark vs. trustmark, etc., which are not relevant in Myanmar at present.

Myanmar is still considering acceding to the Berne and Paris Conventions and ratifying the WTO Agreement, thus becoming bound by the TRIPS Agreement. The main effect of the new legislation and accession to such international conventions would be to enhance intellectual property protection available in Myanmar and extend the same to foreign authors, inventors and trademark owners.

Moreover, only a few IP cases are officially reported from recent years, perhaps because either such disputes were mostly settled out-of-court or such cases are rarely brought before the Supreme Court from lower courts either as appeals or revisions, thus rendering it impossible for them to become officially-reported rulings. As mentioned above, Myanmar's existing laws only provide remedies to aggrieved trademark proprietors. Consumers are not entitled to sue or to be represented in legal proceedings concerning trademarks and there are at present no legal provisions for consumer protection.

Since 1988, Myanmar has adopted a market-oriented economic system to ensure progress and prosperity for the country and its people. To be in line with the newly-adopted economic system, the legislature repealed and amended old laws and enacted certain new laws to provide a better legal framework for all-round development of the country. The State Peace and Development Council assigned to the Office of the Attorney-General the task of drafting new laws on Intellectual Property. The Attorney General's Office has re-drafted IP Laws to fall in line with the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement made between the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) under the guidance of the Government and with the help of the Ministry of Science and Technology. Accordingly, the Attorney-General's Office has drafted new laws on patents, industrial designs, trademarks and copyright. These new laws will come into effect before the end of 2005 in order to fulfill Myanmar's obligations under the TRIPS Agreement.

## **(D) COPYRIGHT**

In Myanmar, works of the mind such as literary and artistic works, musical works, dramatic works, sculpture, architecture, engravings, photographs, cinematography, collective works and performances are protected by the Myanmar Copyright Act, 1914 which came into force on February 24, 1914. For the purposes of the Myanmar Copyright Act, copyright means the sole right to produce or reproduce a work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver the work or any substantial part thereof in public.

The owner of the copyright in any work may assign the right, either wholly or partially and either generally or subject to limitations to the Government either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing and signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.

Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything which is conferred by the Act on the sole owner of the copyright. Selling, offering for sale, hiring, distributing or exhibiting in public for the purposes of trade, importing for sale or hiring any work constitutes an act of infringement of copyright. It shall also be an infringement of copyright if a person for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright.

However, there are exceptions to the infringement of copyright, such as, using any work for private study, research, criticism, review, publishing or an address of a political nature delivered at a public meeting, publication in a newspaper of a lecture delivered in public unless such publication is prohibited. Publishing of prints, drawings, engravings or photographs of works of art in public places, and recitation in public of any reasonable extract from any published work is also permitted by the Act.

According to the Myanmar Copyright Act 1914, infringement of copyright is actionable in both criminal and civil courts. The owner of the copyright may have recourse to the courts to institute criminal proceedings against the infringer under the Act. Punishment in respect of infringement consists of a fine up to a maximum of 20 Kyats but not exceeding 500 Kyats. Making or possessing plates for the purpose of producing counterfeit copies shall be punishable with a fine which up to a maximum of 500 Kyats. For any subsequent offence the penalty is imprisonment for up to one month or a fine to a maximum of 1000 Kyats, or both.

In Myanmar no specific mechanisms exist for search, seizure and disposal of property relating to copyright. However, the general provisions of the Criminal Procedure Code relating to search, seizure and disposal of property can be applied. Sections 101 - 103 allow for any search to be made in the presence of at least two witnesses, who are respectable inhabitants of the locality and will be required to sign the list to attest to its accuracy. The proprietor of the place searched may be present during the search

Any property found in the course of search shall become an exhibit in any legal proceedings and the court has authority to dispose of it in accordance with sections 516-A and 517 of the Criminal Procedure Code. Section 516-A provides that the court may, in certain cases, make an order for the seizure or disposal of property pending trial. Section 517 states that when an inquiry or a trial in any criminal court is concluded it may make such order as it thinks fit for the disposal, by destruction, confiscation, or delivery of the property to any person claiming to be entitled to custody, or against whom any offence is said to have been committed, or which has been used for the commission of any offence.

In addition, every suit or other civil proceeding regarding infringement of copyright shall be instituted at the Supreme Court or at the Court of District Judge under section 13 of the Myanmar Copyright Act. For settlement of disputes relating to copyright infringement, the Civil Procedure Code plays an important role in Myanmar. Under the Code there are effective procedures for judgments and speedy disposal of the suits to be

made. To be in conformity with the Civil Procedure Code, an action has to be commenced with a complaint by the owner of the copyright as plaintiff. Relief remedies through civil action include an injunction or interdict, damages or accounts.

Regarding infringement cases instituted under civil law against the infringer, if the court is satisfied by an affidavit or otherwise, that the infringer or the defendant is about to abscond, or is about to remove or dispose of the whole or any part of his property, the court may either issue a warrant of arrest and bring the defendant before it to show cause why he should not produce security for his appearance, under Order 38, Rule 1 of the Civil Procedure Code, or may direct a conditional seizure of such property under Order 38, Rule 5 and 6 of the same Code.

For infringement of copyright in television and video productions, there is a specific Law, The Television and Video Law, which lays down penalties for certain offenses. Under section 33 of that Law, the offense of copying, distributing, hiring or exhibiting a censor-certified video tape, for commercial purposes, without the permission of the license holder, may be punished with imprisonment of up to three years or a fine not exceeding Kyats 100,000 or both. In these cases, as the penalty is considered to be effective and the trial usually follows rapidly, the owner of the copyright may not have recourse to civil action. However the fact that the infringer has been punished under the relevant penal law shall not be a bar to civil litigation.

The penalties for import and export of any type of computer software or any information proscribed by the Myanmar Computer Science Development Council are defined in Section 36 of the Computer Science Development Law.

Although The Myanmar Copyright Act, 1914 still exists, not a single case has been reported up to the date for the infringement of the Copyright Act, but this does not mean that there have never been disputes relating to copyright and neighboring rights. In copyright matters disputes occur only rarely in literary and musical fields. Even then disputes do not always reach the courts. Almost all such disputes are settled through negotiation. Bodies such as the Literary and Journalist Organization, the Motion Picture Organization, the Music Organization, the Artist and Artisans Organization play a key role in ensuring negotiation and coordination.

As regards copyright, The Myanmar Copyright Act 1914 has not been activated in the past and is at present no longer in use. A new draft is being coordinated and discussed in order to enact a new law that would be in conformity with the country's changing economic and social situation.

### **The Computer Science Development Law**

As regards protection against software piracy, no protection can be sought due to the lack of advanced technology. However, section 36 of the Computer Science Development Law, enacted in 1996 provides penalties for import or export of any type of computer software or any information proscribed by the Myanmar Computer Science Development Council under section 6(g) of the said Law.

## **The Electronic Transactions Law (2004)**

Under the provisions contained in The Electronic Transactions Law enacted on April 30, 2004 this Law shall apply to any type of electronic record or electronic data message used in the context of commercial and non-commercial activities including domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.

The main objectives of this Law are as follows:

- i. to support electronic transaction technology in building a modern nation;
- ii. to obtain more opportunities for development of sectors including human resources and the economic, social and educational sectors by electronic transaction technology;
- iii. to recognize the authenticity and integrity of electronic record and electronic data messaging and give legal protection thereto in matters of internal and external transactions, using computer networks;
- iv. to enable transmission, reception and storage of local and foreign information simultaneously, using electronic transaction technology;
- v. to enable effective and speedy communication and co-operation with international organizations, regional organizations, foreign countries, local and foreign government departments and organizations, private organizations and persons, using computer networks.

The Electronic Transactions Control Board was formed in accordance with this Law in order to carry out activities in conformity with the policies relating to electronic transaction technology, legal affairs and specifications to enable communication, co-operation and dealing effectively and speedily, with international organizations, regional organizations, foreign countries and local and foreign organizations.

Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a maximum term of 3 years or a fine or both:

- i. sending, hacking, modifying, altering, destroying, stealing, or causing loss or damage to electronic records, electronic data messages, or the whole or part of a computer program.
- ii. interception of any communication within the computer network, using or giving access to any person of any fact in any communication without permission of the originator and the addressee;

- iii. communication to any other person directly or indirectly of a security number, password or electronic signature of any person without the permission or consent of such person; and
- iv. creating, modifying or altering information or distributing information created, modified or altered by electronic technology in a manner detrimental to the interests of or to lower the dignity of any organization or any person.

**(E) BUSINESS RELATED**

At present, there are no specific guidelines or directories set up for business-related IPR for universities, companies, or small and medium-sized industries. However, under provision 12 of the Science and Technology Development Law selling or allowing the right to use the technology of the Government department or Government organization may be permissible in the following cases:

- i. monetary benefits may be granted in the prescribed manner to the relevant inventor or to persons who are instrumental in the development of the technology
- ii. if the person who has obtained the right to use the technology so desires, he may assign duties to the inventor or to persons who are mainly instrumental in the development of the technology in accordance with the existing regulations and bye-laws for Government servants.

The following provisions should be contained in contracts for technology transfer:

- i. Statement of the nature and applicability of the technology transferred;
- ii. Statement as to the type of the technology, the nature and amount of the financial payment;
- iii. Statement of the period for which the transferred technology may be used;
- iv. Statement of the rights and responsibilities of the transferor and transferee of the relevant technology; and
- v. Other agreements.

It was also mentioned that, with the approval of the Government, the Ministry of Science and Technology may issue rules and procedures if necessary. Moreover, the Scientific Development Council or Ministry or Myanmar Scientific and Technological Research Department (MSTRD) may issue such orders and directives as may be necessary. At present, joint venture companies (state-owned and private) utilize the trademark, design and technology of foreign companies through relevant agreements such as trademark agreements, technical transfer agreements, etc., for which payment is allowed under the provisions of the Union of Myanmar Foreign Investment Law.

## **(F) FINANCIAL GRANTS**

At present, there is no financial grant made for patent registration fees or technology acquisition fees.

### **Conclusion**

The Government and the people of Myanmar are using their best efforts towards the all-round development of the country in pursuance of political, economic and social objectives, set by the State Peace and Development Council. For a developing country, investment in every sector of the economy, both domestic and foreign, is a key factor to promoting its economic development, which forms the basis for all other developments. The Union of Myanmar has invited participation in terms of technical know-how as well as investment from sources inside the country and abroad for the proper evolution of the market-oriented economic system and development of the economy for the country and for the people. To encourage and promote investment, there must be transparent and effective laws consistent with the prevailing economic situation. To come into line with the economic system, the State Legislature has taken positive action to facilitate a legal framework for smooth running of businesses, including the foreign trade sector and other trade-related aspects.

Protection of intellectual property rights is accorded great importance as an incentive and encouragement in promoting investment and economic development. The protection of such rights can only be obtained by way of legislation. Laws on intellectual property must be comprehensive and transparent and must contain sufficient provisions ensuring effective mechanisms to convince investors that their rights are safeguarded. In view of this, the State Peace and Development Council enacted the Foreign Investment Law in less than three months after it assumed power. The Myanmar Citizens Investment Law was also enacted at the same time. Under both laws, it is provided that rights to trademarks, patents and technical know-how shall be evaluated and included in investment.

In Myanmar, the intellectual property system is not well-developed and there is no Intellectual Property Office. Only with the adoption of the market-oriented economic system, has the importance of this subject been realized and particular attention focused on it. In spite of the fact that there exists no specific law regarding intellectual property rights in Myanmar, infringements of the said rights can be remedied under the existing laws as mentioned above. Existing laws relating to intellectual property are obsolete and do not meet the current trends and developments in the field of intellectual property.

Myanmar joined the World Trade Organization (WTO), and also abides by the provisions of the relevant treaties of this Organization, in particular the TRIPS Agreement and the ASEAN Frame-work Agreement on Intellectual Property. As a result, all draft laws have to be reviewed and redrafted so as to ensure compliance with the international and inter-governmental obligations of Myanmar. Establishing the new Ministry of Science and Technology and designating it as the focal point to deal with intellectual property matters will help expedite the application of the new laws. The Supreme Court and the different courts of law have also been exercising the judicial powers conferred on them in the proper way, taking into consideration the intellectual property rights protection enshrined in international conventions and agreements including the TRIPS Agreement.

The TRIPS Agreement contains an entire section devoted to enforcement. The aim of that section is to ensure that the provisions on protection are properly enforced. It contains both general and special obligations in this respect. It also gives a particularly prominent place to the enforcement of intellectual property rights and contains very detailed provisions in that respect. Being fully aware of the fact that the enforcement mechanism of these laws does not meet the norms and standards provided in the TRIPS Agreement, Myanmar has been endeavoring to draft and enact new laws on intellectual property. To reflect the international legal provisions, the Attorney General's Office has been working on successive draft laws for the protection of IPR in line with the provisions of the TRIPS Agreement as well as the ASEAN Framework Agreement on Intellectual Property.

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and by means conducive to social and economic welfare and balance of rights and obligations. Enactment alone however hardly fills the vacuum in IP field. Its byelaws such as rules, procedures and other necessary measures have to be followed up, so setting up the necessary infrastructure, training officials and staff as well as educating the public who will deal with or relate to the subject matter, are important. Such tremendous tasks will have to be carried out not only before 2005 but also afterwards.



## PART II: SUCCESS STORIES

### Case Study 1

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#### GENERAL INFORMATION

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COUNTRY : Myanmar

COMPANY NAME : FAME Pharmaceuticals

Contact Address : No. 20, Corner of Mingyi Maha Min Gaung and Nawaday Street,  
Industrial Zone (3), Hlaing Tharyar City of Industry, Yangon

Contact Person : Dr. Khin Maung Lwin

Designation : Managing Director

Business Address : No. 20, Corner of Mingyi Maha Min Gaung and Nawaday Street,  
Industrial Zone (3), Hlaing Tharyar City of Industry,  
Yangon

Telephone Number : 95-1-681908; 95-1-682199

Fax Number : 95-1-680122

E-mail : [drkml@famespirulina.com.mm](mailto:drkml@famespirulina.com.mm)

Home Page (if any) : [www.famepharma.com](http://www.famepharma.com)

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#### Type of IP concerned

#### Trademark

A major section of the population in many developing countries such as Myanmar still relies on traditional medicine. Myanmar's traditional medicine has been used for generations and still enjoys a place of great importance in catering to the health needs of the people. It has been well developed over thousands of years and has become a successful and distinct entity. At the time of Myanmar's royal family, the people depended solely on traditional medicine for their health care. The role of traditional medicine declined during the colonization by the British. At that time the British Government introduced western medicine to Myanmar, for prevention as well as curative purposes. But people living in small villages far away from the cities still relied on traditional medicine for their needs. The Myanmar system of traditional medicine was preserved in secrecy by traditional medicine practitioners and handed down for posterity through people closely related to them. During the British colonization and the Japanese invasion, Government hospitals and community health care facilities mainly followed the

western system. But the health care provided did not fulfill the needs of the whole country and so in many instances, traditional medicine was the only available remedy for most of the population, both in urban and rural areas. Traditional medicine continues to be widely used in the post-independence period and numerous legislative and other measures have been taken throughout the years to support the role of traditional medicine and preserve it for posterity.

It continues to flourish in Myanmar not only because of its efficacy but also for a number of other reasons. In the western system of medicine, the drugs used for treatment of illnesses are produced by pharmaceutical companies and manufactured in laboratories using chemicals and biological techniques. This makes western drugs more expensive than traditional ones which are formulated by using medicinal plants, animal parts, and natural minerals. Therefore, the prices of traditional medicine drugs are lower and more affordable. Traditional medicines are also more easily obtainable because although health facilities are provided all over the country, including in rural areas, availability of western medicine is still limited in remote areas, and sometime even in small cities.

Furthermore, some Myanmar people are reluctant to use western drugs because of their side effects. Since traditional medicine was formulated from natural medicinal plants, animal products and minerals, side effects are relatively low. Not only is traditional medicine invaluable in the prevention and treatment of diseases and in improving health conditions but it has also been noted that many traditional medicines are considered to be more effective and to produce fewer side effects than modern pharmaceuticals. In many low-income countries, where access to “modern” health care services and medicines is limited by economic and cultural factors, traditional medicine continues to play a significant role in health care because of its accessibility and affordability. In Asia, traditional medicine has maintained its popularity in many countries, even when conventional medicine is readily available. In western countries, too, not only are traditional medicine and traditional medicine therapies gaining in popularity but traditional medicine has now also been recognized by western science as a valuable source of products and health care treatments. It often provides material for the development and commercialization of new pharmaceutical products.

In Myanmar, the National Drug Law was promulgated in October 1992 and notifications were issued in August 1993 pertaining to drug registration, drug manufacturing, importing, selling, distribution, labeling and advertising. In January 1995, The Food and Drug Administration Department was established under the Department of Health and there are two committees namely the Drug Advisory Committee to supervise drug registration matters and the Central Food and Drug Supervisory Committee to supervise drug manufacturing and importation. The highest authority is the Myanmar Food and Drug Board of Authority which was formed to enable the public to consume good-quality, safe food and to control and regulate manufacture, import, export, shortage, contributions and sale of food and drugs.

At present, the two government pharmaceutical factories, the Myanmar Pharmaceutical factory and the Yangon Pharmaceutical factory produce essential drugs including prescription-only medicines and over-the-counter remedies. Myanmar Pharmaceutical Industries (MPI) is one of the six-state owned industries under the Ministry of Industry (I) engaged in the production of a variety of specific pharmaceutical and consumer goods. Apart from these factories there is a Development Centre for Pharmaceutical Technology in Gyogone, Yangon which was established with the financial and technical assistance of the Japanese International Cooperation Agency. There are approximately 32 small private pharmaceutical factories in

Myanmar. They produce only over-the-counter remedies, such as vitamins, analgesics and cough syrups. The Myanmar Food and Drug Administration (FDA) does not in principal allow domestic production (private pharmaceutical factories) of prescription drugs, fearing quality problems. The FDA is afraid that insufficient capacity of the domestic pharmaceutical companies could lead to unacceptable health-risks. Private companies are permitted to produce only over the counter remedies as they do not at present have the expertise, technical know-how and resources to produce prescription-only medicine.

In the Declaration on Health Development in the South-East Asia Region in the 21<sup>st</sup> Century, the Health Ministers of the member states set out their decisions on health sector reform. One of them is to promote traditional medicine. It stated that our region has a rich heritage of indigenous systems of treatment. We will strive to integrate these into the mainstream of health care, promoting traditional systems that provide relief, are scientifically proven to be safe, easily available, accessible and affordable. As the Government of the Union of Myanmar has laid down guidelines to upgrade the role of traditional (herbal), complementary and alternative medicines in Myanmar, it is the duty of Myanmar nationals to produce good-quality, effective and safe herbal medicines as well as internationally-accepted modern alternative medicines for the health of the people. The Government is promoting private entrepreneurs so as to produce generic drugs. It offered great encouragement for FAME to be established as a privately-owned pharmaceutical company for the manufacture of modern phyto-medicine in Myanmar.

FAME Pharmaceutical Company has been established since 1994. 'FAME' is a made-up word and it has a very delightful meaning. **F** is for famous; **A** is for ability; **M** is for magnificent; and **E** is for energetic. Before the establishment of its pharmaceutical factory FAME was only one authorized distributor of medicines produced from the Myanmar Pharmaceutical Factory (MPF). FAME became famous for distribution of a multivitamin entitled "FAME pluvimin" produced from spirulina grown in Myanmar. The strength of the FAME name has also enabled it to establish a pharmaceutical factory to produce traditional and alternative medicine to a high standard. FAME studied many medicinal plants using high technology led by Dr Khin Maung Lwin who is a physician as well as having been awarded a Doctorate in alternative medicine in Germany and who is the Managing Director of FAME.

In 1997, a research group was established including physicians and scientists for the purpose of carrying out scientific research on the manufacture of herbal medicine to international standards. The pilot production was started on January 2001. Following upon its success, large-scale production began in February 2002. Following the guidelines laid down by the Head of State, FAME has also produced many good quality alternative medicines for six major diseases (diarrhea, diabetes, dysentery, high blood pressure, malaria, and tuberculosis) which are prevalent in Myanmar as a substitute for imported western medicines, to save foreign currency and to free Myanmar from relying on other countries. FAME produces pharmaceutical products in specially-designed bottles and packaging materials. Formulations and packaging of the medicinal products are registered according to the current Registration Act in Myanmar. The name became very popular among the population and gained a good reputation because of its high quality and low-cost alternative medicinal products. The trademark "FAME" was used to prevent misleading customers with regard to the origins of the products as well as the suppliers' reputation and goodwill. FAME became the leading manufacturer of modern phyto-medicine in Myanmar and has received national and international awards for its quality products.

Some of FAME's projects involve working with scientists and researchers from the University of Yangon, Yangon Technological University, and the Department of Medical Research, Ministry of Health Yangon. In order to develop scientific research in the medicinal plants producing the new drugs, FAME has affiliations with scientists from Germany, the United Kingdom and Australia. Testing that could not be carried out in Myanmar due to lack of facilities has been carried out in laboratories in Germany, Switzerland and the United Kingdom. Moreover, research projects on development of quality controls are carried out in collaboration with Bio-Techno Park, Berlin, Germany, the British Herbal Association, United Kingdom, the University of New South Wales, Australia.

Research for extraction methods, results of efficacy experiments and quality control are an important part of FAME's business strategy. However, herbal medicines and herbal products are different from chemical drugs. They are crude plant materials, such as leaves, flowers, fruits, seeds, stems, wood, bark, roots, rhizomes or other plant parts, which may be entirely fragmented. As such, it is not often possible to obtain existing patent law protection for herbal medicines by claiming the discovery of new chemical entities, which are novel, involve an inventive step and are industrially applicable. Besides, herbal products there are powdered herbal materials or extracts, tinctures and fatty oils of herbal materials prepared by steeping or heating herbal materials in alcoholic beverages and/or honey, or other materials. The production process is usually simple and generally no new chemical entities have been developed: the preparation processes used are well-known. Therefore neither the product nor the process is considered novel, and no patent can be obtained. However, FAME has Master Formulations and Standard Operating Procedures (SOP) which could constitute Intellectual Property (IP). Scientific research has been conducted using modern technology for finding new pharmaceutical products and Intellectual Property Rights (IPR) will become a defense for the image of a successful business. As Myanmar is still drafting a patent law with the emphasis on public health issues, according to government officials, FAME is trying to obtain a patent in the United States and Germany for its scientific findings on herbal medicines.

Patent legislation, which is potentially the most relevant Intellectual Property Right (IPR) for pharmaceutical products, is not in force in Myanmar. Although the Emergency Act 1946 and Indian Act 1911 are theoretically still in force, no patent law is currently enacted. As a consequence, it is not possible to apply for patents in Myanmar. There are no restrictions on the use of pharmaceutical technology because of the total absence of pharmaceutical patent-protection. Only trademark registration can be used to prevent unfair competition and counterfeit goods. Therefore, FAME has registered each and every product as a trademark registration to protect its products in Myanmar. Its first product was a natural multivitamin. Up to November 2004, FAME has produced 38 natural pharmaceutical products which have been registered and distributed in local and oversea markets.

Using modern technology, FAME has produced good quality products under the guidelines laid down by WHO-GMP, and the factory became the first pharmaceutical company to receive a GMP certificate in January 2003 from the Ministry of Health of the Union of Myanmar. Apart from having a GMP certificate from the Ministry of Health, FAME also received the ISO 9001:2000 International Quality Management System with a recommendation from BVQI Auditing Team of the United Kingdom on October 10, 2002. Manufacturing many evidence-based alternative medicinal products, FAME is well known for its quality, safety and efficacy. Products are produced not only for local markets but also for export to neighboring ASEAN

countries and various foreign countries including Japan, Korea, and Germany. FAME has developed a considerable reputation and goodwill inside and outside the country over a short period, due to its high-quality and inexpensive products.

Beside producing medication, FAME started to publish monthly journals on reputed medicinal plants and related diseases in 2003. These are intended to be purely educational and informative and are distributed free-of-charge. However, they are not intended to take the place of any treatment prescribed by a physician. FAME has also organized programs to educate the public through electronic media, printed media, exhibitions, and leaflets etc. It has also set up regular programs to share its knowledge of alternative medicine with physicians and patients by holding seminars as well as workshops throughout the country. It has also taken part in conferences as well as exhibitions of traditional medicine and products to promote public awareness and highlight the value of alternative medicine.

FAME is situated at No.20 on the corner of Mingyi Maha Min Gaung Road and Nawaday Street, Industrial Zone 3, Hlaing Thayar City of Industry, Yangon, Myanmar. The factory has been built and is managed according to GMP guidelines and met the ISO 9001:2000 Quality Management System. The factory is organized by department such as planning, administration, production, quality control, research and development, sales, marketing, engineering, and quality management. Management and administration is headed by the Managing Director. The Board of Directors and the general managers are in charge of their respective disciplines. FAME has 20 professional scientists such as medical doctors, pharmacists, biochemists, chemists, botanists, microbiologists and traditional medicine specialists; 50 technical support staff such as engineers and accountants, and 180 manual workers making a total of 250.

The planning department is responsible for the purchase of all materials necessary for manufacture such as raw materials, packing materials, machines, equipment, etc. All the production plans are laid down by this department according to market demand. 90 percent of the raw materials are collected from local sources and only 10 percent are imported from other countries. A pharmaceutical garden has been established for growing medicinal plants in upper Myanmar.

Production is the largest department and divided into I, II and III units. Each unit is supervised and managed by experienced pharmacists. FAME has successfully produced and is marketing alternative medicine for six major diseases: Diarstat for diarrhea, Plasmogin for malaria, Dia-herb for diabetes, Dysenzi for amoebic infections. Medicines for diabetes and tuberculosis are being manufactured and will soon be introduced. FAME functions with an annual turn over of USD 2 millions. Up to the present it has already manufactured 42 natural products which are distributed on the local and international pharmaceutical markets. FAME has ten offices and pharmacies in Yangon, Mandalay and Taungyi. It also has more than a thousand sub-distributors in every township in all the states and divisions.

Quality control is responsible for ensuring the high-quality of all products. QC is done at all levels, from buying, through all the production steps to the finished products. Research and development plays an essential role in the growth of the business. The scientists from this section have been discovering new phyto-pharmaceuticals for various common disorders in Myanmar. FAME has also established an in-house intellectual property management group to oversee all international patent filings and matters relating to patent strategy.

The sales department is responsible for distribution of the products throughout the country by means of a door-to-door delivery system. FAME products have been exported to Germany, Belgium, Singapore, Thailand, Korea, Taiwan, China, Japan, Malaysia, Philippine, and Bangladesh. The marketing section ensures product recognition by potential customers including medical doctors, traditional medicine practitioners and the general public. FAME has also more than (1000) sub-distributors in every township in all states and divisions.

The quality management department is a section which is compulsory in every factory certified by ISO 9001:2000. A management representative, previously known as a quality manager, is responsible for close and continuous monitoring of systems laid down by ISO to maintain standards. FAME's products comply with international standards but are very cheap in comparison with those of imported herbal products.

FAME has been able to mass-produce high quality products such as spirulina, honey, medicated honey, bee products, herbal products and consumer items at a reasonable price.

### **Spirulina Products**

Spirulina is a natural food source of protein of an extremely high biological value containing, gamma linolenic Acid (GLA), anti-oxidants, chlorophyll, phycocyanin, trace-elements (selenium), biochelated iron, vitamin B12. Myanma Spirulina is a purely natural food without any chemical or synthetic additives. It is found in four alkaline lakes, three of which are a series of extinct volcanic craters situated beside the Chindwin River. Lake Twin Taung is the most beautiful and best-known. Spirulina is harvested throughout the year although the peak blooming season occurs in the summer months, especially in March and April. FAME has manufactured the following spirulina formulae:

1. *SPIRU-C* (antioxidant supplement)
2. *SPIRU-GARLIC* (cholesterol-lowering agent)

### **Herbal Medicine Products**

FAME has prepared herbal raw materials according to WHO guidelines on agricultural and collection practices (GACP) for medicinal plants. FAME is now a leading manufacturer and distributor of herbal products. Dr. Khin Maung Lwin, Managing Director of FAME, is a member of the International Herb Association (USA) and the Herb Research Foundation (USA). FAME is manufacturing a variety of herbal products for local and oversea markets and is planning to produce further herbal products in the future. FAME has already manufactured the following:

- Dia-herb (anti-diabetic)
- Dysenzi (anti-amoebic and anti-cancer)
- Diarstat (anti-diarrheal)
- Fame Chlorella (detoxifier and anti-anemic)
- Ganocan (anti-cancer and detoxifier)

- Hepatec (hepatoprotective)
- Hepa-B (anti-hepatitis B)
- Herbal Fresh (anti-stress and anti-depressant)
- Immugin (immuno-enhancement)
- Immunoplex (immuno-enhancement and anti-HIV)
- Milk Thistle (hepato-protective and liver support)
- Nonicap (anti-cancer and pain killer)
- Neurogin (neurotropic and microcirculation enhancer)
- Plasmogin (anti-malarial)
- Tinoflam (anti-inflammatory and analgesic)
- Urocrush (urolithiasis)
- Saw Palmetto (benign prostatic hyperplasia)
- Echinacold (acute respiratory tract infections)
- Motulax (mild laxative)

### **Honey and Bee Products**

Products manufactured by bees are highly beneficial for humans as food supplements. Honey is a sweet fluid composed of the nectar and deposits from plants as gathered, modified and stored in honeycombs by honeybees. Pure natural honey is of the finest quality and not contaminated with radioactive materials. It is full of minerals, vitamins, enzymes and antioxidants. Natural Honey can relieve physical and mental exhaustion, increase appetite, and enhance digestion and absorption. In children, it can enhance growth and development, as well as the body's immune system. There are many health benefits of honey as a nutritional supplement with its antioxidant, antiseptic and antibiotic effects, its wound healing properties, healing of peptic ulcers, varicose and skin ulcers, its use in first and second-degree burns etc. FAME has produced medicated honey products by mixing extracts from some natural plants with natural honey. FAME has produced the following honey and bee products:

- Bee Pollen (benign prostatic hyperplasia and male vitality)
- Royal Jelly (anti-aging agent)
- Asparagus Honey (sexual tonic)
- Citric Honey (refreshment)
- Garlic Honey (cholesterol lowering)
- Ginseng Honey (immuno-enhancement)
- Licoric Honey (peptic ulcer)
- Lingzhi Honey (anti-cancer and detoxifier)
- Natural Honey (general tonic)
- Noni Honey (anti-cancer and pain killer)
- Pyomay Honey (menstrual disorders)
- Tinospora Honey (anti-inflammatory and analgesic)

## Consumer Products

Consumer products are based mainly on medicinal plants and the following products have been produced by FAME.

- Neem Skin Cream (skin infections)
- Neem Mouth Wash (dental caries)
- Clove Mouth Wash (toothache and gingivitis)
- Ganogestic Balm (anti-inflammatory and analgesic)
- Herbigestic Cream (anti-inflammatory and analgesic)
- Naturla Healer (wound healing-excluding mouth)
- Propolis Honey (wound healing-including mouth)
- Herbicough (anti-tussive)
- Nemoderm (natural antiseptic)

FAME has marketed its products with newly-created packaging material designs such as the image of a bottle, capsule etc. in order to attract consumers. All FAME's designs have been registered, together with the trademark "FAME" in the Office of Trademark Registration. FAME has used special technology to prevent counterfeiting of its design and processing technology.

Market dominance is achieved through market surveys and continuing medical education (CME) by the Managing Director through doctors and representatives. The elaboration of business methods depends on the qualifications of the staff. Local and international training courses are important factors for success. FAME has therefore conducted in-house job training inside and outside the country. The international training given to the administrators (especially the Managing Director, other directors, and general managers) is of fundamental importance for the development of the business. On-the-job training to upgrade technical skills as well as intellectual assessments of the scientific staff in R&D, quality control, marketing, and production is carried out on an ongoing basis. Market surveys are carried out all the year round in order to assess customers' needs and demands. Information on reputed medicinal plants and the diseases they treat are published monthly and distributed free-of-charge to doctors.

FAME has rapidly expended in order to provide high-quality, low cost alternative pharmaceutical products in Myanmar. The research and development division is responsible for discovering new drug therapies. FAME is well known for the quality, safety and efficacy of its products which are aimed not only at the local market but also for export to neighboring ASEAN countries and other foreign countries. FAME has received many international and national awards for its standards of quality and technology and it has become internationally known for the development of its technology and quality management very rapidly. FAME has been honored with the following awards:

- (i) The 29<sup>th</sup> International Trophy for Quality, 2001, Frankfurt, Germany
- (ii) The 30<sup>th</sup> International Trophy for Quality, Golden Trophy for Quality, 2002, Paris, France



- (iii) The 4<sup>th</sup> Century International Quality Era Award, 2002, Geneva, Switzerland
- (iv) The Golden Asia Award for Excellence, 2002, Hong Kong, China
- (v) Myanmar Industrial exhibition, First Prize (Gold Medal), March 2003, Mandalay, Myanmar.
- (vi) Golden Trophy for Technology and Quality, March, 2004, Geneva, Switzerland.

In addition, FAME is the only pharmaceutical company to have received a certificate of Good Manufacturing Practice (GMP) from the Ministry of Health, Union of Myanmar presented on January 1, 2003. FAME was also awarded the ISO 9001:2000 quality management system by BVQI in the UK on October 10, 2002.

FAME warmly welcomes any offer for business co-operation in order to expand its markets worldwide. It is willing to co-operate with any foreign company in a long-term business partnership. FAME can arrange any type of business agreement very rapidly. It also offers to anyone with an interest in its products, whether a wholesaler or a retailer, the possibility of contacting the Company.

Myanmar offers mutual co-operation in the manufacture of pharmaceutical and health-care products, renovation and development of existing pharmaceutical factories, and the establishment of a new pharmaceutical factory on a joint-venture basis.

## Case Study 2

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### GENERAL INFORMATION

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COUNTRY : Myanmar  
COMPANY NAME : NIBBAN Electric and Electronics ▣

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Contact address : No.8, Yan Naing Swe Lane (2), Tarketa Industrial Zone  
Yangon Myanmar

Contact Person : Dr. Aung Thein

Designation : General Manager

Business Address : No.8, Yan Naing Swe Lane (2), Tarketa Industrial Zone  
Yangon Myanmar

Telephone Number : 951-547471

Fax Number : 951-547370

Email : [nibban@mptmail.net.mm](mailto:nibban@mptmail.net.mm)

Home page (if any) : Nil

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### Type of IP concerned

#### Trademark

In Myanmar, small and medium-sized industries (SMIs) have become a key component of the country's strategy towards broadening its industrial base as well as providing a linkage with large-scale enterprises. It is considered that the accelerated development of industry is crucial to Myanmar becoming a modern nation in the near future. Therefore the promotion of SMIs is given high importance. In terms of number, SMIs currently comprise over 96% of the total number of industrial establishments and still occupy 80% of the total manufacturing labor force. They are being increasingly recognized as an integral part of the industrialization process and an important source of employment creation, innovation, and economic vitality. SMIs represent the most suitable platform through which indigenous entrepreneurs can progressively upgrade their investment and their management skills; principally as feeder industries for larger enterprises. They provide ready-made business networks and distribution channels on which further industrial progress and diversification can be built. To gain greater impetus for the industrialization process, the Committee for Industrial Development (CID),

which is an important inter-ministerial committee, has been formed. Myanmar Industrial Development Committee (MIDC) was formed under the CID and a working committee (MIDWC) was also formed under MIDC to implement the tasks laid down by the CID with the assistance of nine sub-committees. In Myanmar, there is neither a separate policy nor a law governing SMIs. The Government's policies and objectives for the economic sector do not differentiate between large and small enterprises. The information emanating from MIDC and its objectives may be referred to as policy guidelines for development of SMIs that would assist in the development of the economy with more equitable distribution of income; complementing and supporting large-scale industries through a network of industrial linkages; producing products of good quality and value; increasing productivity through the use of modern technology and management. A key feature of the development of manufacturing industries in the country is its industrial zones. To meet strong infrastructural requirements industrial zones have been established since 1995. At present there are 18 of these zones established at growth points in the country. MIDC which is the inter-ministerial committee responsible for giving greater impetus to the industrialization process oversees those zones through Industrial Zones Supervision Committees with the assistance of the respective State and Division Peace and Development Councils. The task of these zone committees is to implement plans and programs laid down by the MIDC and to carry out such tasks as they deem fit for development of private industries in their respective zones. The Minister for Industry is the chairman of the Myanmar Industrial Development Working Committee (MIDWC), undertaking the task of assisting the development of the zones, especially in the area of technology transfer through plant visits, short-term attachment training at the plants, short and long-term training at vocational training schools, workshops and seminars etc.

It was recognized that the SMIs sector consisted of different types of enterprises. Thus their problems are varied and complex depending both on the sectors they are in and their level of development. However, there are some problems which are common to all such as an inadequate level of technological and managerial skills; lack or inadequacy of research and development facilities; difficult access to technological information; difficulties in marketing and distribution; low level of productivity; inadequate access to financial institutions; higher costs for the purchase of materials because of the small quantities ordered, etc.

In the fiscal year 2001/2002, the number of factories engaged in manufacturing stood at 53,338 of which 97% were private companies, with 3% state-owned. The share of the private sector is particularly high in light industries producing simple consumer goods whereas state owned factories account for 60% of all units in the case of agricultural equipment and 70% in the case of machinery and equipment. In general, it is noted that industrial activity of any significant size is concentrated in state-owned factories. In 2004, among the total registered SMIs, distribution figures the production of electrical goods stood at only about 0.08%. Myanma Machine Tools and Electrical Industries (MTEI) established under the Ministry of Industry is one of the state-owned industries and produces electronic goods in cooperation with foreign companies from countries such as Korea and Thailand. Others are small and medium-sized private industries and most of them produce electronic items for Myanmar's needs as a substitute for foreign products. The privately owned NIBBAN Electric and Electronics Industry has become a successful producer of electric and electronic goods. NEE has made a success of its business due to the high-quality production standards of its inexpensive electronic items.

NEE started trading under the name Shwe PAHO Industry in 1972, and entered the electronics market by introducing the PAHO ADAPTOR (an AC to DC converter). PAHO means “centre” and aims to be a reliable source of supply of quality electronic products to meet customer demand. The trademark PAHO was registered at the Registration Office of Deeds and Assurance under the law existing in Myanmar. At that time, the marketplace was saturated with electronic products imported from foreign countries with very few manufactured locally. NEE successfully produced its PAHO ADAPTOR with a DC output in the range 0 to 12V to offer customers a home-produced article..

In 1973, although NEE distributed dynamic microphones for public address systems as its second product, it failed to compete with foreign companies because of lower quality and higher prices, stopping production a year later. The high frequency DC to AC converters for fluorescent light was the first local product manufactured in 1975. NEE produced two types of high frequency converters, one for industrial use which could illuminate from five to ten fluorescent tubes and another for domestic use for illuminating a single fluorescent tube in various sizes (nine inches, one to four feet etc). The NEE converter was successful because it could compete with foreign products in quality as well as on price. However, NEE had to stop production of converters when other local brands entered the market, offering the same quality at lower prices. Around 1976, battery-powered fluorescent tube ballasts were used countrywide and NEE produced the PAHO battery charger that was urgently required in local markets. NEE was successful with this product and demand increased year by year.

In Myanmar, only water-forced electric generators had been used to supply electricity for the country for over one hundred years. Increasing demand for electricity because of the increasing population needs has caused shortages in the last decade. As a result, a quota system was used to supply electricity. Sometimes, the voltage was out of the specified range (220V-240V) and so voltage regulators (step-up transformers) were needed to adjust it. Safeguards for power-line interruptions for unstable voltages were also needed to prevent unexpected damage due to incorrect voltage supplies for items such as refrigerators, air-conditioners etc while using the voltage regulator.

The PAHO step-up transformer was put on the market and was able to compete with other local products due to its superior quality, durability and reasonable price. NEE produced different models of transformers according to market needs and adjusted its functions and sizes in keeping with the controlled standard to harmonize with the end use.

In later years, NEE has produced several types of safeguards (power line interruption for low and high voltages) for electronic items such as audio visual systems, computers, copiers, air conditioners, TVs, DVDs and VCDs, refrigerators, washing machines, radios, phones and overhead projectors. An uninterrupted power supply (UPS) for computers was also produced. PAHO electronic items were accepted as quality products in the local market and attracted consumers with their quality and price.

NEE also produced the Auto Star 5 KVA Automatic Voltage Regulator, an electronic circuit motor drive to compete with the Japanese-made Stavol 2.5 KVA type regulator. It met with success in the market due to its high quality and low price. However, production of the automatic voltage regulator was stopped due to lack of raw materials and prices increased after the first year.

In 1982, the Myanmar television program (MRTV) was first introduced by the Myanmar broadcasting organization and second-hand Japanese-made television sets which ran on 110/120 volts entered the market. NEE produced a step-down transformer which could convert 220 volts to 110/120 volts as the Myanmar power supply system only provided 220 volts. At that time NEE gained a reputation for its PAHO trademark in electronic markets.

Japanese-made Television (TV) Antennae which help to receive good-quality pictures and sound also entered the market. Growing use of television around the country was due to progress in programming and led to an increasing demand for new TV models from Japan and other countries. In 1984 NEE introduced its first model BXR TV Antenna onto the local market to compete with foreign products under its NIBBAN trademark. NEE tried hard to penetrate the market using different strategies as consumers thought more highly of foreign products than those produced locally especially in the field of electronics. Although the NIBBAN antenna could compete with foreign standards in quality it was sold at a very low price in order to attract consumers. After a year, people accepted the NEE antenna and its reputation spread throughout the country. NEE launched special promotional programs in order to publicize its products and improved their quality at the same time. Trade secrets, durability, and quality control (QC) are basic requirements for survival in business. Advertising is a way to attract the customer to new products. NEE invested in its new brand name, NIBBAN, by advertising in several ways: attending exhibitions, delivering pamphlets, and advertising in newspapers, magazines, and journals, etc. At that time, there was only trademark registration to protect the Company from unfair competition and infringing goods. NEE made a certain amount of profit from its antenna because of steadily-increasing demand in the local market which led to the possibility of investing more in its research and development programs, thus enabling it to offer a greater range of electronic products.

In 1991 NEE started to advertise the NIBBAN TV ANTENNA on television. Consequently, the antenna became well known through out the country. Moreover, NEE took part in several local industrial exhibitions in a drive to meet its customers as well as its counterparts in order to share experiences. NEE was trying hard to enhance the quality of its products and at the same time to satisfy the customers' requirements. In 1994, the second broadcasting station, Mya Waddy (MWD) was established by the Government. As a result, a new type of TV antenna was required to receive the programs transmitted from both stations. NEE created a new antenna called TXR series (TV antenna) in order to receive good-quality sound and vision from both MRTV and MWD broadcasting stations. In the following year, a new model 2-in-1 antenna booster was introduced onto the market to meet consumer needs. In cities, the TV antenna has to be set up at the top of a building to receive clear sound and vision. There is however some difficulty in setting an antenna up on high apartment blocks. NEE tried to find a solution to this problem and they introduced a new 2-in-1 TV antenna together with a booster to meet market needs. This model only needs to be set up in the front of an apartment to receive programs transmitted from the two broadcasting stations. It also included a booster amplifier to offer visual clarity and higher volume as well as a noise filler to prevent interference

Up to now, NEE has produced four electronic items: the PAHO battery-powered fluorescent tube, the PAHO step-up transformer, the PAHO battery charger, and the NIBBAN TV antenna, more for the purpose of meeting customer demand than making vast profits for the industry which has as its motto "Supplying the requirements of the market in time is our main duty".

The Myanmar Government is actively seeking regional and international cooperation. Myanmar became a member of ASEAN in 1997 and signed agreements on economic cooperation. Cooperation plays an important role in the private sector according to the Hanoi Plan of Action, Bali Concord and Vientiane Action Program approved by the Head of State. According to the strategy of the Vientiane Action Program (2004-2010), efforts are being made for the emergence of a single market in priority sectors by 2010 leading to an increase in the competitive power of small and medium-sized enterprises including investment.

NEE realized that internationally-certified standards play a vital role in the quality of its products. It has endeavored to obtain certification from the ISO (International Organization for Standardization) for nearly seven years. It has invested time, money and energy in its work, based on the Japanese concept of a good house-keeping system (5S). It has tried to manage its production processes according to the standards laid down by the ISO and the following steps have been taken in order to obtain the ISO quality management standard.

1. NEE has managed to build up a clean and systematic environment in processing and storage of its goods in order to protect the high quality of its products.
2. Managed to train the workforce to follow the necessary rules and regulations in processing the products.
3. Managed to repair and maintain machines by using the TPM system (total productive maintenance) in order to maintain standards of quality.
4. Managed to set up a quality control circle (QCC) to solve problems or complaints related to the quality of its products and to find ways of improving quality.
5. Managed to control the quality levels of the products (TQM)

It has endeavored to fulfill the above requirements for nearly six years. After obtaining advice from an expert from Malaysia over a period of eight months, NEE finally obtained the ISO certificate (9001:2000) by passing the examination and inspection carried out by examiners from UKAS. ISO certification is one of many competitive advantages especially in export markets. NEE has to ensure the quality of its products as well as maintaining on-going improvements in its management structures.

NEE believes that the best way to penetrate markets is to meet consumer requirements. It has used this strategy and tried to keep its place in the local markets, bearing in mind the motto “supplying the requirements of the market in time is our main duty”.

It is well-known that the business plan is a mechanism to ensure that the resources or assets of a company are used profitably in all its activities in order to develop and retain a competitive edge. NEE studied many aspects of business as well as consulting with experts and has also learned from the business environment before setting up its business plan. The human resources department, finance department, procurement department, production department, marketing department, research and development department, quality assurance department,

sales and service department are eight major departments in NEE's business. It has trained its staff in the skills necessary in their respective areas in order to improve their knowledge of electronics and future inventions. Using qualified teachers, offering on-the-job training, reading technical papers, articles, magazines and books, surveying market environments, collaboration with other companies, encouraging physical and mental fitness, incentives, giving weekly seminars, attending seminars or workshops both at home and abroad are important tools the NEE uses to train its staff.

It is very important to supply products of a consistent quality to meet the increasing demand. NEE has a quality assurance department to control specifications or standards of raw materials and components from its business partners during processing and also finally checking the products before marketing. It has tried to keep its machines in good order with a high-quality maintenance program. NEE has trained its staff (engineers and technicians) with special programs in collaboration with other companies in subjects such as technical training, management training, skill development training etc. The staff from the research and development departments have been striving hard to find solutions to the technical problems as well as fulfilling market requirements. NEE has invested heavily in this area in order to enhance the quality of its products so as to come into line with technological developments as well as to produce new and modified products in accordance with market needs.

Market surveys play an important role. The analyzed data is extremely helpful in decision-making whether for launching further products or enhancing the quality or function of its present product line. The NEE TV ANTENNA has penetrated the local electronics market following a market analysis.

In Myanmar there is at present no statutory law to protect intellectual property assets such as trademarks, inventions or designs. However, NEE registered the trademarks PAHO and NIBBAN at the Registration Office of Deeds and Assurance through a Myanmar trademark law firm. NEE has tried to keep its good name for quality control and to satisfy consumers with its electronic products. It has invested heavily in advertising the trademark (brand) of its products by several means such as leaflet distribution, advertising on TV and FM radio, taking part in exhibitions, establishment of a showroom and service center and setting up a sales promotion program. According to the present IP system in Myanmar, NEE has no chance of protecting its IP assets, especially for product design. However, it has used a special procedure to control the design of its software to prevent unauthorized copying. Moreover, agreements such as non-disclosure in order to protect its IP are included in contracts with employees or partners.

Myanmar changed her economic course from a centrally-planned economy to a market-oriented system in late 1988. Since then, a series of structural reforms has been introduced which were designed to open up and integrate the economy with the world economy. These reform measures were intended to lead to a more liberal market-oriented economic structure. Accordingly, laws, orders, rules, regulations and notifications which prohibited or restricted the private sector from engaging in economic activities were replaced and many laws and rules which were kept in abeyance were revived and amended to be in line with the system and with the changing times and circumstances. New legal policy instruments giving the private sector as well as foreign investors and businesses the right to do business and to invest in the country were enacted. Myanmar has been enjoying considerable economic growth since it shifted to a market economy in 1989.

Myanmar became a fully-fledged member of ASEAN on July 23, 1997 and joined the ASEAN Free Trade Area (AFTA) to take advantage of the benefits accorded under the Common Effective Preferential Tariff Scheme (CEPT) which is a mechanism with a 15-year time frame running from January 1, 1993. Myanmar expects to achieve a free trade zone within the region by 2008. Moreover, a healthy Intellectual Property system that will be set up in the near future will be a key element in encouraging foreign direct investment (FDI). Myanmar is anticipating that large amounts of products from the other ASEAN countries including electronic goods will enter its market in 2008 and will lead to an increase in foreign investment in manufacturing. NEE is trying hard to keep abreast of market forces by controlling product quality, improving awareness of its trademark and applying new strategies especially in R&D.



### PART III

Listing of Manuals, Guidelines and Directories  
in the Area of  
Intellectual Property (IP) Portfolio Management

**COUNTRY: MYANMAR**

No.	English Title + Brief Description of its Contents in less than 50 words	Year of Publication	Agency Responsible and Address	Contacts (Tel/Fax/ema il)
<b>A. PATENT AND INVENTION RELATED</b>				
1.	The Myanmar Patents and Designs (Emergency Provision) Acts	1946		
2.	The Science and Technology Development Law	1994		
3.	Law Journal	1999- 2004	Attorney General's Office	951-384805
4.	No other publication	-		
<b>B. INDUSTRIAL DESIGN RELATED</b>				
1.	The Myanmar Patents and Designs (Emergency Provision) Acts	1945		
2.	No other publication			
<b>C. TRADEMARK RELATED</b>				
1.	The Myanmar Merchandise Marks Act:	1889		
2.	The Registration Act;	1908		
3.	The Sea Customs Act;	1878		
4.	The Land Customs Act;	1924		
5.	Law Journal	1999- 2004	Attorney General's Office	951-384805
6.	No other Publication			

<b>D. COPYRIGHT RELATED</b>				
1.	The Myanmar Copyright Act;	1914		
2.	The Television and Video Law;	1996		
3.	The Computer Science Development Law	1996		
4.	The Electronic Transactions Law	2004		
5.	Law Journal	1999- 2004	Attorney General's Office	951-384805
6.	No other publication	-		
<b>E. BUSINESS RELATED</b>				
1.	The Science and Technology Development Law	Jun 1994		
2.	No other publication	-		
<b>F. FINANCIAL GRANTS</b>				
	No publication	-		

### General Publications Concerning IP

1. Title - **Intellectual Property Rights**
- Author - Sein Win
- Year - July, 2005
- Publisher - Room 401/ Building No 222-1 Sapai Marga Street, Hantha Yeikmon, Senmalite  
Kamayut, Yangon. Telephone - 501 663 (Ext- 457)
- Description - (Myanmar version) general description of the Berne Convention, TRIPS Agreement and the International Agreement on Performers, Phonogram Producers and Broadcasting, cooperation with developing countries and solving arbitration issues of Intellectual Property Rights.

2. Title - **Intellectual Property (National Literary Award)**
- Author - Aung Than Tun
- Year - June, 2003, 1<sup>st</sup> time
- Publisher  
Kyauktada - U Pyone Mg Mg, Ava Book Store, No. 232, Sula Pagoda Road,  
Tounship, Yangon. Tel: 951-706082.
- Description  
Property, such - (Myanmar version) This book includes explanations of Intellectual  
as copyrights, patents, trademarks, and trade secrets, A general  
description of present Myanmar laws concerning Intellectual Property  
and International Conventions related to Intellectual Property.
3. Title - **Myanmar Law Digest**
- Author - Aung Than Tun
- Year - 2001, 1<sup>st</sup> time
- Publisher  
Kyauktada - U Pyone Mg Mg, Ava Book Store, No. 232, Sula Pagoda Road,  
Tounship, Yangon. Tel: 951-706082.
- Description - (English version) The Myanmar law digest is a complete survey of the  
up-to-date legal framework of Myanmar and its practical application  
in the light of the changing political economy. It summarizes facts  
and basic principles of law with valuable references. It includes an  
invaluable bibliography which shows at a glance the eminent authors  
and their works on various aspects of laws, old and new; Government  
Acts and Ordinances promulgated throughout the ages; law texts and  
commentaries; manuals, rulings, directives and digest of rulings. It is  
a readable, understandable exposition of the fields it covers and a  
most useful handy reference.