

Law n° 2007-50 dated 23 July 2007 amending and supplementing the law n° 2001-36 dated 17 April 2001, relating to the protection of the fabric, trade and services marks (1).

In the name of the people,
The Chamber of Deputies and the Chamber of Advisors
having adopted,

The President of the Republic enacts the following law :

Article one - Shall be repealed the provisions of the 51st article of the law n° 2001-36 dated 17 April, 2001 relating to the protection of the fabric, trade and services marks, and replaced by the provisions hereafter :

Article 51 (new) : Without prejudice to sanctions by special texts, will be punished of a fine from 10000 to 50000 dinars whoever :

a) have contravened the provisions of the 22nd and the 23rd articles of this law.

b) have imported goods carrying a counterfeited mark.

Art. 2 - Are added to the law n° 2001-36 dated 17 April, 2001, relating to the protection of the fabric, trade and services marks, articles 52 (second), 52 (third), 52 (quarter), 52 (quinquies), 52 (sexies), 52 (septies), 52 (octies) and 52 (nonies) :

Article 52 second - The infringements envisaged at the point (a) of the 51st and the 52nd articles of this law are noted by the agents enumerated below :

- Legal senior police officers quoted with numbers 3 and 4 of article 10 of the penal procedure code.

- Agents of economic control indicated in accordance with the particular statute governing the body of economic control, who are sworn in and entitled for this purpose.

- Doctors, veterinary surgeons, pharmacists, engineers and high-level technicians who are sworn in and entitled by the Minister in charge of agriculture or the Minister in charge of the public health.

- Customs agents.

The infringements with the provisions envisaged at the point (b) of article 51 of this law are noted by the customs agents.

Article 52 third - With regard to the infringements with the provisions envisaged at the point (a) of articles 51 and 52 of this law, the agents aimed to article 52 (second), after having made known their quality carry out the provisional seizure of the products suspected to be counterfeited.

An official report of provisional seizure is established for this purpose and must comprise the following mentions :

- Date : hour, day, month and year.

- Names and quality of the agents.

- Place of the observation.

- Identity and quality of the holder of the goods and, if necessary, identity and the quality of the person who is present at the time of the observation.

(1) preparatory works :

Discussion and adoption by the Chamber of Deputies during its session held on 10 July 2007.

Discussion and adoption by the Chamber of Advisors during its session held on 16 July 2007.

- Legal base.

- Identification of the seized product: its denomination, quantity, mark, packing and, if necessary, the weight, the number of the batch and dates of manufacture and validity of the product.

- Identity and quality of the person at whom are consigned the seized products.

- Signatures of the agents and the person who is present at the time of the observations and, if necessary, the person at whom are consigned the seized products. With the case of refusal to sign, a mention is made in the official report.

The official report can comprise all other mentions that the agents policemen consider useful for purposes of the investigations.

The duration of temporarily measure of seizure cannot exceed one month. The Public prosecutor can, by writing, extend this duration for the same duration and only once. With the expiry of this time this measurement ceases automatically.

During the period of seizure the suspected products are left in guard of their holder, or if necessary, in a place chosen by the agents provided that this place meets the necessary conditions of conservation.

The service which the agents concerned belong to is held to inform the owner of the mark or its having right, by any means which can leave record, and to grant the possibility to him of examining the taken samples and of carrying out the expertises enabling him to come to a conclusion about the counterfeit.

If it proves that the products seized temporarily are not counterfeited, the measurement of seizure is raised systematically. In the contrary case, the service, which the agents belong to having carried out the provisional seizure, establishes an official report of infringement against the contravener and transmits it to the minister in charge of trade who will transmit it to the Public prosecutor of the competent jurisdiction court, accompanied with the administration requests.

Article 52 quater - In the achievement of their missions, the agents in charge of the observation of the infringements are authorized :

- 1/ to enter, during the usual hours of opening or work, in the professional buildings. They are also authorized to achieve their missions during the carriage of the goods.

- 2/ to make all the necessary observations and to obtain, on first requisition and without displacement, documents, parts and registers necessary to their investigations and observations and to take copies of them.

- 3/ to seize, counters receipts, any document, cited in the second paragraph, necessary to prove the infringement or to seek the joint authors of the infringement or their accomplices.

- 4/ to take samples according to the lawful modes and conditions. Each taking away comprises, unless materially impossible, four identical samples, including two intended for expertise and two others to subject if required to the contradictory expertises.

5/ to proceed to the visits of the places with use of dwelling supposed to contain products counterfeited, and this, after preliminary authorization of the Public prosecutor of the competent jurisdiction court. The visits of the places with use of dwelling must be paid in accordance with the regulations of the penal procedures code.

Article 52 quinques - The members of the police force are held, in the event of need, to lend hand-strong to the order agents of control to guarantee the good achievement of their mission.

The haulage contractors are held not to make obstacle at the request of the agents aimed to article 52 (a) of this law in order to proceed to the operations of seizure or sampling, and to present the loading or transport documents, the receipts, the goods and declarations of which they are holders.

Article 52 sexes - The samples taken by the agents aimed to in article 52 (a) of this law are subjected to the necessary expertises. In the event of analyses and tests, those must be carried out in the laboratories entitled for this purpose in accordance with the regulations into force.

Article 52 septies - The infringements with the provisions of this law are noted by an official report established by two agents among those quoted in article 52 (a) of this law, having taken share personally and directly with the observations of the facts which constitute the infringement.

The official report must comprise the service seal of the agents policemen, their signatures and their quality, as well as the declarations of the contravener.

The contravener or his representative, present during the establishment of the official report, is held to sign it. If the official report is established in its absence, or that present it refuses to sign it, mention is made by it in the official report.

The official report must also mention the date, the place and the nature of the observations or controls carried out and indicate that the contravener was informed of the date and the place of the drafting of the verbal lawsuit and that convocation by registered letter was addressed to him, except case of obvious offence.

Article 52 octies - Is punished of a fine from 5000 to 20000 dinars and of a one month imprisonment or six months or one of these two penalties :

- whoever avoids or attempts to avoid controls intended to check the suspected products to be counterfeited,

- whoever puts, in any manner, the agents entitled by the present law in the impossibility of reaching the buildings of production, manufacture, deposit, sale, distribution or with the means of transport,

- whoever refuses to give any account, technical or commercial necessary to control,

- whoever intentionally provides false documents with regard to the source of the product, its origin, its nature, its elements and its substantial qualities.

Article 52 nonies - The responsibility for the services the agents belong to aimed to in article 52 (a) cannot be committed if they do not manage to recognize the products supposed counterfeited.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the state.

Tunis, 23 July 2007.

Zine El Abidine Ben Ali

Law n° 2007-51 dated 23 July 2007, amending and completing law n° 60-30 dated 14 December 1960, organizing social security schemes (1).

In the name of the people,

The Chamber of Deputies and the Chamber of Advisors having adopted,

The President of the Republic enacts the following law :

Article one - The provisions of paragraph one of article 105 of law n° 60-30 dated 14 December 1960, organizing social security schemes are repealed and superseded by the following provisions :

Article 105 (paragraph one new) : Any full contribution or part of it not paid at the time limit by an affiliated employer is overvalued by a late payment penalty for non payment of the required contributions worth 1% per each month late or part of it if the employer declares all the wages automatically paid. If all the paid wages are not declared, a late payment penalty for non declaration of wages worth 0.5% from the affiliations amount required per one month late or part of it is added to the late payment penalty for non payment of contributions.

Art. 2 - A third paragraph is added to article 45 of law n° 60-30 dated 14 December 1960, organizing social security schemes as follows :

Article 45 (third paragraph) : The employees may pay the affiliations fees provided for in the article herein monthly.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the state.

Tunis, 23 July 2007.

Zine El Abidine Ben Ali

(1) preparatory works :

Discussion and adoption by the Chamber of Deputies during its session held on 10 July 2007.

Discussion and adoption by the Chamber of Advisors during its session held on 16 July 2007.

CONSTITUTIONAL COUNCIL (*)

Opinion n° 29-2007 of the Constitutional Council, on a draft law amending and completing law n°2001-36 dated 17 April 2001, on trademarks, trade and services protection.

Opinion n° 45-2007 of the Constitutional Council, on a draft law amending and completing law n°60-30 dated 14 December 1960, organizing social security schemes.

(*) These opinions are published only in Arabic and French.