



QUID JURIS?

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GENERAL INFORMATIONS

LEGAL INFORMATION

MARKETS OF THE STATE

The rule of the markets of the State grows rich of a new decree N°2-03-703 of November 13th, 2003 which foresees that the payment of the services of stationery of works, stationery or the services must be made henceforth for a maximum period of ninety days, hardly of interests of delay.

This rule does not apply to contracts concluded except the frame of the regulated markets nor in the concessions of services.

The period(delay) of the organization and the term of payment are henceforth regulated. We shall underline that there is no rule determining the date of observation of the execution of the market while this one constitutes the point of departure for the calculation of the period(delay) of the organization and the payment above. As a result a particular attention must be given to the editorial staff of clauses defining the execution of the market and the period(delay) of report of this last one during the conclusion of markets.

The coming into force of the new decree is not immediate, this rule applying:

" That in 2004 for the markets of an equal initial amount or superior to 2.000.000 DH (approximately 200.000 €), with a maximum term of payment fixed in 120 days.

" That in 2005 for the markets of an equal initial amount or superior to 1.000.000 DH (approximately 100.000 €), with a maximum term of payment fixed in 105 days.

It will be necessary to wait for year 2006 to see the coming into force actual and generalized by the obligation for payment in 90 days by the State of the services of works, stationery or of services returned by the economic operators about is their amount. Besides, the quality or the nationality of the person receiving benefits has no incidence on the obligation for payment of the State for the new statutory period.

PRACTICE OF the RIGHT

TRADEMARKS

Trademark of factory or business is an essential element of the business of a company. As the case may be, the trademark can determine to her only the value of the business of a company when this one is constituted through royalties of leading license which it generates. Therefore, the trademark can constitute a considerable asset independently of the fact that it identifies a product or a service.

The choice of a trademark is strategic. In Morocco, a trademark has to have a distinctive character to be protected. This excludes the generic names, the geographic names and in a general way, the common terms.

Once the trademark was chosen, it is necessary to identify the existence of similar products or service marketed under a trademark similar or susceptible to entail confusions. A preliminary search with the Moroccan Office of the Industrial Property allows to know better the existing market.

This stage was exceeded, the recording of the trademark is the only legal means to prevent every competitor from using the same trademark or the similar trademark to identify products or identical services. It is important to distinguish between recording of a registered company name and recording of a trademark. Indeed, it is not enough to register a registered company name to prevent a competitor from marketing its products or services under the same name. A registered company name serves only for identifying a moral person and confer no right of property on this name, while the recording of a trademark creates a real right of property which can be used to protect itself against any action of unfair competition.

So, the prospecting of new markets requires a preventive approach which will have to exercise with the Moroccan Office of the Industrial Property. Morocco offers an excellent law on the protection of the trademarks, allowing to protect as such reliefs, holograms, logos, computer generated images; the forms, notably those of the product, the combinations(overalls) of colours or nuances of colours. Repressive measures against the counterfeiters are henceforth in accordance with the international standards.

FRANCHISING

The commercial distribution through the networks of franchises knows a considerable development in Morocco in all the sectors of the economy.

The franchising is a contractual operation of American origin allowing to standardize processes of manufacture or marketing of products or services under a definite trademark. The specificity of this contractual tool is that it is strictly regulated abroad and in particular at the European level. We shall find in particular the obligation put chargeable to the franchiser of a duty of compulsory preliminary information in favour of the candidate franchisee intended to allow it to consider better the investment to be realized.

In Morocco, the franchising is the object of no rule and, therefore, the franchisers about are their nationality are not subjected in of some forced relative in particular to the preliminary information of the potential franchisee.

The contracts franchises can be concluded in foreign language be subjected to a foreign rule as well as to a foreign jurisdiction. The Moroccan courts have the obligation to recognize any judgment returned abroad since the provisions of the contract of franchising are not opposite at the provisions of Moroccan law and order. it is there so of any provision foreseeing the break of the contract in case of bankruptcy of the franchisee. The continuation of contracts being a principle of law and order in case of receivership, it is likely that the Moroccan jurisdictions oppose to any opposite decision which would be returned abroad.

Therefore, it is advisable to consider well the viability of the operation of franchising in its quite at the beginning, especially if the franchising is run through a common company in which case, the mechanisms of the right of company must be investigated with attention to allow to reassure the realized investment.

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