



***ENFORCEMENT GUIDE  
(INDUSTRIAL PROPERTY)***

**BELIPO**  
BELIZE INTELLECTUAL PROPERTY OFFICE

## **BELIPO'S MISSION STATEMENT**

*“Our mission is to create an efficient and modern intellectual property system leading to the emergence of a vibrant intellectual property culture in Belize.”*

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## **ENFORCEMENT GUIDE (INDUSTRIAL PROPERTY)**

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### **INTRODUCTION**

This guide focuses on the legal framework for the enforcement of industrial property rights in Belize. It starts by defining the main types of intellectual property rights and then provides examples of such rights. The guide also covers the exclusive rights granted by industrial property rights (trademarks, patents and industrial designs) and then moves on to the thrust of the guide - the enforcement of trademarks, patents and industrial designs in Belize.

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### **WHAT IS INTELLECTUAL PROPERTY?**

Intellectual property is the area of the law that deals with creations of the mind such as inventions, literary and artistic works, and symbols, names, and images that are used in commercial activities. Intellectual property is divided into two categories-industrial property and copyright.

The main areas of industrial property are trademarks, industrial designs and patents. A trademark is a sign that is capable of distinguishing the goods or services of a business or professional undertaking from the goods or services of other undertakings. There are many famous local examples of trademarks in Belize. These include BRODIES AND BELIKIN BEER.

A patent is the exclusive right to make, use, or sell an invention for a specified period of time. A patent is the title granted to protect an invention. Good examples of patents can be found in medical drugs or fertilizers.

An industrial design is the ornamental or aesthetic qualities of a product. Industrial designs cover a wide range of products of industry and

handicraft. These products range from furniture to technical and medical instruments to watches, jewelry, and other luxury items; from housewares and electrical appliances to vehicles; from textile designs to leisure goods.

As was indicated earlier, the other main area of intellectual property is copyright. Copyright is the legal protection given to the creator of an original literary or artistic work. Copyright is the exclusive right granted by the law to the creator of such original work, to do, authorize, or prohibit certain acts in relation to such work. Such a creator is also known as the author or the owner of the rights.

Works included under the banner of copyright include novels, poems, plays, reference works, newspapers, and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement, maps and technical drawings.

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## **RIGHTS OF THE TRADEMARK OWNER**

According to section 24(1) of the Trade Marks Act, the owner of a registered trademark has exclusive rights to use the trademark, and such exclusive rights are infringed by use of the trademark in Belize without the trademark owner's consent. A person uses a trademark if he affixes it to goods, offers or exposes goods for sale under the sign or offers or supplies services under the trademark, imports or exports goods under the trademark, or uses the trademark on business papers or in advertising.<sup>1</sup> The term of protection of a registered trademark is ten years from the date of registration.<sup>2</sup> The term of protection may be extended for further periods of ten years.<sup>3</sup>

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## **RIGHTS OF THE PATENT OWNER**

Section 33(1) of the Patents Act grants the owner of the patent the exclusive right to authorize the exploitation of the patent. The exploitation of a product patent is defined as making, importing into Belize, offering for sale, selling and using the patented product, and stocking of the patented product

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<sup>1</sup> Section 25(4) of the Trade Marks Act.

<sup>2</sup> Section 20(1), *ibid.*

<sup>3</sup> Section 20(2), *ibid.*

for the purposes of offering it for sale or selling or using it.<sup>4</sup> The exploitation of a patented process is defined as the using of that process, and the doing of the acts referred to in the last sentence in respect of a product obtained by means of that process.<sup>5</sup> Under the Patents Act, the exploitation of a patent without the authorization of the patent owner is regarded as constituting an infringement of the patent.<sup>6</sup> A patent shall expire twenty years after the date of filing the application for the patent.<sup>7</sup>

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## **RIGHTS OF THE INDUSTRIAL DESIGN OWNER**

Section 10(1) of the Industrial Designs Act states that the exploitation of a registered industrial design in Belize, by persons other than the owner of the registered design, shall require the owner's written authorization. The owner of the registered design shall also have the exclusive right to make, sell, import or distribute, for commercial purposes, any article bearing or embodying the design.<sup>8</sup> Any person who performs the above acts without the consent of the owner of the registered design commits an infringement of the registered industrial design.<sup>9</sup> The term of protection of an industrial design is five years from the filing date of the application for registration.<sup>10</sup> The term of protection may be extended for two further consecutive periods of five years.<sup>11</sup>

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## **ENFORCEMENT OF TRADEMARKS**

### **Civil Remedies**

The trademark owner has the right to institute an action for infringement of the trademark.<sup>12</sup> A trademark owner instituting an infringement action can claim relief such as damages, injunctions, and account

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<sup>4</sup> Section 33(2)(a) of the Patents Act.

<sup>5</sup> Section 33(2)(b), *ibid.*

<sup>6</sup> Section 40, *ibid.*

<sup>7</sup> Section 28(1), *ibid.*

<sup>8</sup> Section 10(2) of the Industrial Designs Act.

<sup>9</sup> Section 24(1), *ibid.*

<sup>10</sup> Section 11(1), *ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Section 49(1) of the Trade Marks Act.

of profits.<sup>13</sup> The Court may order the infringer to erase the offending sign from any infringing goods, material or articles in his possession.<sup>14</sup> If the erasure of the offending sign is not practicable, the Court may order the infringer to destroy the infringing goods, material or articles in question.<sup>15</sup> Also, if it appears to the Court that the order would not be complied with, the Court may order that the infringing goods, material or articles be delivered to a designated person for the erasure of the sign or the destruction of the goods.<sup>16</sup>

The trademark owner may apply to the Court for an order for the delivery up to him, or a designated person, of any material or infringing goods, material or articles that a person has in his possession.<sup>17</sup> An application for a delivery up order may not be made after the end of the period of six years from the date of infringement.<sup>18</sup> However, an exception is made for cases in which the trademark owner is under a disability or is prevented by fraud or concealment from discovering the infringement.<sup>19</sup> Also, no delivery up order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order as to disposal of the infringing goods.<sup>20</sup>

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### **Border Measures (Customs)**

The trademark owner or licensee may give a written notice to the Comptroller of Customs that he or she is the proprietor or licensee of the registered trademark, that at a time and place specified in the notice infringing goods, material or articles are expected to arrive in Belize, and that he or she requests the Comptroller to treat the goods as prohibited goods.<sup>21</sup> As long as such a notice is in force, the commercial importation of the relevant goods is prohibited and the importer is liable to the forfeiture of such goods.<sup>22</sup> In

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<sup>13</sup> Section 49(2) of the Trade Marks Act.

<sup>14</sup> Section 50(1)(a), *ibid.*

<sup>15</sup> Section 50(1)(b), *ibid.*

<sup>16</sup> Section 50(2), *ibid.*

<sup>17</sup> Section 51(1), *ibid.*

<sup>18</sup> Section 51(2), *ibid.*

<sup>19</sup> Section 53(2), *ibid.*

<sup>20</sup> Section 54, *ibid.*

<sup>21</sup> Section 74(1), *ibid.*

<sup>22</sup> Section 74(2), *ibid.*

making such a notice to the Comptroller, the trademark owner or licensee shall comply with such conditions relating to the form of the notice, the furnishing of evidence, the payment of fees, the giving of security, the indemnification of the Comptroller, and any other incidental or supplementary matters.<sup>23</sup> This provision served as the basis for the recent seizure of 1,644 master cases of counterfeit Marlboro cigarettes with a market value of BZ\$2,650,000 (US\$1,325,000).<sup>24</sup>

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## **Criminal Offences**

A person commits an offence who, without the consent of the proprietor, applies a registered trademark to goods or their packaging, sells or lets for hire infringing goods, or has in his custody or control in the course of a business any such goods with a view to selling or letting for hire.<sup>25</sup> A person commits an offence who, without the consent of the proprietor, applies an identical or similar trademark to material intended to be used for labeling or packaging goods, or as a business paper in relation to goods, or for advertising goods.<sup>26</sup> It is an offence to use in the course of business, without the consent of the proprietor, material bearing a trademark for labeling or packaging goods, as a business paper in relation to goods or for advertising goods.<sup>27</sup>

A person who, without the consent of the proprietor, possesses in the course of business any infringing material with a view to labeling or packaging goods, using as a business paper in relation to goods or for advertising goods, commits an offence.<sup>28</sup> A person commits an offence who, without the consent of the proprietor, makes an article specifically designed for making copies of an identical or similar trademark, or has such article in his possession in the course of business, knowing that it has been or is to be used to produce infringing goods or material.<sup>29</sup>

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<sup>23</sup> Section 74(3) of the Trade Marks Act.

<sup>24</sup> United States Embassy in Belize, *BZ\$2,650,000 Worth of Counterfeit Marlboro Cigarettes Seized*, Press Release, November 15, 2004, available on <<http://www.channel5belize.com/news/archive/15-11-2004-news.shtml>>

<sup>25</sup> Section 75(1) of the Trade Marks Act.

<sup>26</sup> Section 75(2)(a), *ibid.*

<sup>27</sup> Section 75(2)(b), *ibid.*

<sup>28</sup> Section 75(2)(c), *ibid.*

<sup>29</sup> Section 75(3), *ibid.*

Any person who commits any of the above offences is liable on summary conviction to a fine not exceeding \$15,000 or to imprisonment for a period not exceeding ten years.<sup>30</sup> If the offence continues after first conviction, the offender will be liable to a further fine of \$100 for every day such offence continues, or in default of payment of the fine to imprisonment for a period of ten days for every day such offence continues.<sup>31</sup> The alleged infringer must intend to cause loss to another person.<sup>32</sup>

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## **Powers of Police Officers**

Any police officer may enter and search any premises; stop, board and search any vessel, aircraft, or vehicle; or seize, remove or detain any infringing goods.<sup>33</sup> A police officer may also, in exercise of the powers conferred by the Trade Marks Act, break open any outer or inner door of any place; forcibly board any vessel, aircraft or vehicle; forcibly remove any person or thing obstructing the police officer; detain any person until such place has been searched; detain any vessel or aircraft; and prevent any person from approaching or boarding such vessel or aircraft until it has been searched; or detain any vehicle until it has been searched.<sup>34</sup> However, no domestic premises shall be entered and searched by a police officer unless a magistrate has issued a warrant authorizing a police officer to enter and search the premises.<sup>35</sup>

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## **ENFORCEMENT OF PATENTS**

### **Civil Remedies**

Under the Patents Act, the patent owner is entitled to institute court proceedings for infringement of the patent.<sup>36</sup> A plaintiff in infringement proceedings is entitled to remedies such as an injunction, the seizure,

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<sup>30</sup> Section 75(6) of the Trade Marks Act.

<sup>31</sup> Ibid.

<sup>32</sup> Section 75(1), (2) and (3), *ibid.*

<sup>33</sup> Section 79(1), *ibid.*

<sup>34</sup> Section 79(2), *ibid.*

<sup>35</sup> Section 80(1), *ibid.*

<sup>36</sup> Section 41(1) of the Patents Act.

forfeiture or destruction of any infringing product or thing used to produce such articles, damages or an account of profits, or any other relief provided for in the general law.<sup>37</sup>

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## **Criminal Offences**

The Patents Act makes the intentional or willful infringement of a patent a criminal offence.<sup>38</sup> Any person who commits such an offence “is liable to a fine of not less than \$15,000 but not more than \$40,000, or to imprisonment for a term of not less than five years but not more than twelve years, or to both such fine and such imprisonment”.<sup>39</sup>

Any person who, knowing the same to be false, falsifies an entry in the Register, or makes any document falsely purporting to be a copy of an entry in the Register, or produces, tenders or causes to be produced or tendered as evidence any such false entry or copy, commits an offence.<sup>40</sup> Any person who commits such an offence is liable to a fine of not less than \$10,000 and not more than \$30,000, or to imprisonment for not less than three years and not more than ten years, or to both such fine and imprisonment.<sup>41</sup>

Any person who, knowing the same to be false, makes a false representation that a patent has been granted to him or another person, or that he or she is the holder of an exclusive or non-voluntary licence, with the result that another person is induced to act on such representation, commits an offence.<sup>42</sup> Any person who commits such an offence is liable to a fine of not less than \$5,000 and not more than \$20,000, or to imprisonment for not less than two years and not more than five years, or to both such fine and imprisonment.<sup>43</sup>

Any person who falsely represents that anything disposed of by him for consideration is a patented product or process shall commit an offence, and

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<sup>37</sup> Section 41(2) of the Patents Act.

<sup>38</sup> Section 63(1), *ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Section 63(2), *ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Section 63(3), *ibid.*

<sup>43</sup> *Ibid.*

shall be liable to a fine of not less than \$4,000 and not more than \$10,000.<sup>44</sup> Further, any person who represents that a patent has been applied for in respect of any article disposed of for consideration by him or her, and no such application has been made, or such application has been refused or withdrawn, commits an offence.<sup>45</sup> Any person who commits such an offence is liable to fine of not less than \$4,000 and not more than \$10,000.<sup>46</sup>

However, such prosecutions must be commenced before the expiration of five years from the commission of the offence or one year after the discovery of such commission, whichever occurs last.<sup>47</sup> Also, it must be noted that some of the above offences can also be found in the Trade Marks Act.

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### **Border Measures (Customs)**

The Patents Act does not affect the right of the State or any person employed by the State to dispose of or use articles forfeited under the laws relating to customs and excise.<sup>48</sup>

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## **ENFORCEMENT OF INDUSTRIAL DESIGNS**

### **Civil Remedies**

The industrial design owner has the right to institute court proceedings against any person who infringes the industrial design.<sup>49</sup> In such proceedings, such owner may be entitled to relief by way of damages, injunction, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, or an account of profits derived from the infringement.<sup>50</sup>

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<sup>44</sup> Section 63(4) of the Patents Act.

<sup>45</sup> Section 63(8), *ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Section 67, *ibid.*

<sup>48</sup> Section 66, *ibid.*

<sup>49</sup> Section 24(1) of the Industrial Designs Act.

<sup>50</sup> Section 24(2), *ibid.*

It is an offence for any person to intentionally infringe an industrial design, and such an infringer will be liable to a fine of \$5,000 or to imprisonment for five years.<sup>51</sup> A person commits an offence who, knowing the same to be false, makes a false entry in the Register, makes any document falsely purporting to be a copy of an entry in the Register, or produces as evidence any such entry or copy of such entry.<sup>52</sup> Such a person is liable to a fine of \$5,000 and to imprisonment for ten years.<sup>53</sup> It is an offence for a person who, knowing the same to be false, makes a false statement for the purpose of deceiving the Registrar or any other officer or for the purpose of procuring or influencing the doing or omission of anything under the Industrial Designs Act.<sup>54</sup> Such a person is liable to a fine of \$5,000 and imprisonment for five years.<sup>55</sup>

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### **Border Measures (Customs)**

Like the Patents Act, the Industrial Designs Act does not affect the right of the State or any person employed by the State to sell, use or otherwise deal with articles forfeited under the Customs Regulations Act.<sup>56</sup>

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### **CONCLUSION**

In conclusion, it must be stated that Belize has now successfully created the legislative and administrative framework for the effective implementation of intellectual property rights. The intellectual property laws of Belize clearly outline the exclusive rights of the intellectual property owners, together with a host of civil remedies, border measures, criminal offences and penalties. Although the Patents Act and the Industrial Designs Act do not specifically outline the powers of police officers (like the Trade Marks Act), these omissions are remedied by section 44(2) of the Police Act. This section empowers any police officer to stop, search and detain any conveyance in or upon which there is reason to suspect that anything unlawfully obtained may be found, and to detain any person who may be reasonably suspected of having or conveying anything unlawfully obtained.

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<sup>51</sup> Section 24(5) of the Industrial Designs Act.

<sup>52</sup> Section 25(1), *ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> Section 25(2), *ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Section 30(2), *ibid.*