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Intellectual Property: IP Enforcement & Compliance

Continuing with our special focus on IP enforcement and compliance, *Lawyer Monthly* speaks to Nadia Kettani, partner at major Moroccan business law firm, Kettani Law Firm (KLF).

Please introduce yourself, your firm and your role.

KLF was founded in 1971 by Professor Azzedine Kettani who was admitted to practice as a law professor at the University of Casablanca and as a lawyer in 1968 and is approved by the High Court of Justice of the Kingdom of Morocco. After internships in France and the United States, I joined him and I am the Head of the International Consulting Department while supervising some areas of the Litigation Department. Rita Kettani, the Head of the Commercial Department, the Litigation Department and the Labour Law Department, joined in 1993. The firm acts for banks and other financial institutions, international businesses, major public and private companies and government departments.

KLF covers the whole spectrum of financial and business activities, and is an acknowledged leader in the fields of corporate finance, banking, project finance, corporate and commercial law. Areas of particular expertise include stock exchange law, aviation law, telecommunications regulations, energy, tourism, labour law, intellectual property, legal audits and IPOs. Additionally, the firm has a great deal of experience in international arbitration and litigation as well as handling all forms of commercial disputes.

How big an issue is IP theft in your country? Which sectors are most affected by it?

The expression of "IP theft" is used in practice for counterfeiting of trademark and patents but not in the law. The Moroccan legal definition of counterfeiting encompasses the violation of any intellectual property rights; such as (i) patent counterfeiting, (ii) trade name counterfeiting, (iii) service mark counterfeiting, or (iv) technical drawing counterfeiting.

Counterfeiting is a serious concern for many companies operating in Morocco. A recent survey conducted by the National Committee for Industrial Property and Anti-Counterfeiting (created in 2008) showed that the following sectors are mainly injured by acts of counterfeiting: textile, leather, electronic, car spare parts and cosmetics. The same survey showed that counterfeiting resulted in 1 billion dirhams tax losses in 2012 and that the profits generated by counterfeiters ranged between 6 and 12 billions dirhams, which represents between 0.7 and 1.3% of the gross domestic product.

What rights does a company have if they suspect another company is profiting from their intellectual property?

The best legal tool available is the launch of a legal suit for the deregistration of the trademark, the patent or the drawings together with a fast-track procedure whereby the injured party requests the judge to order the counterfeiter to immediately stop the acts of counterfeiting. In order to succeed, the entities suffering from the counterfeiting must first identify the counterfeiters, then send summon letters followed by a conservatory seizure of the product through court bailiff who drafts minutes confirming the presence of counterfeited products at the seller's address and then file a lawsuit on the merits within 30 days together with the fast track procedure.

In some circumstances, injured companies may bring criminal proceedings or request the customs authorities to seize the counterfeited products at the border if coming from abroad. The request to the customs authorities is initiated through a request made before the judge under the above-described fast-track procedure.

On the other hand, how can somebody defend themselves and what are their legal rights in they are accused of violating a copyright/trademark?

In the context of a civil suit for counterfeiting, the defendant will prepare his defence in the same way as any civil suit; i.e., by rebutting the alleged evidence of counterfeiting. However, no immediate recourse is available to the entity whose goods are being seized by the authorities based on allegations of counterfeiting. LM

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