

IP Protection for the different in-store experience

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Competition in the retail industry is very big, as consumers have wide variety of options available to them. Therefore, to remain competitive and to drive traffic and sale, retail companies are in constant search for new in-store experiences to give consumers compelling reasons to visit their stores. In store experience range from having a uniquely designed store that is worthy of a social media posts, a digital interactive experience that combines brick and mortar with the online store, have entertainment in the store, create unique pop up shops and others. To keep the uniqueness of the experience created and keep the competitive edge, it is possible to protect some elements with intellectual property rights and accordingly create a monopoly over such experiences.

In this article, we will explore the possible intellectual property rights that could be applicable.

Trademarks:

The UAE has recently issued a new trademark law under Federal Decree-Law No. 36/2021. Based on this law, a Trademark is everything that takes a distinctive shape of names, words, signatures, letters, symbols, numbers, addresses, seals, drawings, pictures, engravings, packaging, graphic elements, forms, colour or colours or a combination thereof, a sign or a group of signs, including three-dimensional marks, Hologram marks, or any other mark used or intended to be used to distinguish the goods or services of a facility

from the goods or services of other facilities, or to indicate the performance of a service, or to conduct monitoring or examination of goods or services. A distinctive sound or smell may be considered as a trademark.

A trademark distinguishes the product of a particular manufacturer from similar products offered by others. The owner of a registered trademark has the right to prevent others from using the same or similar trademark on their products.

A registered owner of a trademark can prevent use and registration of an infringing mark based on the basic rule: a trademark is not available for use and registration if it resembles to a trademark already registered and the resemblance is likely to cause confusion, mistake or deception.

From the definitions above, it is noted that in addition to the Name as a traditional way of protection, shape of a product, or a smell, sound or music denoting to product or service, as the case may be, is also qualified to be protected as a trademark, and it is recognized by the UAE trademark law and the trademark laws of most of the other GCC countries.

Many stores uses specific scents within their store. Recent studies reveal that ambient scent boosts recognition and memory performance of the consumers. It increases the time consumers spend in a shop or business, elevates mood and a person's level of enjoyment and improves the quality of a service encounter. The study further reveals that scent is our oldest and most evolved sense, and today it's used as a marketing tool by retailers to attract, delight, and convert in-store shoppers. Research has shown that scent marketing can raise retail store sales by 11% and increase customer satisfaction scores by 20%.

With the importance of the scent, which may become a source identifier, where consumer can identify the

store by its very unique scent, retailer may consider registering such scents as a trademark which create an exclusive right to the use of the scent and to prevent third parties from using it. For example, Version Store in the US has registered a trademark of a “flowery musk scent” for their shops. A Footwear chain Flip Flop Shops received a US trademark registration for the coconut aroma they pump into their retail locations. With the new Trademarks Law in the UAE retail stores can now consider registering scent as a trademark and optimise the exclusivity of its protection.

The Trademarks Law did not provide the conditions to register a scent trademark, other than the main condition of distinctiveness. However, the Executive Regulations of the Trademarks Law has yet to be issued, and maybe it will contain some guidance as to the conditions to accept scent trademarks.

In addition to the scent, studies show that the speed, rhythm and volume of in-store business music can influence the pace of customer flow through a store. Research has shown that fast music increases arousal, which increases customers’ pace of movement. Conversely, relaxing music causes people to slow down and look at their surroundings. Accordingly, business background music brings many intangible benefits – increased brand awareness, customer experience and loyalty. The right music can have a positive impact on purchasing decisions, customer moods, store ambiance, and brand image.

The background music can also be protected as a trademark if it is unique and able to identify the source, in other words, if consumers are able to identify the store when hearing the music. For example, the British department store Selfridges has a successful example in sound design branding, as it created consumer ‘zones’ within its stores, which change visually and sonically so customers know they have passed into a new department. The Swedish Mall, Emporia, has also found success using soundscapes to help guide customers.

Music or sound can be registered as a trademark under the UAE Trademarks Law, and retailers shall be considering such protection, if the music or sound they are using is unique to them and would be used in the long term. The Trademarks Law did not provide the conditions to register sound as trademark, other than the main condition of distinctiveness. However, the Executive Regulations of the Trademarks Law has yet to be issued, and maybe it will contain some guidance as to the conditions to accept sound trademarks.

Copyright:

As per Federal Decree-Law No. 38/2021 on Copyrights and Neighbouring Rights, Authors of Works and Holders of Neighbouring Rights shall enjoy protection for the following Works:

- 1- Books, brochures, articles, and other written Works.
- 2- Smart applications, computer programmes and applications, databases, and similar Works determined by a decision of the Minister.
- 3- Lectures, speeches, oral and written sermons and other Works of a similar nature.
- 4- Theatrical Works, musical shows, and pantomime.
- 5- Musical Works, either with or without words.
- 6- Audio, visual, or audio-visual Works.
- 7- Architectural Works, and engineering drawings and plans.
- 8- Works of drawing with lines or colours, sculpting, engraving, and printing on stone, fabrics, wood, or metals, and any other similar Works.

9- Works of photography and similar Works.

10- Works of applied and plastic arts.

11- Illustrations, geographical maps, sketches, and three-dimensional Works related to geography, topography, architecture, and others.

12- Derivative Works, without prejudice to the protection granted to the original Works from which these Works were derived.

The Work is defined as “any innovative production in the fields of literature, arts, or science, of whatever type, manner of expression, significance, or purpose”.

Store Design or layout is a way of combining construction and aesthetics. It pertains to everything that makes it easier for customers to shop at a store. It helps the customers make their decision. The retail design uses every inch of a store to make it an apt place to be. The goal of the retail strategy is to make it comfortable for the customer to shop, find, and preferably buy things. No doubt, effective design helps to boost customer understanding and enjoyment of the products and the brand itself – and therefore sales.

With the importance of the design or layout of a retail store or show room, protection can be sought through copyright or 3D trademark. In the UAE it is likely to be protected by copyright as a design work. Protecting the layout as 3D trademark is possible under the new Trademarks Law; however, in practice it is not yet clear if it will be acceptable. For example Apple has a US registration for the layout of its stores, which the layout it uses in almost all its stores worldwide.

Conclusion

In a very competitive industry, retailers should consider the protection of the unique elements of their stores and shall think more creatively in the protection of their non-traditional trademarks that has now become possible under the new Trademarks Law and other IP rights including copyright.

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