

The Legal Protection for the un-registered trademark

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As such, people or entities that differentiate their goods or services from others in the market, as well as build a relationship between the customers and their products based on trust, usually use trademarks. Article 37(1)(a) of the Trademark Law provides for the protection of the registered trademarks registered in the trademark office in Amman, Jordan. The Law states that any infringement to a registered trademark presented before the Jordanian courts, will be trialed in accordance with the provisions. In order for this to happen, the claimant needs to check and prove the occurrence of the infringement to the registered trademark.

It is debatable which law is applicable to the case of civil protection for un-registered trademark in Jordan, since the Trademark Law did not cover the subject. Therefore, infringement to any unregistered trademark, such as misleading the customers by imitating a well known trademark, can be legally pursued using other branches of the laws. An example of this is the Unfair Competition Law no. 15 of 2000 (the "Unfair Competition Law"), which regulates the legal actions that are considered as Unfair-Competition under Article 2. As such, the use of registered or un-registered trademark in a way which infringes the rights and causes unfair competition by misleading the customers could be brought before the Jordanian courts and tried in accordance with the abovementioned Laws. In some cases, attorneys argue that the Unfair Competition Law does not apply in the cases concerning trademarks, but the Cassation Court laid a precedent when it decided case no.2005/3539. In this case, the judges stated that both the Trademark Law and the Unfair Competition Law are private laws and as such applied to trademarks at any time, if they see fit. In addition to showing the versatility of Jordanian Laws, the courts are resourceful and adaptable.

In addition, the Trademark Law, despite not registered before the trademark office, protects well-known trademarks. The Paris Convention of 1883 and amended in 1973 (the "Paris Convention") covered the well-known trademarks in Article 6 (2). This Article states that the Union countries (the "Parties") shall give legal protection for the industrial or commercial well-known trademarks. This applies to both used and registered trademarks. The Paris Convention admitted the legal protection regarding the use or the registration of the known trademarks, without any restriction. The criteria set in the Paris Convention define the different aspects, which contribute to establishing a well-known trademark. These include, but are not limited to, the strength, usage, reach and reputation of the trademark, as well as the link between the trademark and the goods.

Article 2 of the Jordanian Trademark law No. 34 of 1999 (the "Trademark Law") defines a well known trademark as a "mark with a world renown whose repute surpassed the country of origin where it has been registered and acquired a fame in the relevant sector among the consumer public in the Hashemite Kingdom of Jordan". This Trademark Law criticises that the abovementioned definition requires the trademark to be famous among the consumers public in Jordan in order to be included in the Law, which results in well-known trademarks abroad overlooked.

The judicial precedent case no. 1987/32 acknowledged protection by all legal means if it led to mislead the consumer or to promote the Unfair Competition. Article 8(12) of the Trademark Law prohibits the registration of any Trademark that is identical, similar or constitutes a translation of a well-known trademark. Furthermore, Article 26 (1B) of the Trademark Law continues to protect trademarks by providing for the right of applicants to claim for the prevention of others to use well-known trademarks, even if not registered in Jordan.