

New Commercial Anti-Fraud Law in Bahrain

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One of the most important is the Law 62 of 2014 (the new Commercial Anti-Fraud Law), which was enacted and published on 9 October 2014 with immediate effect (the “New Law”). The new law establishes further grounds to trademark owners to file a complaint before the Bahraini authorities to pursue and impose sanctions against traders and entities that supply counterfeit products, including foodstuffs, basic and luxury products, medical products, cosmetics and other commodities.

The New Law provides a broad definition of a counterfeit product any original product which has been changed or been tampered in some way which has resulted in it losing some of its material or in-kind value; whether this was by addition, deduction or change in the commodity itself, its nature, type, properties, form, elements, measure, scale, power, caliber and/or its origin or its source. For example, this would cover a situation where a legitimate product (such as an unmarked leather wallet) is then tampered with to create a counterfeit product (such as by placing a well known logo on it).

The New Law also criminalizes the attempt to commit fraud by giving false information about the type, origin or source. Interestingly, the sanctions of the New Law are substantial, and in addition to other types of fraud can be used to pursue infringers of intellectual property rights. However, this does not prejudice the use of any more severe punishment stipulated in other laws, such as trademarks or penal codes in Bahrain. This reflects the legislator’s intent to impose high penalties against those that commit fraud, including counterfeiting traders and for the penalties to comprise both imprisonment and fines. In regards to imprisonment, sentences are capped differently depending on the consequences of violation (ranging from 3, 5 to 10 years). As far fines, these have different levels and they range from 3,000 Bahraini Dinars (approximately USD 8,000) to 20,000 Bahraini Dinars (approximately USD 54,000) or the equivalent of the value of the commodity in question, whichever is greater.

The Ministry of Industry and Commerce will be responsible for the implementation of the New Law. The relevant Ministry’s officers are authorised according to the New Law to accept complaints, enter premises, inspect records and confiscate the products. We expect that the local authorities in Bahrain will issue further implementing regulations, statutes and resolutions to aid with the execution of the New Law during the course of this year. We expect that these resolutions will give more clarity on the implementation of this law and establish the legal mechanism to pursue the application of it.