

IP Cooperation and Harmonisation in the Gulf: A myth or reality?

Omar Obeidat - Partner, Head of Competition and Intellectual Property - Intellectual Property / Competition

o.obeidat@tamimi.com - Dubai International Financial Centre

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As all the Arab Gulf Cooperation Countries (“GCC”) are members of the WTO, the laws governing IP rights in the region have since been amended to become in tune with the TRIPS requirements. The promulgation of common laws regulating customs in the GCC, the Unified GCC Patent Regulation and the Unified GCC Patent Office were other steps forward towards unifying the IP practices in the GCC. Finally, the recent adoption of a GCC Common Trademarks Law, to which common implementing regulations are expected within a few months, is regarded as an impressive milestone in cooperation and harmonisation in the GCC.

Following these unification developments, one would expect a degree of harmony in the practices of IP offices in the GCC region, or in the principles governing IP rights such as the ‘Well Known Marks’ concept, or ‘Confusing Similarity’ threshold. To the contrary, however, there is a great amount of variance in the practices of IP offices in the GCC region. It is not a secret that designs offices are not functioning in some countries, such as Qatar, while basic services such as trademark searches are not available in others, such as Kuwait. Nor is it unusual to receive conflicting decisions from GCC trademark offices as to whether a proposed mark is inherently capable of registration or whether a prior existing mark should bar it from being registered.

Even on the practitioners’ side, many attorneys specifically stipulate that submission of trademark registration certificates in all or most the Arab states are evidence of ownership in one of the Arab countries. The reality is that a registration certificate in one GCC state will have no bearing on the decision on another state’s trademarks office or a judge in another state addressing an opposition matter.

The reality is that the level of capacity and expertise of IP offices vary drastically from one GCC office to another. Electronic filing for trademark prosecution was first rolled out in KSA and is now expected in the UAE. However, the systems are completely different from one another. The lack of coordination between the two administrations has led to the implementation of very different software solutions and the modules to be rolled out for registration. Further, patent examination by the GCC Patent Office has been carried out through contracts with external, foreign patent offices that are different from the offices with whom the UAE Patents Office contracts. This creates vast variances in results of opinions and procedures.

The myth is that most brand owners deal with the Middle East as one region, and do set their expectations under the assumption that a degree of harmony exists between the countries of this region. In fact, company budgets are planned in the Middle East based on feedback of the business units, pressure from distributors, or to counter IP infringements. Yet, the reality is that there is no certainty as to IP registration and to IP enforcement in the region and each jurisdiction has to be addressed separately.

The reality is that, from a business standpoint, it is reasonable to expect that complete harmony, at least at the registration level, exists in the GCC states. As four out of the six GCC states are very small markets, it becomes a burden to plan for separate IP protections processes for each, individual market. Brand

owners cannot afford to draw up a strategy for the smaller markets and therefore the activity of registration and enforcement is substantially lower in those jurisdictions.

Time lines for the prosecution of IP rights in each GCC state are worlds apart. If a local or regional business was to launch in the region, as it is usually the case that brands or products intend to cover the GCC region as a whole, it would be a challenge in itself to clear the product, let alone register it. The clearance can range from one working day to 'N/A', depending on the country. On the other hand, the registration process can range from six months to 30 months, depending on the country. If anything, the harmony and cooperation between IP offices is a necessity for the local entrepreneurs more so than to global IP right holders.

The region lacks cohesiveness and cooperation in the field of IP and the prosecution and enforcement of IP rights. Unfortunately, the common area of cooperation and harmonisation seems to be in the area of increasing official costs for IP registration. The GCC contains some of the highest official fees in the world for IP prosecution, with other states in the region eager to follow the same 'success' in charging high fees. Further, it costs more money to register in the UAE or in KSA than it would to cover most of Europe through the Community Trade Mark system.

The reality is that the purported harmonisation in legislation in the GCC does not achieve business advantages for IP right holders or entrepreneurs. What is needed is cooperation and the sharing of experiences in the areas of registration and enforcement in order to achieve advancement in IP protections and overcome many of the existing challenges in the IP arena.