

Legal Protection of the Famous Trademarks In Accordance with the Laws in Force in Palestine

Amjad Hassan

PhD, Assistant Professor, Faculty of law, An-Najah National University, Nablus, Palestine

Hasan Falah

PhD, Assistant Professor, Faculty of law, An-Najah National University, Nablus, Palestine

Abstract

A trademark is considered to be one of the most important elements of intellectual property for its ability to distinguish goods and services from others, it is the fruit of the effort of the merchant who did the best he could to bring the product to its fame and gained the admiration of the public worldwide. The merchant aims to attract customers, control the market, compete legitimately and takes the trademark as a way to achieve it, the greater the fame of the brand, the greater its popularity and financial value. This leads others to try to take advantage of the reputation and popularity of this brand by simulating, copying or falsifying it, which harms the owners of trademarks and consumers and negatively affects the development of the national economy. The regulation of well-known trademarks is a national necessity and an international requirement, and therefore Arab laws and international conventions "The Paris Convention for the Protection of Industrial Property and the Agreement on the Aspects of Intellectual Property Rights from International Trade" (TRIPS) all implemented special regulations of well-known trademarks. In Palestine, the Jordanian Trademark Law No (33) of 1952 is applicable in the West Bank and the Regulator of Trademarks in general; It did not establish special rules for the protection of well-known trademarks, which imposes on the Palestinian judiciary and specialists the burden of searching for ways to protect these marks in accordance with the provisions of the Trademark Law and the general rules, judicial principles and practical familiarity with reality.

Keywords: Legal Protection of the Famous Trademarks In Accordance with the Laws in Force in Palestine

Introduction

Research Problem

The problem of this research concerns the protection of famous trademarks within the Palestinian legislation and reality, and the effectiveness of the legislation in force in Palestine, especially the Trademark Law No. 33 of 1952, which did not regulate the famous brands. Has this protection been achieved in the draft Palestinian Industrial Property Law, and what is the role of judicial and jurisprudential applications in implementing such protection?

Keywords

Trademarks, Trademarks Law No. 33 of 1952, Palestinian Industrial Property Law, International Agreements, Analysis of Legal Texts, Judicial Applications, Practical Practice.

Introduction

A trademark aims at distinguishing the goods and services produced by the merchant from goods and services produced by others. The trademark has a role in marketing goods and services by bringing customers, maintaining the confidence in the products and their quality and good manufacturing, not to add that the longer the presence of the product in markets, the more the public knows about it, the higher the quality of the product the higher the sales and the ability to compete in the market and eventually the value of the trademark will increase, this presence can only be maintained through a trademark that ensures that the product is distinguished from the others.

Observing how the modern means of communication have played a prominent role in the proliferation of many brand names and their financial value has increased, prompting countries to enter into special agreements that provide an integrated legal system for well-known trademarks such as the Paris Convention for the Protection of Industrial Property and the Convention on Intellectual Property Rights (TRIPS). (Paris Convention for the Protection of Industrial Property, 1883; TRIPS agreement, 1994.) Afterwards most countries of the world started to develop domestic legislation to ensure the protection and regulation of trademarks in the framework of legal obligations arising from accession to international conventions, especially the TRIPS Agreement, and extended the scope of trademark protection to include the protection of services and famous brands. Not to add that Palestinian markets have been crowded with famous brands and their value has increased, necessitating their organization and protection, According to the Ministry of National Economy, it has 597 commercial agents for international products. Mr. Ali Thoukan, the trademark registrar of the Ministry's intellectual property department, confirms the presence of more than 26,000 domestic and international trademarks registered to protect against counterfeiting and counterfeiting. Especially after its international recognition as a state. (The forging of global trademarks, 2015)

Due to the absence of Special provisions for the regulation and protection of well-known trademarks in conformity with the relevant international conventions in the Jordanian Trademarks Law No. 33 of 1952 and the Trademark System, the provisions of the Goods Law of references to trademarks and the provision of penal protection in the case of assaults, However, these laws did not deal explicitly with famous trademarks. (Jordanian Trademark Law, 33/1952; Trademark System, 1/1952; The Goods Marks Law, 19 /1953). And by applying universally accepted standards, most brands in Palestine are considered to be well-known brands, The judicial applications in Palestine are a few, but there is a ruling that was a precedent in the Palestinian judiciary which is the famous chocolate brand "NUTELLA" of the famous Italian chocolate maker Ferrero. The court decided to temporarily close a restaurant in the city of Ramallah in the field of selling sweets and chocolate for the use of the global brand "NUTELLA", where the restaurant infringed the world famous brand "NUTELLA" by promoting its merchandise under the name of NUTELLA Shop - Ramallah. The court explained its decision that this use leads to cheating the consumer and encouraging illegal commercial competition and demonstrating an incorrect source of goods. (Palestinian Court of Appeal, 692/2014)

By applying universally accepted standards, most trademarks in Palestine are considered to be well-known trademarks. In this research, we will analyze the relevant Palestinian legislation to discuss legal provisions that protect the famous trademarks in two sections:

The First Chapter: registration, use and trademark reputation.

The Second Chapter: Means of protection of the famous trademarks in Palestine.

1. Registration, use and trademark reputation

Trademarks play an important role in human life as it relates to all human requirements; these brands range a common unknown to many, to brands that are popular among people until they become known as famous trademarks.

The importance of trademarks stems from their distinction between different products, goods and services and their source, which makes them a symbol of consumer confidence, a guarantee of their quality, a mean of advertising, and a protection for consumers. (S. Zine El-Din, 2005, p114).

It applies to famous brands the same rules as regular brands, but the fame that has spread and publicized in Palestine as a result of the quality of the goods and services they represent, and spread out of bounds, and has become handled by a wide audience of consumers, giving it a high financial value. (S. Qalioubi, 2005, p552).

1.1. Definition of the famous trademark

The Trademark Law in force in Palestine did not frankly define trademarks, but generally defined it as "any mark used or intended to be used on any goods, (O. Abdel Salam, 1996, p197) or in relation thereto to indicate that such goods belong to the owner of the mark by virtue of its manufacture, election, certificate, trade or offer for sale". (Article 2, Jordanian Trademark Law, 33/1952).

As for The Palestinian Industrial Property Draft Law defines the famous trademark as "the internationally recognized mark that has exceeded the boundaries of the country of origin in which it has been registered and gained fame in the relevant

sector of the public in Palestine and which has at least one of the internationally recognized criteria for marking". (Article 2, The Draft Palestinian Industrial Property Protection Law, 2012).

In this draft, the brand's reputation is determined only if at least one of the criteria for trademark recognition is available, which demonstrates the desire of the project to increase the number of famous trademarks and facilitates their terms.

A part of the doctrine defined trademark as "a special form and composition that takes a way to distinguish the products or services of a project", (M. Brieri, 2000, p236). another group thinks of it as "a badge that permits the identification of particular products or services of a particular project and by attracting customers towards such a project or its products". (S. Sharqawi, 1986, p574). A third group went on to say that "the emblem that took a particular shape was characterized by a character that distinguishes it from the other badges taken by the manufacturer, trader or service provider to distinguish its products or goods or services as a means of promoting them, and has enjoyed a good reputation through which it is known to a large segment of the public". (F. Al-Haniti, 2015, p34).

Thus, it is clear to us that jurists agree that a trademark is famous if its fame exceeds the limits of the original country in which it was registered. The draft of Palestinian Industrial Property Protection Law, 2012 identified some of these criteria - (article 52, draft Palestinian, 2012; A. Bayoumi, 2008, p270).

With respect to the Paris Convention, the convention did not provide for a specific definition or a standard for the trademark, it gave the right to the State to determine the trademark's fame, and to establish protection to the trademark even if it was not registered, the Convention states in its most recent amendment that countries should undertake the responsibility to prevent the use of trademarks which constitute an infringement on a another trademark which they consider to be famous trademarks. The Convention also prohibits the setting of a time-limit for the use of such marks if the use is in bad faith. (Article 6 Paris Convention, 1883).

The TRIPS Agreement has developed a clearer concept of the trademark by stating that the famous brand may indicate to the services, which is absent from the Paris Convention, and it has shown that the brand's reputation is measured by its knowledge of the relevant public sector, including its knowledge of the member country concerned. Even if the infringing mark has used it on different products, provided that there is a connection between these products and the owner of the well-known brand, and that the interests of the owner of the famous trademark resulting from such use. (Article 16, TRIPS 1994).

Based on the above, we find that one of the rules of trademark's fame is the local fame of the public sector concerned in Palestine, to make the argument for its fame and non-aggression.

1.2 Trademark's fame as an alternative to its registration

Both the Paris Convention and the TRIPS Agreement went into the possibility of protecting the trademark without registering it on the condition that it was famous and recognized by the public. The trademark's reputation must be examined and defined with standards as well as the concept of the public sector concerned and the priority of use and registration should be also investigated in three branches as follows:

1.2.1 Trademark's Fame Criteria

National legislation and international conventions did not combine a specific standard of trademark reputation, but adopted several criteria. (I. Hussein, 1978, p46).

In Palestine, the brand is famous if it is known or distinct in the relevant sector of the Palestinian public, or the period of use and the geographical scope of use gave it this status, the promotion period of the mark was for long periods of time or the trademark was registered many times in more than one country, (*Supreme Court of Justice, 343/2008*). The Palestinian judiciary has applied this standard even without regulating the law of the famous brand. In a *decision of Supreme Court of Justice No. 343/2008* "... Since the trademark that the appellant requests to register in the name of Bambi is a famous trademark owned by the first defendant and registered in his name More than one country, including Lebanon, Jordan, Saudi Arabia, Syria, the UAE and others with dates before submitting the request for registration of his mark Bamby ". Where the decision mentions the famous brand without specifying its criteria or reason to call it famous, the decision is published on, Or is protected by the application of the provisions of national law, or are classified by market value by competent authorities. (H. Alsagheer, 2004, p22).

The Palestinian industrial property Draft law stressed the protection of a famous but not registered trademark, and set several criteria for determining the brand's reputation, and granted the judge discretion in considering the brand famous. (Article 52 of Draft Palestinian, 2012).

The criteria of trademark fame are the meaning and objectives of registration. Registration is intended to inform all about the existence of a mark and fame that leads to this goal. (M. Al-Shammari and H. Abu Helou, 2008, p691). The registration increases the value of the ordinary trademark and the famous marks of its fame have achieved this value. The registration aims to inform others of the existence of a trademark and open the way for any opposition against trademark registration, as for the fame that transcended the borders of the country in which it originated; has reached the knowledge of everyone so that everyone can object to it, so we see that the brand's fame has achieved the purpose of registration.

1.2.2 The Concept of the Concerned Public Sector

Determining the meaning of the audience concerned - as a determinant of brand knowledge and fame - was left to the jurisprudence and judiciary, but when it comes to the TRIPS Agreement, it went on to state that the trademark's reputation is measured by the extent to which the public sector is aware of the trademark and did not specify which the audience concerned. (Article 16.2, TRIPS1994).

At the same time the jurists considered that if products or services are directed to a large audience, fame is measured by a large audience, but if directed to specific audience measured fame with this specific audience, The court decided that "we find that the mark to be registered is (FILTER MAN) and that the other mark is (MAN). Looking closely at these two signs, we notice that the word (MAN) in the English letters and prominently in each of the two signs will lead to cheating the public, it is not easy for the average consumer to distinguish between the two brands, even if the company's brand is followed by the word "FILTER". The lesson is that the average consumer is the overwhelming majority, whom the law is keen to protect and prevent exploitation and their ignorance. (A. Ghuwairi, 2008, p214; *High Court Jordanian87/91*).

As for the Palestinian Industrial Property draft Law it stated that the intended sector of the public is the actual or potential consumers of the same type of goods or services, persons engaged in the distribution of the type of goods or services, and the business community dealing with the same type of goods or services. (Article 52/C, The DraftPalestinian, 2012)

It is clear from all the above that the purpose of registering the trademark is to identify rights holders, prevent disputes and avoid cheating the public and to establish an argument to all that the registration of the trademark is the owner of the rights to them. and by achieve these goals the trademarks attract more fame, (T. Al-Hmour, 2010). in contrast to some cases of registration of ordinary trademarks for which there is little known by the public, the law establishes a legal presumption on the assumption that it is recognized as soon as it is registered. This confirms that fame that reaches the public's makes registration sounds unnecessary, which makes the registration requirement considered valid in the trademark as soon as its fame is established.

1.2.3 Precedence of Use and Precedence of Registration

Some countries tend to link the protection of the trademark to its registration in accordance with the provisions of the law. In some of its provisions, the Trademark Law referred to the necessity to register a trademark and that the trademarks will not have any impact until after registration, the article 6 of the aforementioned law stated "Any person wishing to take up the use of a trademark ... shall apply for the registration of such a mark." The law also specifies the powers that a trademark registrar has in article 26 when it states that "subject to any restrictions and conditions restricted in the Register, registering a trademark entitles that person to the right to be use independently ... ", Article 34 also stressed the importance of registration when the provision prohibited compensating for infringement of a trademark unless it was registered, the legislator also linked criminal liability to registration when, in article 38, it stressed the requirement that the trademark should be registered for use without legal authorization to be considered an infringement, The word registration was mentioned over a 100 times in 47 articles of the Trademark Law.

With regards to the importance of registration, the legislator did not wish to consider the registration as an irrefutable presumption of the ownership of the trademark to its owner. Rather, it regarded it as revealing the existence of the trademark and that the registration was a simple presumption of the ownership of the mark to its owner, it also can be proven to be reversed by an earlier use of the trademark, the registration creates a deferred right that is threatened with extinction by objection or request for cancellation, The High Court of Justice ruled that the intended use in the Trademark Law is to use

the trademark to distinguish the goods of the owner of the mark itself, and that the mere fact that a person imported goods with a group of other persons imported from abroad is not intended to be used by the Trademark Law. (S. Zinedine, 2005, p314; The High Court Jordanian, 55/52).

When the legislators organized the Trademark law they obviously wanted to encourage the registration of trademarks already in use, (S. Zinedine, 2005, p198). law even defined trademark as "the mark used ...", it also affirmed that a person wishing to use a trademark of his or her goods that they manufacture or sell may apply for the registration of the trademark, since a famous trademark is a trademark that is already used and known by its usage, its owner can apply for registration, but this will not distinguish the trademark with a global reputation from the trademark that was used for a simple period, or we will have to require the trademark owner to register it in all countries of the world in order to have adequate protection.

In addition, the law recognizes trademark before it is actually used on the goods, although the law has allowed the registration and protection of the trademark that the owner intends to use, The Supreme Court of Justice ruled on the use of the famous mark that if the right of a person who registered the trademark in his name conflicts with the right of another person who is a former user of the mark, the person who uses the mark shall have a priority right over the person registered for the mark (M. Taha, 1988, p 488; The High Court Jordanian, 65/72). it was a priority for the law not to prevent protecting a famous trademark which I believe that the lawmaker forgot to mention when legislating Trademark Law, which the Jordanian amended law has rectified, expressly providing for the protection of the well-known trademark. (Article 5, The Amended Jordanian Trademarks Law 34/1999).

It is noted from the foregoing that the Trademark Law merged use and registration, requiring registration to recognize the trademark and civil and criminal liability, but at the same time did not make the registration a conclusive presumption but rather simple evidence that can be proved contrary. (M. Al-Keswani, 2011, p 274).

Furthermore the High Court of Justice ruled in its ruling that the trademark, even if it is famous, is dealt with under the Trademark Law and not under the Trade Names Act, despite the similarities between them. (Court of Cassation Jordanian,716/1992).

2. Means of protection of famous Trademarks in Palestine

Although trademark law did not regulate special provisions for well-known trademarks, it created many legal rules that are directly applied to the well-known trademark, through which it could be protected.

2.1. Means of protection provided for by law

There are many forms and images of the protection that can applied to well-known trademarks, which courts must use to provide as much protection as possible for current well-known marks.

2.1.1. Prevent the registration of an infringing mark on a famous brand

The Trademark Law prohibits the registration of any mark that leads to fraud of the public or that promotes unfair competition. It also prohibits the registration of a mark that matches the mark of another person previously registered for the same goods for which the mark is registered or for a class or mark similar to that of the mark May lead to cheating others, Article 8 of the Trademark Law referred that "marks that violate public order or morals or that lead to fraud of the public or signs that encourage unfair commercial competition or that are not indicative of their true origin" also in paragraph 10 of the same article: "The mark that corresponds to a mark belonging to another person already registered for the same goods for which the mark is registered or for a class thereof or a mark that is similar to that mark to the extent that it may result in the deceit of others." (Article 8 /6 Law 33/1952),

It is clear from the foregoing that the trademarks law has stipulated in the registration of trademarks that they should not be infringing a previous mark, whose registration leads to fraud and dishonest competition, The High Court of Justice ruling stated that "if the trademark to be registered is not similar to any mark used and known in Jordan, in addition, the basic idea and main appearance of the mark to be registered on a completely different goods from the goods of the objector in terms of their uses, this would eliminate the confusion between the two goods and deny the existence of unfair competition that leads to fraud of the public and the right of the trademark registrar to register the mark to be registered , (The High Court Jordanian, 84/1996). and although the legislator in its enactment of this law did not mean the famous brand; The point behind the point behind the text is not to deceive the public, which is clear in the famous brands, so if a person uses

the KFC label on certain products it will undoubtedly mislead the public since they believe that the product is related to the KFC company that the consumer believes in its quality and leads to unfair competition and taking advantage of other's effort.

The law also prohibits the registration of a trademark that matches "complete conformity" or even similarity of a registered trademark. The law does not specify whether the mark is registered inside or outside Palestine, Since the text is absolute, the Registrar shall refrain from registering a trademark identical to that of a well-known trademark; as long as he knew or was supposed to know that it was registered "even outside Palestine" because of its fame and Since the text is absolute, the Registrar shall refrain from registering a trademark identical to that of a well-known trademark; as long as he knew or was supposed to know that it was registered "even outside Palestine" because of its fame, the Jordanian High Court of Justice ruled that "the text of article 8/10 "That a mark that corresponds to a mark belonging to another person previously registered for the same goods for which the mark is registered or a class or a mark similar to such marks may not be registered to the extent that it may lead to fraud of the public, Accordingly, since the appellant has the same trademark that the company wishes to register in its name and since that mark is registered in the name of the appellant in Britain and that it used the mark previously used to request the registration of the mark on behalf of the appellant, the products of this trademark have been exported to the Jordanian markets with their distinctive brand for a while, so that they are known to the consumer public except that the two symbols are similar in terms of names and characters. The similarity leads to cheating the public. Therefore, the decision of the trademark registrar to refuse to register the trademark on behalf of the company. (Article 11,law 33/1952; the Jordanian High Court, 215/95).

Furthermore, protection in the registration stage, although it is a good start to prevent the registration of trademark infringement on the famous brand, but it is not enough, as they prevent the registration of these marks on the same goods only, and allow registration on different goods, If the famous trademark was infringed with the use of infringing goods, the law would not be used to prevent the registration of the infringing mark and to protect the trademark.

2.1.2. Honest competition and Famous Trademarks

In general law permits one or more persons to apply to register for the same trademark on the same products only if the mark is used for fair competition, but also at the same time none of them knows of the existence of the other mark, and has not intended to compete with or harm the other mark and its owner. (Article 18,law 33/1952).

But then the application of this provision to famous trademarks is unacceptable because honest competition is inconceivable with the famous trademarks, and the use of someone for a trademark that later appears to be famous may be an unrealistic coincidence, and this registration will inevitably confuse normal trademarks with famous ones as well as to misleading to the public. (A. Bayoumi,2008,p 206).

2.1.3 Object to the registration of an infringing mark on a famous mark

Basically the law authorizes any person to object to the Registrar the registration of any trademark within three months from the date of publication of the application for registration or during any other period designated for this purpose... " (Article 14, Law 33/1952).

Besides that the law does not stipulate the personal interest of objecting to the registration of a trademark, since the objection represents a public interest that any person may direct, even if a person uses objection as a profession, the interest is realized and clear if the objector is the owner of the famous trademark. (*Jordanian Supreme Court, 241/97*).

At the same time the law specifies the duration of the objection as three months from the date of publication of the publication, However, the registrar has the right to appoint any other period, especially if the registrar feels that the application for registration of a trademark may be similar to a famous trademark registered outside Palestine, then the Registrar shall give additional time either on his own or at the request of the objector. His decision shall be subject to appeal before the Supreme Court of Justice within 20 days from the date of the issuance of this decision, the high court stated that "... the Court finds that the Registrar took into consideration the circumstances prevailing in that period in terms of irregularity in the institutions of the Authority, including the Trademark Office, which prevented the submission of the objection within the specified period In accordance with these exceptional circumstances, decided to accept the objection ... and that the registrar has exercised the powers conferred upon him by law. (*Palestinian High Court, 36/2004*). The law also grants the right of priority to any person to register his trademark, provided that the request for protection is submitted within six months

from the date of filing the application for protection in the foreign country. (Article 41, Law 33/1952). And to me I see that linking the right of priority to a period of 6 months from the date of registration in the foreign country, makes the right of priority lose its meaning because of the short period, The Jordanian Court of Justice also ruled that the owner of the identical or similar trademark may object to the registration of another mark similar to his even if the infringing mark is not registered in Jordan and registered abroad if such registration leads to unfair competition of the *decision of the Jordanian High Court of Justice*. (The Jordanian *High Court,171/88*). The law also prohibits the right holder to submit a request for civil compensation for any infringement on the trademark before its registration in

Palestine, and will not receive criminal protection prior to its registration in Palestine.

2.1.4 Protecting the famous Trademark by eliminating the counterfeit mark

The law gave all interested parties the right to request the cancellation of the registration of any trademark because they were not used on the goods for which they were registered for or because they were not used or were not used during the two years prior to the submission, and for those who registered their trademark can justify the reason for the non-use and convince the Registrar or the court with this justification. (Article 22, Law 33/1952).

It is certain that the owner of a famous trademark that has a confirmed interest in the cancellation of a trademark registration which resembles or imitates his trademark, when the infringer holds the mark for himself and does not exploit it in a real and effective manner on the goods for which he is registered.

moreover, it is the responsibility of the owner of interest in the famous trademark to prove that it has not been actually used, or prove that it has not been used in past two years preceding the application, which is the minimum requirement for the acceptance of the application, and the more the period of non-use the strongest the justification for the cancellation of the registered trademark increased.

But the question arises whether the right to cancel a trademark is subject to the five-year period in the text of article 25, or is it available as long as the trademark exists?

Referring to the text of article 22 of the Trademark Law which established the right to cancel the registration of a trademark indicated that "... as there was no sincere intention to use that mark for the goods for which it was registered for and in fact it was not used for such goods or on the basis that such a mark was not already used during the two years that submitted the request, "the law requires when submitting an application that the trademark was not used two years prior, and no specific period of time has been specified for that application.

The law also states that "... without prejudice to the general character of the provisions of article 25 of this Act ...", (Article 10 Law 34 of 1999). which means that there is a link between the articles since article 22 refers to the provisions of article 25 and that the general rule of article 25 covers article 22, at the same time the purpose of canceling the registration of a trademark registered in article 22 is because the trademark was not used, and the purpose of determining the term of termination of the right of cancellation under article 25 is for the stability of transactions, And not to keep the owner of the mark under the danger of the cancellation of his mark, and as long as the cancellation because of the non-use of the mark will not affect the stability of transactions, "it is a trademark not already used", it also would not threaten the practical interests of the owner of the mark, which meant that the five-year period in article 25 did not apply to article 22, making it possible to request the revocation of the mark for non-use five years after its registration, What also supports our opinion is the fact that article 22 of the Amended Jordanian Trademarks Law, supra note 29, replaced the expression "without prejudice to the general character of the provisions of Article 25" to "taking into account the provisions of Article 25" which does not speak of the five-year period.. (Article22,law34/1999; M. Al-Tarawneh, , 2009.)

◦In addition, the Paris Convention in Article 6 II prohibits the granting of any time-limit for the delisting, as long as the registration and use of the mark was carried out in bad faith, which means that the aggressor's registration of a famous trademark and its non-use is a manifestation of bad faith, in which the infringer should not be protected during the legal period, The Trademark Law, 33/1952, did not differentiate between good faith and bad faith. "See Article 25\5" of the law. The Palestinian Industrial Property draft Law also did not distinguish between good or bad faith in determining the duration of the deletion.. (S. Zinedin,200 5, p 381).

2.1.5 Deletion of the trademark

The Trademark Law permitted a request to delete a trademark because there was no legal justification for its registration, or because its registration was unfair competition, and it was determined to do so within five years from the date of actual registration of the mark and not from the date of submission of the application, The five-year period is in line with the text of Article 6 II, paragraph 2, of the Paris Convention. (Article 25/5, Law33/1952; the decision of the Jordanian *Supreme Court*,64/1977).

Based on the above, the reasons for the deletion of the trademark infringing on the famous trademark due to violation of articles 6, 7, 8 of the law are as follows:

First: Article 6 requires those who wish to use a trademark independently to register their trademark. Therefore, the infringer of a trademark will not be able to use this trademark because it is already in use and that would be an infringement on the mark which is not of their production and work, this all violates article six, and their registered mark became subject to deletion. (Article 6, Law 33/1952).

Second: the deletion of the trademark infringing the famous mark if there is distinguishing characteristic, which ensures the distinction of goods than others, the counterfeit mark will not lead to distinguishing marks on the contrary will lead to misleading and confusing counterfeit goods and famous goods, therefore, many brands that may cause a confusion in the products and may interfere with others are liable to be deleted.

Third: Remove the trademark infringing on the famous brand because it will contribute to cheating the public and lead to unfair competition. (Article 8/6, Law 33/1952; M. Al Tarawneh, 2009)

2.1.6 Trademark invalidity

The law clarified that if someone's trademark that is registered outside of Palestine, was infringe, this person may submit an application to invalidate the registration of the mark registered or intended to be registered by those who do not own it, The *High Court of Justice decision No. 90/2011* stated that "by reference to the provisions of Article 34 of the Trademark Law, which gave a person who has a registered trademark abroad the right to request the revocation of a trademark even if it is registered to a person who does not own it if it is based on his request for reasons In paragraphs 6.7.10 of Article VIII of the Trademark Law, , the Court finds that it has first to object to the application for registration for the same reasons and is in the early stages of registration. (Palestinian *High Court of Justice, 90/2011*) and the law sets forth the reasons that can be invoked to rule the invalidity. (Article 34, Law 33/1952).

As for the request of invalidity may be made because: the mark is contrary to public order, leads to cheating the public, encourages unfair competition, that the mark is descriptive, because the mark matches a mark belonging to another person previously registered on the same goods or mark that is similar to that mark, cheating the public.

For this case, the trademark must be registered, but it is not required to be registered in Palestine. Most of the famous trademarks are registered abroad. Therefore, famous trademark owners can apply for invalidating trademarks that might lead to misleading the public.

Furthermore, the law did not specify a period of time for exercising this right. Article 34 was not linked to article 25, which stipulated that the right to delete should be exercised within five years from the date of registration. This means that the right of revocation of marks registered abroad is at any time. (Article12,law 34/1999).

2.1.7 The extent to which famous brands are taxed in Palestine.

The Income Tax Law in Palestine No. 25 of 1964 subjected the "ordinary or famous" trademarks to the income tax. Article 5 paragraph 1/4 stipulates that the accepted compensation shall be subject to any trademark, design or patent. (The Jordanian Income Tax Law 1966- 2004)

The same paragraph grants the authority of the income tax assessor to distribute the income derived from this source over a period of time exceeding one year as he deems appropriate to achieve tax justice for the taxpayers, since distributing of income over a longer period of time leads to a reduction of the tax burden on the taxpayer, In addition to delaying the tax benefit on the amounts distributed over tax years, which enables the taxpayer to invest this money and make profits from them.

The Palestinian Income Tax Law No. 17 of 2004 also subjected trademarks, including the famous ones, to a tax according to the general text in article 2, (Article 2, Tax Law 17/ 2004). concerning the tax base, where it states that "unless the exemption is provided for in this law, all income earned by any person from any source shall be subject to income tax." This law does not provide for the exemption of these marks in Article 6, which deals with income exempt from income tax, as well as article 7 on tax-exempt income with conditions.

It is taken on this law that the tax base contained in Article 2 above was vague and provoking for tax disputes between taxpayers and tax departments because it did not specify the criterion adopted by the law to subject income to tax; Is it the criterion of the territory of the activity, the nationality of the taxpayer or his place of residence, which tax legislation did not deal with, opening the way for tax evasion and loss of tax revenues. This requires addressing the ambiguity and lack of legislation in the near future to achieve tax justice.

2.2 Potential Protective Measures

The legal means of protecting the famous brand in Palestine have been already clarified, and how methods have expanded to include the famous brand, but the most effective means of protection is the civil responsibility of compensation and criminal liability.

2.2.1 Civil Protection of the Famous Trademark

By extrapolating the provisions of the Trademark Law, it is clear that the establishment of rules and grounds for the protection of a trademark on the basis of registration and the prevention of compensation for infringement of an unregistered trademark confers on the trademark owner the right to stop the infringement by objecting to the registration of the mark by deletion, cancellation or invalidation.

Mentioning the fact that the legislator did not leave us the power of judgment or enforcement because article 43 of the law expressly states that it is not permissible to claim compensation for unregistered trademarks, (Article 34, Law33/1952). this position is contrary to the general rules that give the right to compensation to whoever faces damage from the actions of others, (M. Al Tarawneh, 2008).

It is also seen that the position of the legislator may be justified because the owner of the ordinary mark does not want to register his mark, making him vulnerable to infringement. The legislator considers that there is an important public interest to push trademark owners to register them, also so that it is not permissible for someone who was neglectful to register his trademark to benefit from his shortfall, and no one is excused for their ignorance of the law, so that the registration would have a practical legal value that is characteristic of those who registered with those who did not.

In our view, this justification is unacceptable for famous brands, most of which are foreign marks registered in a foreign country and have become famous for their quality and value to the countries of the world, including Palestine, How is it prohibited to claim compensation because the mark was not registered in Palestine, even though the infringement took place in Palestine, it is not considered be neglect and does not establish the rule of non-apology ignorance of the law, , So it was a priority to the Palestinian law to distinguish in the request for compensation between ordinary trademarks and famous brands. (A. Al-Khashroom, 2007, p254).

Moreover, the general rules of compensation cannot be invoked in accordance with the provisions of the Civil Code. As long as the text is unequivocal, it is not permissible to circumvent it by resorting to general rules, , since trademarks law is the law for trademarks and civil law is the general law of all the provisions of compensation.

This is what was taken by the Palestinian Industrial Marks Draft Law when it excluded from the compensation of infringement of unregistered marks; famous trademarks. (Article 53, draft Palestinian 2012).

But it seems that the Jordanian legislator may have been alerted to the legal problem in the text of article 34 and dealt with it in the Law on Unfair Competition and Trade Secrets No. 15 of 2000, giving the right to claim compensation for the harm caused by any illegal competition, it also considered Unlawful competition as Any practice related to a trademark used in the Kingdom, whether registered or unregistered, leads to misleading the public. (M. Al Tarawneh, 2008).

2.2.2 Criminal protection of the famous Trademark.

The Trademark Law states that any person who infringes a registered trademark shall be punished. The law stipulates that the criminal liability is the intention of fraud but at the same time if the infringer is of good faith, if the infringer is of good faith, there would be no criminal responsibility, but when it comes to good faith or misappropriation it should all be decided by the judge. (Article 38, Law 22/1953; M. Abdel Tawab, 2001, p 455).

The Trademark Law also made clear that the infringed mark must be registered under the Trademark Law, and thus the legislator has determined that there lays no responsibility for infringing a well-known trademark even if it is registered abroad. (A. Al-Khashroom, 2007 ,p250).

The Goods Act states that "the false trade description of the goods applies to the use of any numbers of goods, words, signs, marks or any combination thereof, whether or not involving a trademark" and what is meant by false name is the name used on the goods as a trademark otherwise. (Article 2/3, Goods Marks Law , 19 /1953).

This means that the Goods Law deals with trademarks infringements by placing them on goods. The law stressed that anyone who falsified a trademark or used it on goods is close to similarity with the goods of the trademark and would lead to deceiving the public, shall be punished by imprisonment for a period not exceeding one year or by a fine not exceeding one hundred dinars or both penalties unless it is proved that he did so without fraudulent intent. (Article 3, Goods Marks Law, 19/1953; S. Zinedine ,2005 , p182.

In essence a person is deemed to have infringed a trademark; if such trademark or similar mark is made in such a way that it leads to deception without the consent of the owner, or that he has falsified any real trademark, whether by change, addition, distortion or otherwise. (M. Mubarak, 2006, p.74)

It is clear through the penalties stipulated in the Goods Law that registration is not required in trademarks contrary to the Trademark Law, and that the various forms of infringements contained therein can be used to punish the infringers of famous trademarks. (Article 5, Goods Marks Law 19 /1953).

Conclusion

The trademark law applied in Palestine did not regulate the well-known trademarks, but the draft law on industrial property, however, provided that the trademark law in force provided criminal protection for famous trademarks although it did not frankly name it well-known.

Furthermore, the law establishes the protection of registration according to simple and irrefutable evidence. However, we believe that the brand's popularity and its spread to a broad base of the concerned public plays the role of registration, which entails the necessity of judging judges to apply all provisions of the trademark law to famous trademarks. Trademarks can also be protected by the trademark registrar by abstaining from registering trademarks that are similar to famous trademarks, because the law prohibits the registration of trademarks that lead to cheating and deceiving the public.

on the other hand, the Trademark Law was clear that there was no doubt that there would be no compensation for the use or abuse of a famous trademark which is not registered in Palestine and that there would be no criminal liability in case of assault. However, the Goods Law did not stipulate that criminal liability opens the way for this responsibility when the conditions are met.

Bibliography

- [1] Al-Khashroom, "Penal Protection of Patents and Trademarks in Jordanian Law: A Study in Light of the TRIPS Agreement", *Al-Manarah Journal*, 13 (8) 2007, p 225-254.
- [2] Bayoumi, *Industrial Property in Comparative Law*, (Alexandria: Dar Alfekr Aljame'i, 2008), p270-281.
- [3] Ghuwairi, *The Brand and its Protection, The Famous Mark and its Protection*, (Amman: Dar Alfalah publishing, 2008), p214-254.
- [4] Brieri, *Law of Trademarks, Part I*, (Cairo: Dar Al-Nahda, 2000), p236-255.
- [5] F. Al-Haniti, *Legal Protection of the Famous Brands, Comparative Study*, (Amman: Wael Publishing House, 2015), p34-156M.
- [6] H. Alsagheer, *The New in Trademarks in Light of the New Law on the Protection of Intellectual Property Rights and the TRIPS Agreement*, (Alexandria: Dar Alfekr Aljame'i, 2004), p22-89.
- [7] Hussein, *International Trademark Protection*, Ph.D. thesis, Faculty of Law, Cairo University, 1978, p46-115.

- [8] Jordanian Trademark Law No. 33/1952, published on <http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=1952&MID=12149>.text 6-34
- [9] M. Abdel Tawab, Al-Waseet in Explaining the Crimes of Deception, Fraud and Trademark Imitation from Civil and Criminal Aspects, (Alexandria: Alam alfekr Walqanoon for publication and distribution, 2001), p 455-479.
- [10] M. Al-Keswani, *The Law Applicable to Intellectual Property Issues: Comparative Study*, (Amman: Dar Wael, 2011), p 274-302.
- [11] M. Al-Shammari and H. Abu Helou, "Preventive Protection of the Trademark Unregistered in Jordanian and French Law", *Yarmouk Research*, 24 (3) 2008, p691 et seq.
- [12] M. Al-Tarawneh, "Civil Protection of the Unregistered Trademark in Jordan", *Mu'tah University Journal*, 2009, p45-65.
- [13] M. Mubarak, *Brand and Ways of Protecting It According to the Laws in Force in Palestine*, MA Thesis, Graduate School, An-Najah National University, 2006, p.74 et seq.
- [14] M. Taha, *Commercial Law*, (Alexandria: Aldar Aljameya, 1988), pp 488-749.
- [15] O. Abdel Salam, "Crimes of fraud in transactions and assault on names and trademarks", *Journal of Police Thought – United Arab Emirates*, 5 (1) (1996), p197 et seq.
- [16] S. Qalioubi, *Industrial Property*, (Cairo: Dar Al-Nahda Al Arabiya, 2005), p552-562.
- [17] S. Sharqawi, *Commercial Law, Part I*, (Cairo, Dar al-Nahda Al-Arabiya, 1986), p574-596.
- [18] S. Zine El-Din, *Explanation of Industrial and Commercial Legislation*, (Amman: Dar al-Thaqafa Publishing and Distribution, 2005), p114. P381
- [19] T. Al-Hmour, "Trademarks: a Reading in the Principles and Standards of Protection", *Mutah University Journal*, 2010.
- [20] The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement), 1994, published at http://www.wipo.int/wipolex/en/other_treaties/details.jsp?group_id=22&treaty_id=231. Text 15-18
- [21] The Amended Jordanian Trademarks Law No. 34/1999, published in the Official Gazette No. 4389 dated on 1/11/1999, p 4299.
- [22] The draft Palestinian Industrial Property Protection Law, 2012, issued by the Palestinian Ministry of National Economy, Ramallah 2012.
- [23] The forging of global trademarks "Piracy publicly, without censorship!" Article published on 11-02-2015, at: <http://www.tmf.net/article/24392>, accessed on 12/3/2017, p.01-01.
- [24] The Goods Marks Law No. 19 /1953, published on: <http://muqtafi.birzeit.edu/Legislation/LegCard.aspx?id=1116>.
- [25] The Jordanian Court of Justice *the Jordanian High Court of Justice*, Journal of the Bar Association, p. 102-923.
- [26] The Jordanian Income Tax Law that was applied in Palestine for the years 1966 till 2004, published on: <http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=1964&MID=2904>
- [27] The Palestinian *High Court of Justice ruling* <http://muqtafi.birzeit.edu/courtjudgments/ShowDoc.aspx?ID=35923/88811>.
- [28] The Paris Convention for the Protection of Industrial Property: the Convention for the Protection of Industrial Property of 20 March 1883, amended in Brussels on 14 December 1900, in Washington on 2 June 1911, in The Hague on 6 November 1925, in London on 2 June 1934, at http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=287555.text 6-7.
- [29] Trademark System No. 1/1952 published on: <http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=1952&MID=1114>.