

# THE LEGAL FRAMEWORK FOR PROTECTING WELL-KNOWN TRADEMARKS IN JORDANIAN LEGISLATION AND INTERNATIONAL CONVENTIONS: HOW COMPLYING IS NATIONAL LEGISLATION WITH INTERNATIONAL REQUIREMENTS?

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## Abstract

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The article analyzes the legal protection of famous trademarks in Jordanian legislation and international conventions. The study aims to demonstrate the concept of a well-known trademark and the mechanism of protecting it by preventing the registration and use of a trademark that matches, resembles, or constitutes its translation of a famous brand, and revocation of the registered brand that matches or is a translation of a famous trademark — moreover, identifying judicial procedures to protect famous brands in addition to the statement of legal protection of the famous brand under the Paris Convention for the Protection of Industrial Property and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The analytical and comparative approach used in this study is to analyze the texts of Jordanian legislation relating to the protection of the famous brand and to compare those texts with the international requirements set out in international conventions. The research paper reached a set of results and recommendations, the most important of which is the necessity of various local associations or organizations, including the Consumer Protection Association, to assist in recognizing and implementing the criteria established in the conventions that enhance the brand's popularity. This is crucial for safeguarding national items that are alleged to be imitations of international products.

**Keywords:** Trademark, Legal Protection, International Agreements, Intellectual Property, Jordanian Legislation

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## 1. INTRODUCTION

The utilization of labels and symbols commenced before Christ and even before the advent of reading and writing. The initial label was utilized to identify sheep. Also, Indians used symbols to mark their goods and distinguish them, and so did the ancient Romans, Egyptians, and Greeks. The use of trademarks in the form of shapes and symbols has increased significantly when the caste system, which has transformed skilled craftsmen into a rigorous system whereby members are obliged to use a coercive production label to establish responsibility for the manufacturer of poor-quality products and to combat illicit trade (Ibrahim, 2022).

As industrial and economic life evolved owing to the emergence of the machine that replaced the Renaissance's manual labor in Europe. Leading to increased merchandise and trade competition among European countries, it became necessary to distinguish those goods with marks of each kind different from the other (Al-Ghuwairi, 2008).

Therefore, global markets had to be founded to help protect big companies' brands and merchandise. This chronological development and geographical expansion of those major companies created a conflict between the laws of the major powers. So, competition between the goods and companies of the major industrialized states with different brands required the creation of international agreements to regulate competition and protect brands in the world. The first international convention for this purpose was concluded in 1883, the Paris Convention for the Protection of Industrial Property, and was amended several times. The most recent was the 1967 Stockholm Amendment and other international conventions have been concluded in this area (Jarada, 1998).

The study aimed to demonstrate the concept of a famous brand and the mechanism of protection of a famous brand by preventing the registration and use of a trademark that matched, resembled, or is a translation of a famous brand, revocation of the (registered) trademark that matches or constitutes its translation of a well-known trademark, and determining the judicial procedures for the protection of the famous trademark, as well as the statement of the legal protection of the famous trademark under the Paris Convention for the Protection of Industrial Property and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. It examines the impact of trademark protection on foreign investment attraction, the aspects of trademarks that entice foreign investments under Jordanian and international legislation, and the stance of Jordanian law regarding the protection of both famous and infamous trademarks without discrimination.

The problem of the study lies in the fact that the obligations set by the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement were not clear and specific, which made their implementation difficult for some countries in the world, especially in Jordanian legislation. Therefore, this required the Jordanian legislator to amend the legislation related to trademarks in line with the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement without paying attention to the requirements of local trade and industry.

Therefore, through this research paper, we will work to answer several legal research questions that represent the research problem, the most important of which are:

*RQ1: What is the importance of a trademark and the purpose of its use?*

*RQ2: What are the methods of acquiring trademark ownership?*

*RQ3: What are the main characteristics of the right to own a trademark?*

*RQ4: What are the most important measures required to protect the identity of a trademark?*

*RQ5: What are the conditions for registering a famous trademark?*

*RQ6: How are famous trademarks protected under the provisions of the Paris Convention for the Protection of Industrial Property?*

*RQ7: How are famous trademarks protected under the TRIPS Agreement?*

The significance of the study resides in enhancing the economic and developmental value of trademarks, serving as a distinguishing mark for goods and services to avert imitation or counterfeiting. The stance of Jordanian legislation regarding the establishment of standards that distinctly delineate trademark effects on legal competition protection is pivotal, as legal competition protection is deemed one of the foremost justifications for enforcing trademark protection. It serves as a premier marketing and promotional instrument, representing both an element of allure and the identity of the producer.

The rest of the study is structured as follows. Section 2 reviews the relevant literature. Section 3 analyzes the methodology that was used to conduct the study. Section 4 presents the results. Section 5 discusses the results. Section 6 concludes the study and presents the recommendations for future research.

## 2. LITERATURE REVIEW

Through this research paper, several previous studies were referred to, including a study by Al-Sarayrah (2024). The study yielded several findings, notably that the trademark legal frameworks established by the Paris Convention for the Protection of Industrial Property (1883), the TRIPS Agreement (1995), the Hashemite Kingdom of Jordan Trademarks Law (Law No. 33 for the year 1952) (1952), and Law No. 15 of 2000 on Unfair Competition and Trade Secrets (2000) effectively safeguard trademarks, thereby facilitating the attraction of foreign investments to Jordan. The Paris Convention for the Protection of Industrial Property (1883) broadened the scope of trademark protection to encompass service marks alongside trademarks and industrial marks, allowing for their registration and use for both identical and dissimilar items. Additionally, Trademarks Law No. 34 for the year 1999 (1999) addresses trademark protection by prohibiting the registration of trademarks that are identical or similar to existing trademarks, or that imitate international agreements, thereby promoting foreign investment in Jordan (Al-Sarayrah, 2024).

Another study by Obeidat (2021) determined that registration establishes the right to the trademark and provides both civil and criminal protection for it. This law does not protect unregistered trademarks, which are instead safeguarded under Law No. 15 of 2000 on Unfair Competition and Trade Secrets (2000).

A recommendation was made to the lawmakers to change certain parts of the trademark legislation in accordance with these findings (Obeidat, 2021).

Petriaiev and Kogut (2020) determined that the ability to safeguard business names upon their initial use, without the necessity of registration as stipulated by the Paris Convention, has resulted in several disputes and complications regarding their proper utilization and rightful ownership. Furthermore, the registration of any sign as a trademark is prohibited if it has already been utilized by any business or individual entrepreneur as a commercial name, regardless of the duration since its usage (Petriaiev & Kogut, 2020).

Cheng (2024) concluded that the principle of trademark dilution has not been systematically and explicitly defined in Chinese trademark law; yet, it has increasingly served as a foundation for references and judgments regarding the cross-class protection of renowned trademarks.

### 3. RESEARCH METHODOLOGY

The study used the analytical and comparative approach by analyzing the texts of Jordan's legislation on the protection of the famous brand and comparing those texts with the international requirements set out in international conventions, in particular, the Paris Convention for the Protection of Industrial Property (1883) and the TRIPS Agreement (1995).

The research paper will refer to several sources, including Law No. 33 for the year 1952 (1952), the Paris Convention for the Protection of Industrial Property (1883), and the TRIPS Agreement (1995), in addition to using jurisprudential opinions on trademarks from specialized legal journals and using judicial rulings related to trademarks in the Jordanian judiciary and the extent to which these judicial rulings are consistent with the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement.

Therefore, the dynamics of advertising on social media platforms, including Instagram and Facebook, are altering the allocation of marketing resources for brands, shifting them from traditional media to social media to promote their renowned and established trademarks. The Internet offers a growing number of chances for us to buy globally recognized branded products and services. Typically, reputations come before brands. Branded goods or services are frequently promoted and marketed in advance, even if they have not yet been physically introduced into a certain country's market. Given the current circumstances, businesspeople are unequivocally aware that the reputation and goodwill associated with their renowned brands have transcended national and local boundaries.

Several member states have included provisions in their legislation that provide for the protection of unregistered well-known trademarks, extending beyond the concept of specialty. This protection is granted under the same or comparable criteria as registered well-known trademarks or trademarks with a reputation. It should be noted that the explicit wording of the legislative regulations in the member states differs from country to country. When assessing the current national legislation, it is feasible to identify three tiers of legal safeguarding for well-known trademarks and registered trademarks with a reputation that presently exist in the European Union (EU) member states.

As a result, this study investigates the extraordinary attention and protection given to trademark uniqueness, as well as the rationale and usefulness of such protection, in light of the modern era and commercial climate.

## 4. RESULTS

### 4.1. The significance of the brand and its purpose of use

The brand is of great economic importance, as it is the means of success of any goods or business. It is a means of honest competition between traders and producers at the state and local levels. It aims to attract consumers to the best class of goods by distinguishing them by brand on the one hand. On the other hand, the product, merchant, or service provider shall serve the owner of this brand as a means of distinguishing his goods or services from the rest of the goods (Alghuwairi et al., 2024).

The trademark is beneficial to the trader or owner of the trademark in the excellence of its products and services that it provides to the public and to protect those products or services from imitation. It is also considered an advertising means for those services offering them (Zoueini, 2010).

Therefore, the brand helps the consumer in choosing the product he wants and the item he wants from the brand, and helps to build trust between the consumer and the category of goods where the goods can be distinguished by that brand without investigating its quality and product. The consumer has to buy those goods once and discover the quality. The next time it is his role to distinguish the goods from the marked goods in his mind, thereby saving time for the consumer and the seller (Al-Tamimi, 2009).

Also, the brand helps to distinguish products and goods, which prompts the owners of these brands to strive for quality and excellence. Moreover, the brand plays a role in distinguishing between national goods and foreign goods. This helps the competent authority to enact laws and regulations to assist the national industry by distinguishing the volume of demand for goods with national trademarks to the consumer, helping him to buy national goods. Furthermore, the brand is important in creating fair and clean competition among traders (Hanna, 2000; AL-Khalailah et al., 2025).

### 4.2. Methods to acquire ownership of a brand

We would like to address how to acquire ownership of trademarks to explain the priority of acquiring the right to unregistered trademarks, especially famous trademarks (Assaf, 2012).

The jurisprudence disagreed on how the trademark acquires the right of ownership and on the legal basis of the right of ownership in the trademark; whether the right arises with precedence of use or by registration of the brand with the trademark registrar or the relevant entity. Thus, dividing the trends of the scholars into three:

The initial trend calls for the right to own the trademark to take precedence over use. Registration is not the origin of the right but a presumption of ownership (Bottero et al., 2007).

The Jordanian legislature defined the trademark as: "any mark used or is intended to be used upon

goods or in connection therewith for the purpose of indicating that such goods are those of the proprietor of such trademark under having manufactured, selected, certified, traded in or offered them for sale” (Law No. 33 for the year 1952, 1952, Article 2).

From the previous definition of the trademark, we see that the legislator created a requirement to register the trademark by saying “use or intention to use” so that the trademark is legally owned (Cordell et al., 1996, p. 42).

It can be said that this definition of a trademark before the amendment has emphasized the progress of Jordan’s legislature in the first direction.

After amending Law No. 33 for the year 1952 (1952), the legislator replaced Article 2 with the word “to be used” instead of “intended to be used”. Saying:

“Any visible sign used or to be used by any person to distinguish his goods, products or services from the goods, products or services of others” (Law No. 33 for the year 1952, 1952, Article 2).

It is noted that this amendment serves the same purpose as in the definition of the previous trademark law. In confirmation of this, we conclude from Article 24, paragraph 5 of Law No. 33 for the year 1952 (1952):

“Each request submitted for the cancellation of a trademark from the Register as a result of the absence of a justification for registration in pursuance to the provisions of Articles 6, 7, or 8 of this Law, or as a result of unfair competition arising of registering that trademark in regard to the rights of the applicant in the Hashemite Kingdom of Jordan shall be submitted within five years as of the registration of that trademark”.

If the legislator wished for such effect from registration, the former trademark user would not have been allowed to request an audit of the registered trademark in another person’s name, but with three conditions:

- Having a similarity between the two signs that led to the cheating of the public.
- The sign for revocation must be used prior to the registered sign.
- It is not five years since the registration of the revocation required signs (Dill, 2010).

The Jordanian judiciary has endeavored to pursue the first direction in several judicial decisions. The Supreme Administrative Court of Jordan has ruled that:

“The jurisprudence and judiciary have settled that although the registration of the trademark is a presumption of ownership of the mark, this presumption may be demolished in reverse evidence. The former trademark user whose merchandise has become distinctive has the right to request the revocation of the trademark registered in another name if the following conditions are met: if it is established that there is a similarity between the two marks, it would lead to public fraud. If the use of the first mark is prior to the date of use and registration of the mark to be canceled. If the registration of the required sign to be canceled has not passed five years” (Judgment No. 101 of 2015).

In another judgment, Jordan’s Supreme Administrative Court ruled that:

“The registration of a trademark in the name of a person is a presumption of ownership of the trademark. This presumption may, however, be

demolished by reverse evidence. So, if the right of the person whose name the sign is registered collides with that of a former user. The person who used it has priority over the person on whose behalf it was registered. And he is entitled to apply for revocation of registration when there was a similarity between the two marks that would lead to public fraud. It cannot be said that registration of a trademark may remain based on Article 18 of the Trademark Act, which allows registration of a trademark based on Article 18 of the Trademark Act, which allows registration of a single trademark in the name of more than one applicant if the competition is not dishonest. If the use of this brand after it has become distinctive for the goods of the requesting company would lead to the cheating of the public because of the similarity. Nothing in the law requires that similarity be deemed to lead to public fraud if fraud is established. Since it does not require misinformation to take place. But is sufficient to be as likely as it appears from the text’s phrase (which may lead to public fraud)” (Judgment No. 376 of 2023).

We note from the foregoing that the Jordanian judiciary has adopted the principle that registration is a presumption of ownership. It has not been regarded as an absolute individual presumption, but rather as relative. This presumption could be demolished by proving pre-use.

Under Article 2, paragraph b of Law No. 15 of 2000 on Unfair Competition and Trade Secrets (2000), if the unlawful competition relates to a trademark used in the Kingdom, whether registered or unregistered, and leads to misleading the public, the provisions of paragraph a of this article shall be applied.

This trend is characterized by the protection of the true generator of the current brand and the protection of the original trademark holder who chose it on his products even though he did not register the label. On the other hand, it has drawn criticism of this trend as it gives way to disputes about the primacy of the brand and encourages the trademark owners not to register, which creates difficulty in establishing the primacy of registration (Hassan & Falah, 2019).

The second tendency requires that the owner of the trademark acquires ownership of the trademark only after registration and based on Article 28 of Law No. 33 for the year of 1952 (1952). It stipulates that:

“The registration of a person as the Proprietor of a trademark shall be considered as an indication of the legality of the original registration thereof and shall apply to all subsequent assignments and transfers in all legal procedures related to its registration”.

This trend is characterized by its interest in formal theory and the ease of resolving disputes between the owners of similar brands. This trend is criticized as a waste of the brand’s real innovator’s rights to own it and prioritizes the brand for its registrar even if he uses it after the original innovator of the label (Leaffer, 2007; Iqbal & Nugroho, 2021).

The third tendency is a compromise trend that combines the advantages of the previous two directions and avoids their disadvantage to the extent possible by which the primacy of use is the right of ownership and requires the deposit of the existence of the right’s determination. However,

once a certain period has elapsed since the filing without dispute, the deposit becomes the basis of the right of ownership decisive for each subsequent dispute (Monseau, 2011).

As for the Jordanian legislature's opinion, the third and final criterion, the intermediate criterion, is adopted. As evidenced in Articles 29 and 25, paragraph 5 of Law No. 33 for the year 1952 (1952), which were referred to earlier in the two directions.

#### 4.3. Key features of the entitlement to possess a trademark

The ownership of a brand is a subjective right, in other words, the owner of the brand may only invoke his right to own property in the face of his competitors who engage in trade, industry, or offer the same kind. This is because the brand aims to distinguish products and prevent confusion with alike or similar products.

Therefore, the owner of the brand is not entitled to prevent others from using the same on different products without affecting the exceptional character of his right as a brand owner. The brand owner's protest against third parties is only within the limits of products, goods, or services similar to his or her products, goods, or services. This means that the same label may be used to distinguish various and different products. This is because registering a brand is limited to certain goods or special items of goods. As a consequence, the label may be used by more than one person insofar as the subject matter of one's industrial or commercial activity is different from that of the other. The label may be used by more than one person even if the subject matter of their activity is consolidated as long as mixing or confusion between their products or goods is way off (Moskalenko, 2015; AL-Khalailah et al., 2024).

The ownership of a brand is a limited and time-bound privilege, this means that the right to a trademark is limited to a certain period of time, as determined by law. Jordanian law limits the duration of the right to a trademark to 10 years from the date of registration of the mark and may renew its registration for similar periods. The provisional right here means that if the trademark's owner fails to use or renew the registration of the mark for an unjustified reason. He then loses his marking right and becomes permitted for registration and use by others. It is a temporary right for the duration of registration only (Muzakki et al., 2018).

Article 20 of Law No. 33 for the year 1952 (1952) states:

"1. Ownership of trademark rights shall be for a period of ten years from the date of registration and may be renewed for similar periods in accordance with the provisions of this Law. 2. Registered or renewed trademarks shall be renewed prior to the entry into force of the provisions of this Law upon expiration of a period of ten years".

Therefore, if the registered trademark is not renewed, the owner loses the right to own it. Under Article 21, paragraph 2 of Law No. 33 for the year 1952 (1952), which states:

"If the owner of the trademark does not request to renew it, it shall be deemed to have been removed from the registry by expiring one year after the expiration of its registration period. A third party is entitled to request the registration of this trademark in his name after another year".

## 5. DISCUSSION

### 5.1. Conditions for registering a famous brand

There are several conditions for the registration of the famous brand. The most important of which is to prevent the registration of a trademark that is identical, similar, or constitutes the translation of a famous brand, to prevent the use of a trademark that is identical or similar or constitutes the translation of a famous brand, and to cancel the (registered) brand that corresponds or constitutes the translation of a famous brand (Al-Ghuwairi, 2008).

#### 5.1.1. Prohibiting the registration of a trademark that is identical, similar, or a translated version of a well-known trademark

Article 8, paragraph 12 of Law No. 33 for the year 1952 (1952) states:

"A trademark which is identical or similar to, or is a translation of a famous trademark for use in distinguishing goods similar or identical to the goods for which it became famous and which shall create confusion with the famous mark or for use for goods other than that in a manner which may damage the interests of the Proprietor of the famous trademark and which may suggest a relation between the Proprietor and that goods. In addition, marks that are similar or identical to honorary emblems, flags, other insignia, and names or abbreviations of international or regional organizations or insignia that insult our historical, Arab and Islamic values".

By reading this article, we conclude that Jordanian trademark law prohibits the registration of any trademark that is identical, similar, or is a translation of a famous trademark. The word "identical" means that the mark to be registered is in full conformity with the famous trademark, i.e., a replica of the famous trademark. The word "similar" means that the brand to be registered is an imitation of the famous brand not to the degree of total conformity but a resemblance between them. The translation of the sign is intended to transfer the name of the sign from one language to another, i.e. the transfer of the name of the famous sign and the mark to be registered from one language to another (Jarada, 1998).

The Supreme Administrative Court of Jordan ruled that:

Article 8, paragraph 12 of the Trademarks Law No. 34 for the year 1999, it is not possible to register a trademark that is identical or similar or is a translation of a famous trademark. Is the OASIS trademark a translation of the English word (OASIS) and is this trademark (OASIS) a well-known trademark? If these conditions of translation and fame are met, the trademark to be registered (OASIS) may not be registered. With regard to the first requirement, it has been fulfilled since the word OASIS means (ALWAHA) the Arabic translation of the word "oasis". But is this brand (OASIS) a famous brand? Article 2 of Law No. 33 for the year 1952 (1952), which seeks to define a famous trademark, defines it as "The trademark of international renown whose fame exceeded the country of origin in which it was registered, and which gained fame in the concerned sector of the public in the Hashemite Kingdom of Jordan". According to this definition, a well-known

brand must have two things: First, its fame must have passed through the registered country of origin. Second, to have gained fame in the relevant sector of the public in the Hashemite Kingdom of Jordan. From the evidence presented in the case, we find that these terms were unsubstantiated and did not provide legal evidence of their verification. In his contested decision, the trademark registrar merely stated that the brand to be registered is a translation of a trademark that had proved to be famous after listing the names of a number of states it is registered in. Thus, decided to stop the registration procedure. "Since the trademark registrar had to identify the evidence, he relied on verifying the brand's prominence in the light of what he had shown so that our court could legally control the integrity of his decision. Since he did not do so, his decision would be unlawful and cassation induced" (Judgment No. 436 of 2005).

By reference to Article 8, paragraph 12 of Law No. 33 for the year 1952 (1952), the mere fact that the trademark to be registered is identical, similar, or is a translation of a famous trademark is not sufficient to prevent its registration. The application for registration of the trademark must have been made for one of the two things:

First: The purpose of the registration of the trademark to be registered is to use it to distinguish goods like or similar to those bearing the famous mark. That use must create confusion between the mark to be registered and the famous mark.

Second: The purpose of the mark to be registered is to use it to distinguish goods that are different or not similar to those that bear the famous mark. That use must then be likely to cause harm to the owner of the famous brand on the one hand and to suggest a link between the owner of the famous brand and the goods on the other.

Article 8, paragraph 12, of Law No. 33 for the year 1952 (1952) is consistent with the TRIPS Agreement (1995), which requires member states not to accept the registration of any identical, similar trademark or a translation as a famous trademark.

### *5.1.2. Prohibiting the utilization of a trademark that is identical, similar, or serves as the translation of a well-known trademark*

Article 26, paragraph 1 of Law No. 33 for the year 1952 (1952) stipulates that:

"If the trademark is famous and unregistered then its Proprietor may request the competent Court to prohibit others from using it on similar or different products and services, on the condition that the use of the trademark indicates a relation between the products and services and the famous mark and the existence of a possibility of damage occurring to the interests of the Proprietor of that mark as a result of that usage. Confusion shall be assumed in the case of using the famous mark on similar products".

This article has addressed the likelihood of third parties using a well-known trademark, whether registered in the country where the use takes place, and whether it is based on similar or non-similar products or services. The text of the article authorized the competent court to prevent others from using the mark similar to a famous trademark provided that the application to the competent court

was submitted by the owner of the famous trademark. And that usage indicates a link between such products or services and the famous brand. The fact that the owner's interests are likely to be affected as a result of this use assuming the possibility of confusion in the case of the use of a well-known brand identical to similar products (Zouein, 2010).

Article 26, paragraph 1 of Law No. 33 for the year 1952 (1952) is contrary to Article 14, paragraph 1 of the same Law, "any person may object to the registration of any trademark with the Registrar". The inconsistency between the two articles is that Article 26, paragraph 1 restricted the right to apply for the prohibition of the use of the famous mark by the owner of the famous mark. Contrary to Article 14, paragraph 1, which gave any person the right to object without specifying a description of that person. That conflict was contrary to the purpose for which Law No. 33 for the year 1952 (1952) existed, namely, the fight against illegal competition, consumer protection, and the protection of any assault on any brand that was famous or not.

In both cases described in Article 26, paragraph 1 and Article 14, paragraph 1 of Law No. 33 for the year 1952 (1952), there is an assault through the use of the trademark by others, infringement, and registration of a registered trademark. But the Jordanian legislator distinguished those cases by giving the first, right to object to the trademark owner. And the second, the right to object to any person. Indeed, in Article 14, paragraph 1, the Jordanian legislature sets a date for the submission of an objection. And in the first case, a date for the submission of an objection.

Article 25, paragraph 5, of Law No. 33 for the year 1952 (1952) stipulates that:

"Each request submitted for the cancellation of a trademark from the Register as a result of the absence of a justification for registration in pursuance to the provisions of Articles 6, 7, or 8 of this Law, or as a result of unfair competition arising of registering that trademark in regard to the rights of the applicant in the Hashemite Kingdom of Jordan shall be submitted within five years as of the registration of that trademark".

We conclude through Article 25, paragraph 5 of Law No. 33 for the year 1952 (1952) that the legislator granted the right to request the deletion of the trademark under the provisions of Articles 6, 7, or 8 of this Law within five years of the registration of the transgressed trademark, i.e. that the period required in Article 26, paragraph 1 is five years.

## **5.2. Legal safeguarding of renowned trademarks as per the provisions of the Paris Convention for the Protection of Industrial Property**

The Paris Convention for the Protection of Industrial Property (1883) dealt with the protection of the famous trademark of Article 6, paragraph 2, to increase the world's renowned trademarks and belief in the media revolution, commercial openness, and the global market, which became the cornerstone of any brand's fame so that the article states:

"The countries of the Union undertake, *ex officio* if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction,

an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith" (The Paris Convention for the Protection of Industrial Property, 1883, Article 6, paragraph 2).

By reviewing the articles under the Paris Convention for the Protection of Industrial Property (1883), we find that they require certain conditions for the well-known mark to enjoy the protection established in this Convention: A transgressive trademark constitutes a copy, imitation, or translation. Copies of the trademark are intended to be transmitted in their own right and as such without any change or modification therein. The imitation is then having a great analogy between a transgressive and a famous sign which suggests to the public that there is an association between the two labels without reaching the point of copying (Iqbal & Nugroho, 2021; Monseau, 2011). The translation of the sign is intended to be translated from one language to another if it contains letters or words. Copying, imitating, or translating the famous brand will create confusion between the two brands — the transgressive and the famous mark. Copying between two labels creates confusion that is clear to the public and easy to prove. As for imitation or translation, it is necessary to find a similarity that occurs in the public, but the difference between copying, imitation, and translation is the difficulty of proving the presence of confusion in the public. The transgression on the trademark and industry in the state in which the protection of the famous mark is sought left the Paris Convention for the Protection of Industrial Property, without valuing whether the trademark or industrial brand is famous to the competent authority of that state. And without establishing a specific standard that would assist those authorities in determining whether or not the mark was famous. A transgressive label is used on products like or similar to those that the famous label uses to distinguish it. To apply this condition, it is sufficient that there is a match or similarity between goods that the famous label uses to distinguish itself and those on which the transgressed wishes to place (Hassan & Falah, 2019; Leaffer, 2007).

With regard to Article 6, paragraph 2 of the Paris Convention for the Protection of Industrial Property (1883) concerning the famous trademark, it is stated that:

"A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested".

States members of the Paris Convention for the Protection of Industrial Property must commit themselves to at least five years' duration in allowing the owner of the well-known mark to delete the transgressive mark to exceed five years. No time limit may be set for requesting the deletion or prohibition of the use of signs recorded or used in bad faith.

Article 6, paragraph 2 of the Paris Convention for the Protection of Industrial Property (1883)

establishes special provisions for the protection of the famous trademark. It obliged member states to refuse or nullify the registration and to prohibit the use of an industrial or commercial label that constitutes a copy, imitation, or translation that would create confusion with a sign that the competent authority of the states in which the registration or use took place deems to be famous as actually the mark of a person enjoying the benefits of this Convention. If used on identical or similar products shall also apply if the substantive part of the label constitutes copies of or imitations of that famous label that create confusion.

This provision determines the protection of the famous trademark, even if not registered. By obliging the Union member states to refuse, nullify, or prevent the use of an application for registration, unless the application for registration is submitted by the owner of the famous mark. Despite the importance founded by the Paris Convention for the Protection of Industrial Property, it has faced criticism and difficulty from member states in applying this Agreement. The most important difficulty is how to distinguish whether or not the brand is famous. And what are the standards for measuring brand fame?

The guidelines for the identification of a well-known brand, as recommended by the World Intellectual Property Organization (WIPO), have therefore filled that lack of determination of the factors to be considered in determining when the brand is famous. And who are the relevant sector of the public in Article 2 of paragraphs 1 and 2 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks of 1999, which stated:

A. Criteria to assess the fame of a sign: Whoever wishes to prove that his or her mark is a famous one must provide the competent authorities with information in support of his or her claim. However, the competent authorities cannot compel the mark holder to provide certain information, so its failure to provide such information leads to the conclusion that the mark is not popular.

Article 2, paragraph 1(a) of the joint recommendation requires the competent authorities to take into account any circumstances from which it is concluded that the sign is famous. Article 2, paragraph 1(b) cites examples of factors from which the competent authorities can conclude that the sign is famous:

1) The extent to which the label is famous or known to the relevant public sector. The extent to which the mark is known to the relevant public sector can be determined through consumer pattern surveys and consumer opinion surveys.

2) Duration and geographical scope of usage of the mark in any aspect of usage. It should be noted that the mark is not required to be considered as being used in the state where it is intended to be protected. It is sufficient to consider it as such, to be known as a result of propaganda and advertising campaigns. However, to demonstrate the public's knowledge of the mark in a given state, it might be useful to provide evidence of the use of the mark in a neighboring state, in the territory of a state with which it has close commercial relations, or in a state to which the media of the State in which the mark is intended to be protected as a famous sign. The label's usage on the Internet is also counted.

3) Duration of publicity and promotion of the label in any way, the degree of success of publicity and advertising campaigns and its geographical scope, the presentation of products characterized by the label in national and international markets and exhibitions, the number of products put on the market, and the volume of sales.

4) The number and geographical scope of countries in which the mark or registration requests have been registered and the length of time that has elapsed since its registration. The mark is not required to be registered in all countries in the name of the trademark holder, which may be owned by several different companies operating in different countries but belonging to one group, or have close links or relationships of participation and cooperation.

5) Evidence of successful enforcement of marking rights in neighboring states, in particular the competent authorities' acknowledgment that it is a well-known mark. The word "enforcement" should be interpreted broadly, including an objection procedure in which the owner of a famous sign is prevented from registering a mark similar to his or her own.

6) The value of the mark. There are different methods to estimate its value, and the high value of the mark may benefit from it being a famous one.

Therefore, the advanced factors mentioned in Article 2 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks of 1999 have not been listed exclusively, but for example, and are merely indicative in determining the extent to which the label is considered famous, but not decisive (The Paris Convention for the Protection of Industrial Property, 1883, Article 2, paragraph 1(a)).

B. The public's designated audience: Article 2 paragraph 1(a) and (b) of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks of 1999 clarified that one factor determining the label's prominence is its knowledge or recognition in the intended audience of the public.

Article 2, paragraph 2 of the Paris Convention for the Protection of Industrial Property (1883) clarified the meaning of the relevant sector of the public, stating that the sectors of the public concerned included, but were not limited to:

- 1) Potential actual consumers of the type of commodity or service marked by the label.
- 2) Persons concerned in the distribution channels of the type of goods and services characterized by the label.
- 3) Business communities dealing with the quality of goods and services characterized by the brand.

### 5.3. The safeguarding of renowned brands under the TRIPS Agreement

The TRIPS Agreement (1995) affirms the provisions of the Paris Convention for the Protection of Industrial Property (1883). The TRIPS Agreement extended the protection of the famous trademark. Most Arab countries have signed this Agreement, including the Hashemite Kingdom of Jordan on April 11, 2000, and the Kingdom of Bahrain, Morocco, and Kuwait on January 1, 1995. Tunisia on March 29, 1995, and Djibouti on May 31, 1995, the Arab Republic of Egypt on July 3, 1995, the State of Qatar on January 13, 1996, and the United Arab Emirates on

April 1, 1996, the Sultanate of Oman on November 9, 2000 and the Kingdom of Saudi Arabia on December 11, 2005.

The TRIPS Agreement (1995) stipulates in Article 16 on famous trademark that:

"The registered trademark holder has the absolute right to prevent all third parties that have not obtained the consent of the trademark holder from using the same or similar trademark in their business for the same or similar goods and services for which the trademark is registered. Such use may result in the possibility of confusion. The possibility of confusion is assumed if a matching trademark is used for identical goods or services. The rights described above are prohibited from prejudicing any previous existing rights or affecting member countries' ability to grant rights to trademarks based on use. The provisions of Article 6*bis* of the Paris Convention (1967) apply, with the necessary replacement of services and when deciding whether a trademark is well known, taking into account member countries' knowledge of the trademark in the relevant public sector, including knowledge in the member country concerned as a result of brand promotion. Article 6*bis* of the Paris Convention (1967) applies, *mutatis mutandis*, to goods or services other than those for which a trademark has been registered. Provided that the use of such trademark for such goods or services indicates a link between such goods or services and the owner of the registered trademark. And provided that the interests of the registered trademark owner may be affected by such use" (TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995, Article 16).

Article 16, paragraph 1 of the TRIPS Agreement (1995), after clarifying the scope of the mark's rights and giving it the absolute right to mark it and prevent others from using it without its permission, held that "the possibility of confusion in the case of the use of a conforming trademark for identical goods or services is presumed". In other words, it assumed that damage existed to the owner of the label by simply using his relationship with others — without his permission — on goods identical to those using the famous label. The latter's owner at that time did not need to prove the damage suffered as a result of that use.

As for Article 16, paragraph 2 of the TRIPS Agreement (1995), it retained the same provision in Article 6 of the Paris Convention for the Protection of Industrial Property, not only the TRIPS Agreement Article 16 but also the well-known brand that characterizes services, not as in the Paris Convention for the Protection of Industrial Property, which is limited to merchandise marks.

The TRIPS Agreement therefore met the serious shortcomings of the Paris Convention for the Protection of Industrial Property, which merely determined the protection of the distinctive brand and industry of goods without the service mark. The TRIPS Agreement made equal legal protection of the famous mark of goods and services (Muzakki et al., 2018).

Article 16, paragraph 2 of the TRIPS Agreement (1995) further stipulates that:

"in determining whether a brand is well known, member countries shall take into account the knowledge of the brand in the relevant public sector, including its knowledge in the member country concerned as a result of the promotion of the trademark".

This means to consider whether a trademark is famous or not, two things should be considered. First, know how famous the label is among the scope of the intended audience that uses the products, goods, or services that bear the label. For example, soccer players' sneakers or engineering tools, to see how famous such a mark is, we must look at the recognition of its fame to footballers or engineers other than the rest of society. Second, the label's fame in the same audience in the member country concerned (in which the protection of the mark is required) occurred as a result of the promotion of the brand. Bearing in mind that the promotion of the brand can be done by any means that may lead to knowledge of the brand's fame such as usage, propaganda, differentiation, or other means that may achieve knowledge of the brand's fame (Ibrahim, 2022).

Article 16, paragraph 3, of the TRIPS Agreement (1995) states:

"The provisions of Article 6-bis of the Treaty of Paris (1967) shall apply, *mutatis mutandis*, to goods or services other than those for which a trademark has been registered. Provided that the use of such goods or services indicates to the registered trademark holder. And that the registered trademark owner's interests may be affected by such use".

We conclude that if the Paris Convention for the Protection of Industrial Property (1883) provides in Article 6 for the legal protection of the famous brand when used on products like or similar to goods characterized by the famous label, as well as if it imitates or copies the essential part of the famous brand that creates public confusion. The TRIPS Agreement (1995) has maintained the same protection and even the TRIPS Agreement has included such protection of the famous mark on goods and services that are not like or similar to goods marked by the famous label (Al-Ghuwairi, 2008).

However, in the case of the use of the famous mark on non-similar or similar goods, account must be taken of the fact that the use of that brand for those goods or services indicates a link between those goods and services and the registered trademark owner. The use of the label must lead to confusion in the source of goods or services. This may lead to the belief that there is a link between the transgressive mark on a famous brand and the famous mark. This is contrary to the truth and leads the public to accept the infringed brand and give it the trust granted by the famous brand (Jarada, 1998).

But the question is, if the owner of the infringed brand to the famous label puts out a phrase that this brand is not related to the famous brand, what is the judgment? It can be said that when the objective and aim are achieved in informing the public that this sign is irrelevant to the famous sign and the condition of Article 16, paragraph 3, of the TRIPS Agreement (1995) is not met, the third party has the right to use the famous sign.

The interests of the registered trademark owner may also be impacted by such use. This indicates that the damage is significant enough to be likely or actual, whether material or moral, as the Paris Convention for the Protection of Industrial Property did not specify a particular type or representation to be harmed by the renowned sign. However, all photographs showing damage to that circular were included. An example is the erosion of purchasing power, the diminished prominence of

the renowned brand, and the limited public affinity towards it due to the utilization of the trademark by entities other than its proprietor (Zouein, 2010).

## 6. CONCLUSION

This paper examines the evolution of trademark functions, advocating for the enhancement of trademark protection. It argues that laws and regulations concerning trademark dilution should be refined per the development and transformation of trademark legislation systems globally.

The definition of a famous trademark known as Article 2 of Law No. 33 for the year 1952 (1952) is general and not clear and comprehensive and does not take into account how the brand is renowned such as advertising and promotion of the brand as the TRIPS Agreement did.

The Jordanian judgment therefore established that the registration of a trademark in the name of a person is a presumption of ownership of the trademark. However, this presumption may be proven to be reversed. If the right of the person in whose name the sign is registered is contrary to that of a previous user, the person who used it has priority over the person in whose name it is registered. And is entitled to apply for revocation of the registration when there is a similarity between the two marks that would lead to public fraud.

The commitments required by the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement were vague, generic, and not precise. Making it harder to implement and develop, particularly in emerging countries that were revising their local intellectual property rules. And they were revising their legislation to comply with the Paris Convention for the Protection of Industrial Property and TRIPS Agreement while ignoring domestic trade and industry requirements.

Therefore, Jordanian legislator must establish a connection between the brand and its promotional strategies to attract foreign investment into the local economy. Additionally, it is essential to incorporate legal provisions into the Jordanian trademark law to enhance the brand's reputation, thereby facilitating foreign investment attraction.

The research concluded that registration confers the entitlement to the trademark and affords both legal and criminal safeguards for it. This legislation does not offer protection to unregistered trademarks, which are instead protected under Law No. 15 of 2000 on Unfair Competition and Trade Secrets. A suggestion was presented to the legislator to amend specific sections of the trademark legislation in alignment with these findings.

Finally, there is a need for coordination between several local associations or organizations, such as the Consumer Protection Association. To help identify and apply the standards set out in the conventions that make the brand popular. Because of its great importance in protecting a national product that has come to be claimed as an imitation of a global product. To offer more helpful and focused recommendations for the legislation of Law No. 33 for the year 1952, we can in the future compare the standards set out, combine the pertinent laws of other nations, and chronologically examine the stages that the development of the standards set out.

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