



المعهد القومي للملكية الفكرية  
The National Institute of Intellectual Property  
Helwan University, Egypt

## المجلة العلمية للملكية الفكرية وإدارة الابتكار

دورية نصف سنوية محكمة يصدرها

المعهد القومي للملكية الفكرية

جامعة حلوان

العدد الرابع

يوليو ٢٠٢١



**الهدف من المجلة:**

تهدف المجلة العلمية للملكية الفكرية وإدارة الابتكار إلى نشر البحوث والدراسات النظرية والتطبيقية في مجال الملكية الفكرية بشقيها الصناعي والأدبي والفني وعلاقتها بإدارة الابتكار والتنمية المستدامة من كافة النواحي القانونية والاقتصادية والإدارية والعلمية والأدبية والفنية.

**ضوابط عامة:**

- تعبر كافة الدراسات والبحوث والمقالات عن رأى مؤلفيها ويأتي ترتيبها بالمجلة وفقا لإعتبارات فنية لا علاقة لها بالقيمة العلمية لأى منها.
- تنشر المقالات غير المحكمة (أوراق العمل) فى زاوية خاصة فى المجلة.
- تنشر المجلة مراجعات وعروض الكتب الجديدة والدوريات.
- تنشر المجلة التقارير والبحوث والدراسات الملقاه فى مؤتمرات ومنتديات علمية والنشاطات الأكاديمية فى مجال تخصصها دونما تحكيم فى أعداد خاصة من المجلة.
- يمكن الاقتباس من بعض مواد المجلة بشرط الاشارة إلى المصدر.
- تنشر المجلة الأوراق البحثية للطلاب المسجلين لدرجتى الماجستير والدكتوراه.
- تصدر المجلة محكمة ودورية نصف سنوية.

**ألية النشر فى المجلة:**

- تقبل المجلة كافة البحوث والدراسات التطبيقية والأكاديمية فى مجال حقوق الملكية الفكرية بكافة جوانبها القانونية والتقنية والاقتصادية والإدارية والاجتماعية والثقافية والفنية.
- تقبل البحوث باللغات (العربية والانجليزية والفرنسية).
- تنشر المجلة ملخصات الرسائل العلمية الجديدة، وتعامل معاملة أوراق العمل.
- يجب أن يلتزم الباحث بعدم إرسال بحثه إلى جهة أخرى حتى يأتيه رد المجلة.
- يجب أن يلتزم الباحث بإتباع الأسس العلمية السليمة فى بحثه.
- يجب أن يرسل الباحث بحثه إلى المجلة من ثلاثة نسخ مطبوعة، وملخص باللغة العربية أو الانجليزية أو الفرنسية، فى حدود ٨ - ١٢ سطر، ويجب أن تكون الرسوم البيانية والإيضاحية مطبوعة وواضحة، بالإضافة إلى نسخة إلكترونية Soft Copy، ونوع الخط Romanes Times New ١٤ للعربى، و١٢ للانجليزى على B5 (ورق نصف ثمانيات) على البريد الالكتروني: [ymgad@niip.edi.eg](mailto:ymgad@niip.edi.eg)
- ترسل البحوث إلى محكمين متخصصين وتحكم بسرية تامة.
- فى حالة قبول البحث للنشر، يلتزم الباحث بتعديله ليتناسب مع مقترحات المحكمين، وأسلوب النشر بالمجلة.



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### المراسلات

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## **Limits to the Legitimate Use of Trademarks under the Egyptian Law**

**Samar Elsayed Aly Osman Sarhan**

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**Limits to the Legitimate Use of Trademarks under the  
Egyptian Law**  
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**Introduction:**

The trademark has an increasing commercial, economic and publicity importance, which has led to competition between producers and merchants. Therefore, imitated or used a trademark owned by others to reach the rapid promotion of goods or services in the market led to violation of the rights authorized by law for the owner of the mark harmful to stability Commercial activity threatening the safety of consumers. - And according, infringement of the trademark, whether by falsifying it or imitating it or any form of infringement constitutes a detrimental act to the owner of the mark, to consumers and the state.

This paper will discuss the conditions for registering a trademark in Egyptian law and the TRIPS Agreement in order for it to enjoy criminal protection and the trademark infringement cases and some applications thereof in.

**Research problem**

In the face of the increasing prevalence of images of trademark abuse and the development of its methods, the problem of this study lies in determining the conditions for registering a trademark in order to enjoy criminal protection, the persons permitted to register and when to cancel the mark, as well as the cases that are considered infringement and counterfeit the trademark.



### **Importance of Study:**

The main reason for carrying out this study is the growing phenomenon of counterfeiting trademarks and the unlawful use by others and the large number of counterfeit goods, especially those with wide consumption, with the attendant dangers to the consumer. This caused huge losses to the national economy in addition to weakening investment opportunities.

### **Hypothesis**

The main hypothesis of this is considered as follows: The growing phenomenon of trademark counterfeiting which leads to the spread of counterfeit goods and the consequent dangers to the consumer and the national economy, in addition to weakening investment opportunities.

### **Methodology**

#### **The inductive approach:**

It is the approach that is based on understanding and explaining the various phenomena, with the aim of reaching the relationships that control the variables and formulate them in terms of principles and general provisions. The essence of this approach is the transition from the specific to the general.<sup>1</sup>

### **Conditions for Trademark Registration**

#### **Definition of trademark:**

“Trademarks are distinctive names, domain names, words, logos, slogans, phrases, symbols, images, colors, product designs, product packaging (trade dress) that manufactures or sellers affix to

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<sup>1</sup> (A. A. Salama ٢٠١٧)

distinguish and identify the origin of their products. The owner of a trade mark has exclusive rights to use it or on the product it was intended to identify. Service marks receive the same legal protection as trademarks but are meant to distinguish services rather than products”.<sup>١</sup>

Trademarks are defined in the Egyptian legislation in Article ٦٣ Law No. ٨٢ of ٢٠٠٢ the Protection of Intellectual Property Rights stipulates and Article ١٥/١ of the TRIPS Agreement.

### **Types of trademarks:**

The Egyptian legislature permitted the use of the trademark to distinguish all products and services, and did not limit it to one type. Article ٦٣ of the law stipulates types of trademarks,<sup>٢</sup> this census was not mentioned exclusively, but an example<sup>٣</sup>, but trademarks may be divided into four main types: The industrial mark, Trademark, Agricultural Mark, Service Mark.

#### **٢.١ Non-physical signs:**

The second paragraph of Article ٦٣ of the law is required” In all cases, a trademark shall be a sign that is recognizable by sight” This condition means that the trademark, with all its elements, must be shown in a physical and tactile way, and that it is perceived by the sense of sight, thus the Egyptian legislator did not recognize the

<sup>١</sup> [Trade Mark Infringement And Dilution As Causes Of Action: The US And UK Framework - Intellectual Property - Worldwide \(mondag.com\)](http://mondag.com)

<sup>٢</sup> Article ٦٣ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٣</sup> Cassation April ٢٣, ٢٠٠٢, the set of rulings of the Court of Cassation issued by the civil departments, Q٥٣ Q ١١٠, p. ٥٧٤, May ١٤, ٢٠٠٢, Q٥٣, Q. ١٢٥, p. ٦٩٤

sound and smell signs as trademarks<sup>١</sup>. This means that if the mark is intangible, it does not qualify as a trademark in Egyptian law, therefore it is not permissible to register it, in contrast to the legislation of some countries that have recognized phonemic and odor marks.

Whereas, it is better to review, the second paragraph of Article ٦٣, on the part of the legislator, by deleting it, since with the global technological progress, non-physical signs must be introduced.

### **Register the original trademark**

The trademark must have to distinguish function for the consumers who wishes to make their choice between different goods of the same kind on the market, it must be legally protected. Otherwise, competitors could use identical signs for the same or similar goods or signs so similar that the consumer would be confused as to the origin of the goods<sup>٢</sup>. Article ١١٣/١ of the Intellectual Property Protection Law stipulates a punishment:

(١) counterfeits a trademark registered in accordance with the law or imitates it in a manner which is likely to mislead the public;

The legislator with this text has disclosed his intention to criminal protection of registered trademarks only.

It is clear from the text that the legislator linked the trademark registration to its enjoyment of criminal protection and made registration a condition for the trademark to enjoy that protection<sup>٣</sup>.

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<sup>١</sup> Bahnsawy, Khaled safwat, Trademark counterfeiting crime, Dar Ennahda, first edition, Cairo, ٢٠١٩.

<sup>٢</sup> [Introduction to Trademark Law and Practice \(wipo.int\)](http://wipo.int)

<sup>٣</sup> (Abaas ١٩٧١) (in Arabic)

Thus, counterfeiting a trademark does not constitute a criminal offense if it is not registered according to Egyptian law.

The Trademarks Law has put in place a system for registering a trademark even though registration is optional, However, in the interest of the trademark owner, it is necessary to register it because of the advantages and the legal implications of this registration.

The purpose of the registration requirement is that the trademark owner has taken all the necessary legal procedures to register the trademark with the competent authority for registration.

The formal conditions are some formalities and have been clarified by the Egyptian Intellectual Property Law No. ٨٢ of ٢٠٠٢ in some Its material s as well as the objective conditions.

#### **٤-Formal conditions for trademark registration:**

These conditions must be followed when claiming the recognition of a trademark for official recognition by registering it in the trademark register based on the availability of the substantive conditions. These conditions are:

##### **٤.١ registration request**

There are some articles in the Egyptian Intellectual Property Law that stipulate the formal conditions that must be followed in order for the trademark to be registered in addition to the substantive conditions.

Article ٧٣ of the law stipulates that “the trademark registration application shall be filed with the Commercial Registry Department in accordance with the implementing regulations.<sup>١</sup>

Article ٧٤ of the same law stipulates the categories in which a trademark is registered<sup>٢</sup> Its use shall be limited to the category, categories or the kinds of products for which it has been registered.

Provisions of Article ٩١ shall apply to the categories for which the mark has not been seriously used" Article ٧٧ of the law stipulates that" The Trade Registry Department may, in a motivated decision, require the applicant to undertake the necessary modifications on the subject mark in order to define and clarify the mark so as to avoid its confusion with a mark already registered, or a mark for which a registration application has already been filed. Article ٧٨ of the law stipulates that a grievance may be lodged against the decision referred to in Article ٧٧ within ٣٠ days.<sup>٣</sup>

#### ٤.٢ Announcing and Publishing the Request

The first paragraph of Article ٨٠ of the law stipulates: the decision will be published in the Trademarks Gazette as indicated in the implementing regulations<sup>٤</sup>

The data mentioned in Article ٨٨ of the executive regulations<sup>٥</sup>

<sup>١</sup> Article ٧٣ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٢</sup> Article ٧٣ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٣</sup> Article ٧٨ law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٤</sup> Article ٨٠ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٥</sup> Article ٨٨ IMPLEMENTING REGULATIONS for Law No. ٨٢ of ٢٠٠٢ on the Protection of Intellectual Property Rights.

### **٤.٣ Objection to the acceptance of the application and its procedures:**

The second paragraph of Article ٨٠ of the law stipulates: Everyone may object within ٦٠ days of publication.<sup>١</sup> Article ٨١ of the law stipulates that the department issues its decision to object with a reason, either by accepting or rejecting the registration, after hearing the parties, and it has the right to oblige the applicant for registration with some conditions.<sup>٢</sup>

Article ٨٢ of the law stipulates that the decision of the indicated Department in Article ٨١ may be appealed.<sup>٣</sup>

### **٤.٤ the mark owner has the right to request the amendment**

Article ٨٥ of the law stipulates that the owner of a registered trademark may request in writing of any amendment to the mark that does not substantially affect its identity, by deleting without adding it to the indication of the products of the mark.<sup>٤</sup>

### **٤.٥ the period of trademark protection and renewal**

Registration of a trademark entails that it enjoys legal protection, including criminal protection, and since the term of protection resulting from its registration is ten years, as stipulated in

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<sup>١</sup> Article ٨٠ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٢</sup> Article ٨١ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٣</sup> Article ٨٢ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٤</sup> Article ٨٥ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

Article ٩٠ of the law, and starts from the date of submitting the registration application, as stipulated in Article ٨٣ and renewable for an identical period or periods upon request of its owner and every time within the last year of the protection period. Whereas, Article ١٨ of the TRIPS Agreement states" Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely"

#### **٤.٦ Canceling the registration of the mark at the request of its owner**

The owner of the trademark has the right to request the commercial registration authority to cancel the registration of the trademark from the trademark registry, as stipulated in Article ٩٨ of the Implementing Regulations.<sup>١</sup>

#### **٤.٧ removal of the trademark from the register**

Trademark registration is deletion in the following cases;

##### **The first case: Removal for failure to renew**

Article ٩٠ of the law stipulate that the term of protection is ten years extending to similar periods upon the request of the trademark owner during the last year of the protection period or after the end of the registration period for a period that does not exceed six months in

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<sup>١</sup>Article ٩٨ IMPLEMENTING REGULATIONS for Law No. ٨٢ of ٢٠٠٢ on the Protection of Intellectual Property Rights

the event of non-renewal in the previously mentioned periods, the Department removes the trademark<sup>١</sup>

**The second case:  
removal for non-use**

Article ٩١ of the law stipulates that the competent court may remove the registration of the mark in the event that it has not been used for five consecutive years in a serious manner, upon the request of everyone concerned, by a court ruling.<sup>٢</sup>

**The third case:  
remove due to lack of eligibility to register a trademark**

The objective conditions that must be met in the trademark are distinctive, legitimate, new and if these conditions are not combined together, then The Trade Registry Department must reject its registration.<sup>٣</sup>(Article ٩٣)

**The Fourth case:  
re-registration of the previously removal mark**

Article ٩٢ of the law stipulates that a mark may be re-registered after its removal to its owner within three years from the date of removal.<sup>٤</sup>

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<sup>١</sup>Article ٩٠ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٢</sup>Article ٩١ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٣</sup>Article ٩٣ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٤</sup> Article ٩٢ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights.



## ◦-Objective conditions for trademark registration

The trademark must have objective conditions, in order to be registered and enjoy legal protection which are the distinctive characteristic, novelty and legality in addition to the ability of the mark to be perceived by sight, as the Egyptian legislator does not recognize signs perceptible by touch, inhalation, etc.

### First: The distinctive characteristic of the trademark

Trademark protection can last forever. Such long-lasting monopoly-like right needs the trademark to be one that is capable of performing the necessary function of distinguishing the goods or/and services of one trader from those of the others. This function or capability of distinguishing is referred to as 'distinctiveness' of a trade mark. The capability may be some inherent distinctiveness in the mark itself or perhaps acquired distinctiveness through use of the mark over a period of time<sup>١</sup>

### Second: Novelty of the trademark

It is not sufficient for the mark to be distinguished in order to be registered, rather it must be new in the sense that it has not previously been used or registered by others within the country for products or services similar to those to be registered, so this does not prevent it from registering products or services that are not similar to them. Articles ٧٦, ٧٩ of law ١٦/١ of the TRIPS Agreement<sup>٢</sup> they stipulated that.

<sup>١</sup>[http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S٠٠٠٢٠LA/P٠٠٠٨٤٦/M٠١٠٢١١/ET/١٥١٣٧٦٠٢٩٦١٧\\_Q\etext.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S٠٠٠٢٠LA/P٠٠٠٨٤٦/M٠١٠٢١١/ET/١٥١٣٧٦٠٢٩٦١٧_Q\etext.pdf)

<sup>٢</sup> (Abaas ١٩٧١)(in Arabic) p٣١٠ (Elqalioby ٢٠٠٥)(in Arabic) p٤٩٠

The required novelty is not absolute novelty such as patents, but novelty in use, meaning not to use the same mark on identical goods or services within the state's territory during the specified period of protection.

The novelty requirement in the trademark is restricted in three respects in terms of product type, place and time

### **Third: the trademark is legitimate**

The general principle is that the person has absolute freedom to choose the form of the trademark, but this freedom is not absolute and must be exercised within the framework of legality, and the law has clarified this in the text of Article ٦٧ on what is prohibited to register as a trademark or any of its component.

### **٦ Trademark infringement cases:**

There are many forms of trademark infringement crimes, and it can be represented in a direct assault, such as the crime of counterfeiting and forgery of the mark, as well as for indirect assault such as using a counterfeit mark or placing it on products or services belonging to others. The concept of counterfeit and infringement the Egyptian law, as Article ١١٣ of the Intellectual Property Protection Law stipulates in its paragraphs ١,٢,٣,٤.

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<sup>١</sup>Article ٧٦ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights.

<sup>٢</sup>Article ٧٩ Law No. ٨٢ of ٢٠٠٢ regarding the protection of intellectual property rights

<sup>٣</sup>Article ١٦/١ AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS.

The harm inflicted by fake goods may go beyond consumers being disappointed. Counterfeit products may pose health and safety risks – for example, when drugs do not contain the relevant active ingredient, or when defective vehicle replacement parts result in traffic accidents. The risk of physical harm may not be limited to the persons consuming the fake good, <sup>١</sup> but may extend to others – for example, due to the spread of infectious diseases. In the parlance of economists, the consumption of fake goods may entail negative externalities. Further, counterfeiting causes loss to a country's economy in the form of lost tax revenues. Another far reaching consequence of counterfeiting is that it ends up fueling organized criminal networks and terrorist activities<sup>٢</sup>.

#### ٦,١ The direct assault:

the direct assault, such as the crime of counterfeiting and forgery of the mark,

#### **First: the crime of counterfeiting the mark.**

The imitation of the mark means the fabrication of a mark completely identical to the industrial or commercial mark, considering that the mark is one of the elements of the commercial store, it is subject to dependence on it by competing store owners and others, and this abuse is an act of illegal competition, as some resort to placing similar signs for goods, or increasing an element or deficiency of an element of the mark, which leads to a mistake in the mind of the consumer, in order for him to buy out of error, so instead of buying a product with an original mark, he buys another

<sup>١</sup> Organization for Economic Co-operation and Development, The Economic Impact of Counterfeiting (١٩٩٨) accessed May ١٥, ٢٠٢٠.

<sup>٢</sup> Organization for Economic Co-operation and Development, Fake Goods, Real Losses: Trade in Counterfeit Products and the UK Economy accessed May ١٥, ٢٠٢٠.

counterfeit product that has the same specifications. It can be at or above the same price.

Applying to that issue (**Michael Jordan vs. Qiao Dan (Jordan) Company**).<sup>١</sup>

### **Second: The crime of forgery the trademark.**

Falsification of the mark means the fabrication of a mark completely identical to the original mark, meaning that it is completely and verbatim without alteration. Thus, forgery is intended to transfer the mark literally and completely, so that the forged mark becomes a true copy of the original mark, and a distinction is made between forgery and imitation. The first is a transfer identical to the whole mark without modification or addition, while the second is the placement of a mark similar in its entirety to the real mark.

Applying to that issue (**TCPIP HOLDING CO. v. HAAR COMMUNICATIONS**)<sup>٢</sup>

### **٧,١ The indirect assault:**

#### **First The use of a counterfeit or forged mark**

In addition to counterfeiting and forgery, there are other acts that are considered prejudicial to the rights of the trademark owner, which is the use of a counterfeit or forged mark or the placing of a mark owned by others. The Egyptian legislator considered in Article ١١٣/٢ of the law that the act of using a counterfeit or forged mark is a crime punishable by law. Accordingly, the mere use of the mark is

<sup>١</sup><https://rouse.com/insights/news/٢٠٢١/how-to-win-the-fight-against-legitimate-infringers-in-china>

<sup>٢</sup> [TCPIP HOLDING CO. v. HAAR | ٢٤٤ F.٣d ٨٨ \(٢٠٠١\) | ٤٤f٣d٨٨١٣٢٠ | Leagle.com](#)

considered a self-existing crime, punishable without the requirement that the user of the imitated or similar mark by the same person who imitated it<sup>١</sup>.

## **Second The counterfeiting by fixing the trademark on products**

In addition to the crime of using a counterfeit or similar mark, Article ١١٣/٣ of the Law stipulates "fraudulently affixes to his products a trademark belonging to a third party."

### **Conclusion,**

comprehensive infringements are like a cancer, as they can develop from small-scale trade mark pirates into big well-run competitors. It is ideal for brand owners to find and contain infringers from the start through active prosecution, enforcement and litigation. If infringers have escaped early monitoring and developed into big players, brand owners may need to take measures which include consistent legal battles, favorable media coverage and making full use of key moments<sup>٢</sup>

With globalization, the problem and challenges of counterfeit products are multiplying. Whether you are a consumer, manufacturer, a construction company or a maintenance operation, everyone is exposed to and affected by unsafe fake and counterfeit products. A concerted global effort with cooperation and vigilance of all stakeholders in to combat this threat.<sup>٣</sup>

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<sup>١</sup> (Shanan Naema & Sayegh Nabela ٢٠٠٦) (in Arabic)

<sup>٢</sup> <https://rouse.com/insights/news/٢٠٢١/how-to-win-the-fight-against-legitimate-infringers-in-china>

<sup>٣</sup> [Strategies for managing risk of counterfeit products \(zurich.com.au\)](https://zurich.com.au/Strategies-for-managing-risk-of-counterfeit-products)

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