

# Review of Bahrain's Intellectual Property Framework to Combat Counterfeiting and Illegal Competition Under International Agreements

**Dr. Khalid M. Al Dweri**

Associate Professor of Civil Law  
Kuwait International Law School

**Dr. Qais K. S. Maaitah**

Assistant Professor of Commercial Law  
Applied Sciences University, Bahrain

## Abstract

Intellectual property rights include patents, copyright, trademarks, trade dress and others. The main objective of the current paper is to critically analyze the laws pertaining to IP rights improve its legislative framework to combat online counterfeiting. The analysis found eight local laws related to intellectual proprietary in Bahrain and twelve international agreements with different bodies. These laws were analyzed through a thematic analysis where four main themes emerged: Trademark, copyright, patency, and design.

The analysis and discussion are based on these themes. The analysis suggests that focus is given on trademarks with three comprehensive laws locally implemented laws with one implemented, while design related laws are two and patency and copyrights have one each. The analysis concluded that Bahrain judiciary system totally abides the autonomy, contracts, or agreements of the parties under the signatory member of the foreign laws and extended local laws in the matter of subjectivity and regulations.

The efforts made by government to reduce the problems and implementation of intellectual property rights with no reports of significant violations of U.S patents and trademarks in Bahrain. However, the link between trademarks, unfair competition and consumer protection are vividly existing. The need for filling the legislative gap between the earlier legislations should established for protecting the consumer protection right as well as creating a fair practice of the economy turnover for IP holders.

**Key words:** Commercial law, Patent, Trademarks, Consumers protection, Protection of Copyright, Industrial Designs and Models

### I. Introduction

Intellectual property is property that is considered intangible creations of humans. It involves copyrights, patents, and trademarks<sup>(1)</sup>. It can include other types of rights such as trade secrets, moral rights, and rights against unfair competition. The term intellectual property (IP) became highly popular in the late twentieth century. The main purpose of intellectual property law is to develop the promotion of intellectual goods<sup>(2)</sup>.

The law strives to give people and businesses property rights so that they have an economic incentive for their creations. The result is innovation and technological progress of countries, which depends on the extent of protection given to innovators. Online counterfeiting poses a serious threat to many countries because of the Internet that has become a major enabler in the sale of counterfeit products. It provides anonymity and access to a global market. An 80% increase in counterfeiting has been recorded since the past decade<sup>(3)</sup>.

The total value of pirated and counterfeited goods will reach \$2.3 trillion by 2022<sup>(4)</sup>. Criminal counterfeiters are more elusive than ever which means that the international community has strived to create safeguards to respond to the problem. The kingdom of Bahrain has recognized the need for combating online counterfeiting and protection intellectual property rights. It has been instrumental in developing legislation that relate to protection of IP.

These laws have become necessary to build knowledge in multiple areas while promoting economic growth and social prosperity. The aim of this report is to study the IP framework and to assess its efficacy in combating online counterfeiting.

Online counterfeiting has become a global problem, which is also impacting legitimate businesses in Bahrain. There is the need for a study that can help to provide an understanding about the efficacy of the current IP legislation in the country. Consequently, the aims of this study will be to evaluate the IP framework through careful and precise analysis.

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(1) Laurent Szuskin and Sophie Fourques de Ruyter and Jennifer Doucleff, *Beyond counterfeiting: The expanding battle against online piracy*, *Intellectual Property & Technology Law Journal*, 21, no. 11, 2016, p .1.

(2) *Ibid.*

(3) Raman, Ramakrishnan, and Dhanya Pramod. "A Strategic Approach Using Governance, Risk and Compliance Model to Deal with Online Counterfeit Market." *Journal of theoretical and applied electronic commerce research* 12, no. 3 (2017), pp. 13-26.

(4) *Ibid.*

The goal will be to develop an appropriate framework that can be used for achieving successful outcomes<sup>(5)</sup>. Online counterfeiting is a successful and global business that is threatening companies and local economies. The online sales of counterfeit products have increased with the potential of surpassing the volumes of sales through traditional channels<sup>(6)</sup>.

The industry has transformed itself by using social media, instant messaging tools, and apps to distribute its counterfeit products. The shift is a result of cooperation from online platforms and the success of rogue actions against thousands of independent websites. Countries like Bahrain need to be aware about the changes in strategies of online counterfeiters and seek to improve their legislative framework. Moreover, the country needs to have trained judges and other experts that can successfully prosecute such cases.

The following research questions will be answered in this study:

What are the current laws for intellectual property rights in Bahrain?

How efficient are these current laws against online counterfeiting?

How can Bahrain improve its legislative framework to combat online counterfeiting?

This study is important because it will help policy makers in Bahrain to strengthen and coordinate their efforts in combating online counterfeiting. They will be able to develop a comprehensive legislative framework that is according to international standards. Moreover, it will help to promote creativity and innovation as well as economic growth through the effective development of intellectual property framework<sup>(7)</sup>.

The policy makers will be able to develop an effective framework against counterfeiting by increasing costs and risks of producing and selling counterfeits. Tougher criminal sanctions would be helpful in Bahrain for individuals involved in the chain of operation.

### **Intellectual Property**

Intellectual property rights include patents, copyright, trademarks, trade dress and others. There are also more specialized or derived varieties of exclusive rights. The importance of intellectual property was recognized in the Paris

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(5) Mark, Stevenson, and Jerry Busby. "An exploratory analysis of counterfeiting strategies: Towards counterfeit-resilient supply chains." *International Journal of Operations & Production Management* 35, no. 1, 2015, pp 110-144.

(6) *Ibid.*

(7) *Ibid.*

Convention for Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886)<sup>(8)</sup>. The treaties are managed by the World Intellectual Property Organization (WIPO).

There have been several reasons to protect intellectual property, which include the fact that progress, and well-being of humanity is dependent on the ability to create and invent new works in the areas of technology and progress. The legal protection of new creations allows resources to be allocated for further innovation. Moreover, it helps to achieve economic growth while enhancing the quality and enjoyment of life<sup>(9)</sup>.

An efficient and effective intellectual property system can assist countries in achieving their IP potential as a catalyst for development and social prosperity. It helps to strike balance between interests of innovators and public interest by providing an environment where creativity and innovation can flourish. The proliferation of online counterfeiting is increasing which can threaten any type of brand protection by companies<sup>(10)</sup>. They are using sophisticated tactics to trick consumers and lead them to believe that certain counterfeited products are the real thing. This problem is prevalent in Bahrain also, which creates the need to study the current legislative framework regarding IP.

Intellectual property refers to property that has been created by humans using their intellect. It consists of copyrights, patents, and trademarks. Furthermore, it can include trade secrets, publicity rights, moral rights, and rights against unfair competition<sup>(11)</sup>. The term “intellectual property” became popular in the 19th century, but it was the 20th century where the term became common in the world.

The primary purpose of IP law is to promote the development of intellectual goods so that people and business property rights to information and intellectual goods they create can be protected<sup>(12)</sup>. The stakeholders earn money which gives an economic incentive for the creation of intellectual goods. The result is that it helps to promote innovation and contribute to the technological development of countries. Intellectual property is intangible which makes it difficult for

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(8) Fink Carsten and Keith E. Maskus and Yi Qian, The economic effects of counterfeiting and piracy: a review and implications for developing countries, The World Bank, Policy Research Working Paper Series 7586, 2016, pp.33-35

(9) Ibid.

(10) Ibid

(11) Bentley and Lionel and Brad Sherman, Intellectual property law, Oxford University Press, USA, 2014, pp. 174-176.

(12) Ibid.

policymakers when they strive to safeguard the rights of its owners.

Additionally, intellectual property is indivisible as unlimited number of people can consume an intellectual good without it being depleted<sup>(13)</sup>. Investments in intellectual goods suffer from appropriation as a producer of information or an intellectual good can do very little to stop the first buyer from replicating it and selling it at a lower price. The objectives of intellectual property law are to develop wide variety of intellectual goods for consumers. It seeks to give people and businesses property rights to the information and intellectual goods that they create<sup>(14)</sup>.

The exclusive rights allow owners to benefit from the property they have created since they have a financial incentive in the creation of investment in intellectual property. Another goal is to promote economic growth by giving statutory expression to the moral and economic rights of creators in their creations. Creativity and growth help to improve economies while it can encourage fair trading that play a vital role in economic and social development.

Statistics have found that two-thirds of the value of large businesses in the US can be traced to intangible assets<sup>(15)</sup>. IP-intensive industries contribute 72% more value added per employee in contrast to non-IP intensive industries. Another study found positive impact of IP systems on the economic growth of six Asian countries.

### **Online Counterfeit Products**

The importance of intellectual property rights in the economy has been outlined in the previous section. Counterfeit goods and products pose a serious threat to the creativity and research that is undertaken by companies<sup>(16)</sup>. They make huge profits through counterfeit designs and signs that are protected by intellectual property rights and trading these counterfeit products.

Counterfeiting has been defined as the violation of intellectual property rights. In other words, certain acts are done by other companies without the consent of the intellectual property right owner. The examples of intellectual property right violations include fabrication or selling of illegally manufactured counterfeit

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(13) Ibid.

(14) Merges, Robert P., Peter Seth Menell, and Mark A. Lemley. Intellectual property in the new technological age, vol. 118, Aspen Publishers, New York, 2003, pp. 106 -118.

(15) Ibid.

(16) Tom Gail and Barbara Garibaldi and Yvette Zeng and Julie Pilcher, "Consumer demand for counterfeit goods", *Psychology & Marketing* 15, no. 5, 1998, pp. 405- 421.

versions of products protected by trademark<sup>(17)</sup>. Pharmaceutical products, sunglasses, clothing, sports goods, seeds, DVD players, music players, and others are examples where counterfeit products are sold in the market.

The counterfeit market has become sophisticated with small clandestine workshops being substituted with advanced manufacturing facilities with high tech material and distribution networks. The counterfeit market tends to deprive companies of their positive image and investments in research and development, innovation, and marketing.

Moreover, there is significant loss of revenues as a consequence of counterfeiting to the global economy. The counterfeit market represents 6-9% of the global trade which can result in reduced taxes and customs duties. The rise of online market sites and social media sites has witnessed a tremendous increase in sale of counterfeit products. Research shows that 20% of posts on Instagram were found to feature counterfeit products from accounts based in countries like China, Russia, Malaysia, etc.

In 2016, Instagram found that 20,892 fake accounts were selling counterfeit goods<sup>(18)</sup>. These accounts were responsible for 14.5 million posts and 146,000 images while they gained 687,000 followers through their actions<sup>(19)</sup>.

Despite efforts to create a successful legal framework to combat counterfeiting, it is a major problem in the world. Concerns have been raised by governments, international organizations, and individuals as they seek to create a healthy and secure market for consumers and promoting the protection of legitimate trade and competition<sup>(20)</sup>. Multilateral international IP conventions have been created since the beginning of the 19th century.

The Paris Convention was developed in 1883 with the aim of providing a global standard of protection for patents, trademarks, utility models, and trade names. Article 6bis of the Paris Convention was an important law that recognized the importance of protecting trademarks in countries other than their countries of registration<sup>(21)</sup>.

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(17) Ibid.

(18) Bian, Xuemei, Sadia Haque, and Andrew Smith. "Social power, product conspicuousness, and the demand for luxury brand counterfeit products." *British Journal of Social Psychology* 54, no. 1, 2015, pp. 37-54.

(19) Ibid.

(20) Jonathan Franklin, *International Intellectual Property Law*, American Society of International Law, 2013, pp. 9-11.

(21) Ibid.

The Paris Convention is the foundation of modern IP law as it was replaced by the World Trade Organization (WTO) that adopted the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) that enhanced uniform IP protection. TRIPs allow minimum protection standards for various IP rights that must be implemented by WTO states. TRIPs has been useful in the fight against fakes and counterfeit products<sup>(22)</sup>.

### **Bahraini Legal Framework on IP**

Bahrain is a signatory to the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. The country implemented legislation in 2006 in order to fulfill its requirements under the WTO/TRIPs Agreement in 2006<sup>(23)</sup>. It has also joined the WIPO Performances and Phonograms Treaty.

Bahrain passed laws related to intellectual property to ensure that its local laws would be consistent with the current Paris Convention commitment and allow it to join Vienna Agreement, Patent Cooperation Treaty, Madrid Agreement, and others<sup>(24)</sup>. Bahrain has passed several laws like the Trademarks Law (2006), Patents and Utility Models Law (2004), Industrial Designs Law (2006), Copyright and Neighboring Rights Law (2006), Trade Secrets Law (2003), and Trade Secret Law (2005) to protect intellectual property rights<sup>(25)</sup>.

Counterfeiting is punishable offense that could be led to fines and imprisonment according to the national law. Furthermore, the local registration of IP rights and proof of ownership are needed in order to use IP legislation. Consequently, the punishments can be applicable because of the above evidence. In other cases when counterfeit products are used frequently than action can be initiated on the basis of bad faith. Harsher penalties are used in repeat offenses<sup>(26)</sup>. Protecting and monitoring intellectual property (IP) in Bahrain is challenging because of patchwork of laws that attempt to address the technological advances and divergent needs of producers, owners, and users of intellectual property<sup>(27)</sup>.

The regulations are perceived to be lax and laws are rarely enforced adequately.

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(22) Ibid.

(23) Peter Drahos, *A philosophy of intellectual property*, Routledge, Australia, (2016), p. 224.

(24) May Christopher, *The global political economy of intellectual property rights: The new enclosures*, Routledge, Australia, 2015, pp. 157- 168.

(25) Ibid.

(26) Ibid.

(27) Margaret and Kyle and Yi Qian, *Intellectual property rights and access to innovation: evidence from TRIPS*. No. w20799, National Bureau of Economic Research, 2014, pp. 2-25.

Consequently, the trade of counterfeit goods continues at a stunning pace. Strong profits and lax enforcement allows traders to illegally trade in counterfeit products<sup>(28)</sup>. Famous trademarks are used without permission in Bahrain. This creates the need for improved IP laws that can allow the development of effective measures against counterfeiting.

Moreover, it is important to remove barriers to enforcement. Companies would be able to register their intellectual property under a strengthened legal framework<sup>(29)</sup>. Moreover, an effective framework would be able to resolve ambiguities and implement cost effective enforcement in an efficient manner. It would be able to safeguard the holders' rights in the country. Harmonization and closer integration of IPR protection practices would help the country to boost its competitiveness in terms of IP standards<sup>(30)</sup>. It would be in line with regimes such as TRIPs agreement of 1995 that seeks to establish worldwide harmonization of IP protection.

## II. Research Methods

Descriptive research method has been used because the IP framework in Bahrain needs to be thoroughly evaluated and studied so that it can be made effective to fight online counterfeiting<sup>(31)</sup>. The descriptive research method is beneficial because it will allow the explanation of the relevant laws. It will assist in understanding the dynamics of the problem in a clear and concise manner. The method that must be adopted for research should be able to solve problems or fill up knowledge gaps. The descriptive approach appears to be beneficial according to the objectives and goals of the study<sup>(32)</sup>.

A qualitative approach has been used for the study since the goal is to find the insights and opinions about the nature of intellectual property law in Bahrain. It seeks to use Bahrain as a case study so that its intellectual property legal framework can be studied. The qualitative approach is beneficial because the paper is law. For the exploratory analysis, the Laws related to Intellectual proprietary law, in total eleven local laws and twelve international signatory agreements.

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(28) Ibid.

(29) Mike W. Peng and David Ahlstrom and Shawn M. Carraher and Weilei Stone Shi, "History and the debate over intellectual property", *Management and Organization Review* 13, no. 1, 2017, pp. 15-38.

(30) Ibid.

(31) Mike Mcconville, *Research methods for law*, Edinburgh University Press, UK, 2017, pp. 178- 182.

(32) Ibid.



Laws and Agreements Selected for this paper	Quantity
Local Laws	11
international signatory agreements	12

### **Findings of the Selected Laws and International Agreements**

The findings are presented in this chapter which is obtained through exploratory analysis of the IP laws in Bahrain and international agreements to counter the problem of Counterfeit practices in the Kingdom of Bahrain. The findings are detailed in two sections here, first demonstrate the legal framework under which Bahrain abides by the international practices and second critically analyses the local laws in practice and their implications.

#### **International Agreement on Intellectual Proprietary Laws and Bahrain**

Government of Bahrain is continuously improving the intellectual Proprietary law through local and international compliance of law. In the essence, the government is signatory member of WTO and signed various agreements with their immediate implementation in the country.

These agreements include, Patent Cooperation Treaty (PCT), Trademark Law Treaty, Berne convention For the Protection of Literary and Artistic Works, Rome Convention For the Protection of Performers<sup>33</sup>, Producers of Phonograms and Broadcasting Organizations<sup>34</sup>, WIPO Copyright Treaty, Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

This is in accordance with its current Paris Convention commitment and to position it to join the Nice Agreement, Vienna Agreement, Patent Cooperation Treaty, Trademark Law Treaty, Madrid Agreement, Budapest Treaty, and the Rome Convention.

These laws are further analyzed and grouped into Four Categories (shown in Table):

Patents, Trademark, Design, Copyright

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(33) Act No. 1 of 2004 on Patents and Utility Models et Act No. 14 of 2006 amending some provisions of Law No. 1 of 2004 in respect of Patents and Utility Models.

(34) Act No. 22 of the Year 2006 relating to the Protection of Copyright and Neighboring Rights.

## Review of Bahrain's Intellectual Property Framework

Type of property and law	Validity	International Agreements Signed
Patent  Act No. 1 of 2004 on Patents And Utility Models et Act No. 14 of 2006 amending some provisions of Law No. 1 of 2004 in respect of Patents and Utility Models	Patents are protected for 20 years (ten years for utility models) from the date of filing or, if priority is claimed, from the date on which it is claimed.	<u>Patent Cooperation Treaty (PCT)</u>
Trademark  Legislative Decree No. 11 of 2006 in respect of	Trademark registration is valid for 10 years starting from the day of filing the demand (Decree No. 11 in respect of Trade Marks) and can be renewed for ten-year periods.	<u>Trademark Law Treaty</u>  <u>Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</u>
Design  <u>Act No. 6 of 2006 on Industrial Designs and Models</u>	Patent registration is valid for five years and can be renewed twice more, each time again for five years.	
Copyright  <u>Act No. 22 of the Year 2006 relating to the Protection of Copyright and Neighbouring Rights</u>	Author's rights are protected for the duration of the author's life plus 70 years after his or her death.	<u>Berne convention For the Protection of Literary and Artistic Works</u> <u>Rome ConventionFor the Protection of Performers, Producers of Phonograms and Broadcasting Organizations</u>  <u>WIPO Copyright Treaty</u>  <u>WIPO Performances and Phonograms Treaty</u>

### Thematic Analysis of Intellectual Proprietary Laws in Bahrain

The below analysis is presented with the thematic analysis of the Local laws of Bahrain. The themes are selected based on the types of laws which are found to be four mainly, Trademark, Patency, design and copyright. The following numbers of laws are found which are summarized in the below section:

Themes	Number of Laws
Copyright	1
Design	2
Patents	1
Trademark	4

### ***Theme 1: Patents***

Patents and Utility Models<sup>(35)</sup>

Bahrain has notified WTO under Article 63.2 of TRIPS expresses that the law characterized licenses, utility models and methodology of the patent application and allowing and pass on proprietorship and assurance of the period between the permit to abuse the patent and necessary authorizing and implementation of rights emerging from patent deficiency

### ***Theme 2: Copyrights***

Copyright and Related Rights (Neighboring Rights), Enforcement of IP and Related Laws, Traditional Cultural Expressions<sup>(36)</sup>

Trade secrets has been identified and protected under the law and the penalties that apply when disclosure of these secrets and this law has been mode to litigation before the competent court does not impose any administrative procedures for the registration of trade secrets.

### **Enforcement of IP and Related Laws, Trade Names, Trademarks, Undisclosed Information (Trade Secrets)<sup>(37)</sup>**

Trade secrets has been identified and protected under the law and the penalties that apply when disclosure of these secrets, and this law has been mode to litigation before the competent court does not impose any administrative procedures for the registration of trade secrets

### ***Theme 3: Design***

Enforcement of IP and Related Laws, Layout Designs of Integrated Circuits<sup>(38)</sup>

The law defined designs of integrated circuits as each product in its final form in which the elements - at least one active ingredient - and all or some of the links built within or on a piece of material, and the purpose of this product's performance and function room. The law specifies the recording designs of integrated circuits and periods of protection and litigation procedures in the event of a dispute, or contractor.

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(35) Law No. 1 of 2004 on Patents and Utility Models.

(36) Law No. 22 of 2006 relating to the Protection of Copyright and Neighboring Rights.

(37) Law No. 7 of 2003 on Trade Secrets.

(38) Law No. (5) of 2006 regarding designs of integrated circuits.

### **Enforcement of IP and Related Laws, Industrial Designs<sup>(39)</sup>**

The law defined industrial design as every arrangement of lines and colors, or every form of anthropomorphic colors or without colors, and be an industrial design may be registered if it was characterized by novelty and usable in industry or craft work and that lends a striking feature of the industrial product or a craftsman and not have been disclosed to the public. The law specifies the registration of industrial designs and periods of protection and litigation procedures in the event of a dispute, or contrary to the provisions of this law and the enforcement of rights conferred by the registration of industrial drawing.

### **Industrial Designs and Models**

The law defined industrial design as every arrangement of lines and colors, or every form of anthropomorphic colors or without colors, and be an industrial design may be registered if it was characterized by novelty and usable in industry or craft work and that lends a striking feature of the industrial product or a craftsman and not have been disclosed to the public. The law specifies the registration of industrial designs and periods of protection and litigation procedures in the event of a dispute, or contrary to the provisions of this law and the enforcement of rights conferred by the registration of industrial drawing.

### ***Theme 4: Trademarks***

#### **Enforcement of IP and Related Laws, Geographical Indications<sup>(40)</sup>**

‘The law defined geographical indications such as names or marks that indicate the origin of the commodity in the province, a region or a particular site if the quality, reputation or other characteristics is essentially attributable to its geographical origin. The law specifies the registration of geographical indications and periods of protection and litigation procedures in the event of a dispute, or contrary

#### **Trade<sup>(41)</sup> Secrets<sup>(42)</sup>**

‘Trade secrets has been identified and protected under the law and the penalties that apply when disclosure of these secrets and this law has been made to litigation before the competent court does not impose any administrative procedures for the registration of trade secrets.

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(39) Law No. 6 of 2006 on Industrial Designs and Models.

(40) Law No. 16 of 2006 amending Law No. 16 of 2004 on the Protection of Geographical Indications.

(41) Law No. 12 of 2006 amending some Provisions of Law No. 7 of 2003 Pertaining to Trade Secrets

(42) Law No. 7 of 2003 on Trade Secrets

### Trademarks Law of the Gulf Cooperation Council States<sup>(43)</sup>

‘The Trademarks Law of the Gulf Cooperation Council States (the GCC Trade Mark Law) addresses the forms of trademark law and its definition and types, registration and protection, and a cancellation and transfer of ownership of the mortgage and seizure and the license to use it. Between law enforcement and the rights arising from the registration of trademarks.

Law Title English	Type of Law	Date of Implementation	Arabic Law Title	Themes
Law No. 22 of 2006 relating to the Protection of Copyright and Neighboring Rights	Copyright and Related Rights	29-Jun-06	قانون رقم (22) لعام 2006 بشأن حماية حقوق المؤلف والحقوق المجاورة	Copyright
Law No. 1 of 2004 on Patents and Utility Models	Enforcement of IP and Related Laws, Traditional Cultural Expressions	24-Jan-04	قانون رقم (1) لعام 2004 بشأن براءات الاختراع ونماذج المنفعة	Patents
Law No. 7 of 2003 on Trade Secrets	Enforcement of IP and Related Laws, Trade Names, Trademarks, Undisclosed Information (Trade Secrets)	14-Jun-03	قانون رقم (7) لعام 2003 بشأن الأسرار التجارية	Trademark
Law No. 6 of 2014 approving the Trademarks Law of the Gulf Cooperation Council States (Gulf Cooperation Council)	GCC law on Trademarks	2014	القانون رقم 6 لسنة 2014 بالموافقة على قانون (نظام) العلامات التجارية لدول مجلس التعاون لدول الخليج العربية	Trademark

(43) Law No. 6 of 2014 approving the Trademarks Law of the Gulf Cooperation Council States (Gulf Cooperation Council)

Law No. 12 of 2006 amending some Provisions of Law No. 7 of 2003 Pertaining to Trade Secrets	Enforcement of IP and Related Laws, Trade Names, Trademarks, Undisclosed Information (Trade Secrets)	28-May-06	قانون رقم (12) لعام 2006 بتعديل بعض أحكام القانون رقم (7) لعام 2003، بشأن الأسرار التجارية	Trademark
Law No. 5 of 2006 on Designs of Integrated Circuits	Enforcement of IP and Related Laws, Layout Designs of Integrated Circuits	29-Apr-06	قانون رقم (5) لعام 2006 بشأن تصميمات الدوائر المتك	Design
Law No. 6 of 2006 on Industrial Designs and Models	Enforcement of IP and Related Laws, Industrial Designs	29-Apr-06	قانون رقم (6) لعام 2006 بشأن الرسوم والنماذج الصناعية	Design
Law No. 16 of 2006 amending Law No. 16 of 2004 on the Protection of Geographical Indications	Enforcement of IP and Related Laws, Geographical Indications	29-Apr-06	قانون رقم (16) لعام 2006 بتعديل بعض أحكام القانون رقم (16) لعام 2004؛ بشأن حماية المؤشرات الجغرافية	Trademark

### III. Analysis, Discussion and Recommendations

Bahrain has made significant strides in implementing intellectual property laws that can be used in combating counterfeiting. Article 4 of 2006 Trademarks Law says that the individuals or legal entities can file an application for registration of a trademark in competent authorities<sup>(44)</sup>.

(44) Mark Tushnet and William Nelson, Comparative constitutional law, In the Oxford handbook of comparative law, Cheltenham, UK, 2017, pp. 287-292.

The individual or legal entity is given rights if they are Bahraini citizens or national of a country member in the Paris Union. Article 43 of the 2006 law provides protection for trademark owners by allowing them to lodge applications to customs authorities to suspect release of counterfeit products and to prohibit circulation.

The plaintiff must provide evidence that infringement of applicant right has been done. The law allowed Customs to fight the trafficking of counterfeit goods effectively. Customs can seize counterfeit goods that have been imported or are in transit<sup>(45)</sup>.

They can prohibit the circulation of goods at the request of the rights holder or on their own initiative. However, Customs cannot destroy seized goods without a decision from the competent court. Furthermore, there have been significant delays in issuing implementing procedures for the Trademarks Law.

Preliminary actions can be initiated by the rights holder or authorized person filing a complaint with the Industrial Property Control Section<sup>(46)</sup>. Relevant registration certificates, samples of original and counterfeit goods, receipts showing sale or purchase of counterfeit goods, and others need to be submitted. The complaint process is filed with the relevant authority.

Action can be undertaken within 48 hours as the area where the infringement has occurred is raided by inspectors. A list of counterfeit goods seized is prepared while a preliminary report is developed<sup>(47)</sup>. The infringer has to provide defense to the head of the control section within 48 hours of the raid. The head of the control section can prepare a report for the minister for industry and commerce if an offense has been committed.

The order is referred to the Public Prosecutor's Office who investigates and refers the case to competent criminal court. The IP framework in Bahrain is effective because it allows significant number of remedies for combating the problem<sup>(48)</sup>. These include swift raids, seizure and destruction of counterfeit goods, and fines or imprisonment for offenders. Repeat offenses might lead to temporary closure of the business while the judgment by courts can be

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(45) Mike W. Peng and David Ahlstrom and Shawn M. Carraher and Weilei Stone Shi, "History and the debate over intellectual property, Management and Organization Review 13, no. 1, 2017, pp. 15-38.

(46) Ibid.

(47) Nard Craig Allen and Michael J. Madison and Mark P. McKenna, *The law of intellectual property*, Wolters Kluwer Law & Business, New York, 2017, pp.154-168.

(48) Ibid.

published in a daily newspaper.

The implications are that there is a basic framework available that helps in fighting counterfeit products. It helps to create a collaborative framework for success through the use of integrated and coordinated strategies.

The current law governing trademarks is the Gulf Cooperation Council (GCC) Trademark Law which has become effective in the country in 2016<sup>(49)</sup>. It replaces Legislative Decree No. 11 of 2006 related to trademarks. The law offers provisions that will be consistently applied in the six member states of the GCC.

Currently, the law is effective only in Bahrain, Kuwait, and Saudi Arabia. It does not offer single regional registration or enforcement system for the entire GCC. However, it has become primary source of trademark law that regulates and governs all matters and issues related to trademarks in the jurisdiction<sup>(50)</sup>. National law takes precedence over international treaties signed by the country.

UAE and Jordanian legislative bodies has taken a more profound approach towards the Intellectual property right by driving the legislations from French legislation, mainly, French Intellectual Property Code Article L 711-3 (c), according to which, infringement marks on products or items are mainly attributed to misleading conduct towards public.

The French law, however, does not restrict infringement of trademarks from the idea of deceiving consumer but also suggest but also suggest that trademark violations are applicable when products do not deliver the quality or items they claim for regardless being counterfeited or original. Such cases are vivid from cases like that of Cassation Case concerned about trademark Lava Blaine where the signs are registered for safety of the products with a high content of wool or Laine, however, the products lack what it claimed leading to a conduct of misleading consumers.

However, there are no specialized trademark courts in Bahrain as they are tried in general courts. The judges have developed good understanding of related issues through experience<sup>(51)</sup>. In other cases, expert opinion can be used by the court. The IP rights are enforced through actions brought in the court and lodging complaints with Industrial Property Control Section, Ministry of

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(49) Ruse-Khan and Henning Grosse, *The protection of intellectual property in international law*, Oxford University Press, UK, 2016, pp.483- 492.

(50) *Ibid.*

(51) *Ibid.*



Industry, Commerce, and Tourism. The administrative actions are decided by the criminal courts. A civil court can adjudicate when a complaint has been issued in customs for suspension of suspected goods<sup>(52)</sup>.

The GCC Trademark Law is also effective since it allows protection against online counterfeiting by providing greater levels of protection to famous trademarks. It prohibits registration of trademarks that are reproduction or imitation of well-known trademarks. It prevents registration of any trademark that have relation to dissimilar goods as consumers might be lead to believe that goods emanate from the same trader and would likely damage the famous trademark owner's interests. There is a clear criterion to the determination of famous trademarks under the law. The previous laws would determine whether trademark was famous or not were left to the courts while it was reviewed on a case by case basis<sup>(53)</sup>.

The new law recognizes a famous trademark by analyzing the extent of recognition by consumers that has occurred due to the marketing efforts of the trademark owner. Furthermore, the duration and extent of registration and use of the trademark can determine whether it is famous or not. Finally, the number of countries where the trademark has been registered or recognized is also used in the process.

The new law allows Bahrain to have well implemented provisions in combating online counterfeiting. The infringement of trademarks is dealt by the GCC law as Article 42 of the Trademark Law outlines the penalties for trademark infringement<sup>(54)</sup>.

A fine of SAR 5,000-1 million and imprisonment of one month and three years can be imposed on offenders. A fine of SAR 1,000 and SAR 100,000 can be imposed with imprisonment of one month and one year when an individual knowingly sells goods that contain counterfeit or unlawfully affixed trademarks<sup>(55)</sup>. Repeat offenders can get maximum penalties while the establishment can be closed from 15 days to six months.

These potential sanctions are a significant increase in contrast to the Bahraini national law. It is an effective strategy to combat counterfeiting and trademark infringement. The Bahraini framework on intellectual property allows

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(52) Jay Dratler and Jr. Stephen and M. McJohn, *Licensing of intellectual property*, Law Journal Press, USA, 2017, pp. 724-798.

(53) Ibid.

(54) Ibid.

(55) Ibid.

enforcement proceedings to be initiated against suppliers of counterfeit products and unauthorized sellers. Various sanctions and remedies are available that can help trademark owners<sup>(56)</sup>.

Moreover, wide protection can be obtained under the local patent regime or the GCC patent protection regime. These rights are enforceable in all GCC member states. Copyright can be registered as it helps to provide a verifiable record of content of work as it existed at that point in time<sup>(57)</sup>.

It is imperative for courts to create an internal IP rights unit that would provide database to facilitate enforcement against counterfeit goods. Trademark users should be given legal abilities to file applications against counterfeit products. Bahrain does not have specialized patent court that can be used for combating counterfeiting. A national special court with exclusive authority for patent infringement and validity would help to achieve the goals<sup>(58)</sup>.

Furthermore, it would be a flexible court structure that would help to save administrative costs. It can involve judges that have knowledge about the judicature and technical aspects of intellectual property rights.

A single specialized court would be instrumental in combating the problem. Furthermore, it would create a comprehensive and high quality judicature that is adequate for technical and complex field of patent law<sup>(59)</sup>. Judges would be able to collect the necessary experience in patent law and allow an efficient and competent treatment of complex patent cases.

The current legislative framework needs to be enhanced so that brand owners can pursue seizure orders. This can be a unique remedy as it should be used in certain condition such as the rights holder demonstrating that the seizure order is the only adequate remedy<sup>(60)</sup>.

The rights holder must be able to succeed on merits of the case while they must demonstrate that they will suffer immediate and irreparable damage if the seizure is not advanced. The counterfeit products should be located at the place identified by the plaintiff. The plaintiff should provide a bond as security in the event that seizure is deemed to be wrongful.

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(56) Peter Yu, *Enforcement: A Neglected Child in the Intellectual Property Family*, 2015, pp. 19-23.  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2662834](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2662834).

(57) *Ibid.*

(58) *Ibid.*

(59) Jay Dratler and Jr. Stephen and M. McJohn, *Intellectual property in the digital millennium*, Law Journal Press, USA, 2017, pp. 287-291.

(60) *Ibid.*

Another problem with the intellectual property framework in the country is that there are no procedures under the law to provide rights holders with the right to use pre-emptive measures. Such measures can be useful in avoiding criminal prosecution or civil suit<sup>(61)</sup>. Specific measures that might be given by the court can be warning notices which assert the proprietary rights of the individual or legal entity.

The media can be used to warn the public and industry about the seriousness in protecting and enforcing rights<sup>(62)</sup>. Another option is cease and desist letters that can demand that the counterfeiter refrain from infringing activities. It can also be used to seek damages and costs through the courts.

Another pre-emptive measure can be undertakings or demand notice that allows the rights holder to enter into agreement with counterfeiters who can be compelled to cease trading in the counterfeit goods<sup>(63)</sup>. If they fail to desist than civil proceedings can be initiated.

To combat online counterfeiting, it is essential that the Bahraini legislative framework should allow the rights holders to protect and defend their intellectual property. Close cooperation with authorities is vital for success while successful monitoring of e-commerce websites should be done to increase the awareness about the characteristics of legitimate goods<sup>(64)</sup>.

It would help develop better guidelines for the detection of counterfeit products. The legal system needs to provide tools that will allow in tracking online merchandize and detect prevalence of specific brand in market or specific website. It is also critical that the authorities have ability to detect prevalence of specific brands in the market or websites<sup>(65)</sup>.

They should be able to pursue offenders effectively and calculate the number of infringing products in the market. A specific government portal needs to be launched that would help e-commerce websites to register with the ministry of trade and commerce. This would help in implementing credibility for products and business. The portal would play an important role in protecting the rights

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(61) Joyce Craig and Tyler T. Ochoa and Michael W. Carroll and Marshall A. Leaffer and Peter Jaszi. Copyright law. Carolina Academic Press, 2016, pp. 87- 95.

(62) Ibid.

(63) Dosi Giovanni and Joseph E. Stiglitz, "The role of intellectual property rights in the development process, with some lessons from developed countries: an introduction", Intellectual property rights: Legal and economic challenges for development 1, (2014), pp. 1-55.

(64) Ibid.

(65) Mark Perry, Global Governance of Intellectual Property in the 21st Century: Reflecting Policy through Change, Springer, 2016, pp. 78- 81.

of consumers and warning them about fake products<sup>(66)</sup>.

Additionally, it would be able to provide an evaluation of services and quality of e-stores in Bahrain. There is the need to increase deterrent impact of fines in Bahrain by developing calculation methods that lead to fines against counterfeiters commensurate to the harms caused by them.

Imposing sanctions for failure to pay fines must be done by the Bahraini government<sup>(67)</sup>. Prohibitory regimes against exports of counterfeiters should be done while elimination of bond requirements on trademark owners as a condition to process counterfeit cases would help in more cases being filed against counterfeiters. Appropriate steps are needed in Bahrain to reduce or eliminate burdens on trademark owners of suffering costs of storage and destruction of counterfeit products<sup>(68)</sup>.

The counterfeit goods should be compulsorily destroyed and removed from channels of commerce. The trademark laws in Bahrain need to be modified so that courts can award significant statutory damages against counterfeiters in recognition of situations where it is difficult for trademark owners to prove their measurable monetary damage. Specialized intellectual property crimes investigation and prosecution units are needed within law enforcement and prosecution structures<sup>(69)</sup>.

Additionally, it is important that sufficient resources should be allocated towards training judges and ensure the submission of litigated trademark cases to judges specializing or having substantial experience in trademark matters. It is also imperative that practical steps be undertaken to allow law enforcement with legal mandate to have broader seizure and forfeiture provisions<sup>(70)</sup>.

The intellectual property law framework needs to be modified so that it allows relevant authorities to seize equipment used to manufacture counterfeit products and any business records related to counterfeiting activity. Additionally, forfeiture of any property used or intended to be used for counterfeiting should be allowed by the legal framework. This will help to achieve the effect

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(66) Ibid.

(67) Fang Lily H. and Josh Lerner and Chaopeng Wu, "Intellectual property rights protection, ownership, and innovation: Evidence from China", *The Review of Financial Studies* 30, no. 7 (2017), pp. 2446-2477.

(68) Ibid.

(69) Malbon Justin and Charles Lawson and Mark Davison, *The wto Agreement on Trade-Related Aspects of Intellectual Property Rights: A commentary*, Edward Elgar Publishing, UK, 2014, p.324.

(70) Op. Cit., pp. 217-232.

of combating counterfeiting in an effective and efficient manner.

### **Conclusion**

Bahrain judiciary system totally abides the autonomy, contracts or agreements of the parties under the signatory member of the foreign laws. Dispute resolutions normally are conducted within the judiciary systems yet under arbitration act many cases are considered for illegal practices including Intellectual proprietary allegations. Nevertheless, the interpretation of the international laws and cases differ on the subjective understanding of the law ministries and authorizes depending on the extent of matter under consideration.

Some discrimination cases are reported against foreign workers against local Bahraini citizens which are consistently under strict eye to eradicate and improve with the mission to provide justice regardless of race, ethnicity and country of origin. The efforts are made by government to reduce the problems and implementation of intellectual property rights with no reports of significant violations of U.S patents and trademarks in Bahrain.

Government of Bahrain initiated a campaign to cripple the illegal practices under the concept of copyrights violations. The campaign was based on close monitoring, inspection and public awareness of illegal competition in the market. Strict regulations were imposed on custom clearance. The focus was on targeted video, audio and software industries that showed impressive results. Such pirated videos and audios are almost eradicated in the market but it remains a problem with the end-user that has access to global market of selling such pirated products.

### **Recommendations**

It is important for Bahrain to amend trademark laws so that the courts can award significant statutory damages against counterfeiters. There should be specialized intellectual property crimes investigation and prosecution units. The government needs to focus on allocating sufficient resources towards training judges and ensuring submission of litigated trademark cases to judges specializing or having experience in trademark matters.

The IP framework needs to be modified so that prompt and reasonable access by trademark owners to relevant documents and information gathered on counterfeiters is available to them. A national special court with exclusive authority for patent infringement and validity would help to achieve the goals. Furthermore, it would be a flexible court structure that would help

to save administrative costs. It can involve judges that have knowledge about the judicature and technical aspects of intellectual property rights. A single specialized court would be instrumental in combating the problem. Furthermore, it would create a comprehensive and high quality judicature that is adequate for technical and complex field of patent law<sup>(71)</sup>. Judges would be able to collect the necessary experience in patent law and allow an efficient and competent treatment of complex patent cases.

In Bahrain the link between trademarks, unfair competition and consumer protection are vividly existing. The need for filling the legislative gap between the earlier legislations need to be established for protecting the consumer protection right as well as creating a fair practice of the economy turnover for IP holders. Bahrain IP legislation consider the earlier mentioned elements based on the protection of the IP rights and its relation to different stakeholders, mainly the consumers.

The legislative bodies need to expand the protection of consumer through adoption of the provisions of TRIPS Agreement and Paris Convention where the consumer interests are explicitly detailed.

Overall, the current legislative framework needs to be enhanced so that brand owners can pursue seizure orders. This can be a unique remedy as it should be used in certain condition such as the rights holder demonstrating that the seizure order is the only adequate remedy. The rights holder must be able to succeed on merits of the case while they must demonstrate that they will suffer immediate and irreparable damage if the seizure is not advanced.

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(71) Ibid.

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