

Task: Prepare 2 case studies

Topic: Media Law

Type: Case study

Length: 4 pages

Formatting: MLA

Requirements:

Describe two real case studies about two examples of vendors selling "dangerous" counterfeit goods in Dubai in breach of Trademark Law.

Name

Professor

Course

Date

Media Law

Notably, the war and battle against counterfeiting started with the DED, Christian Louboutin, and Al Tamimi and company. The group was able to marshal efforts and actions in reducing trade on counterfeit. The media laws in the United Arab Emirates (UAE) have been ranked, as among the most significant as the media has enormous influence in the regions. The media law in chapter 6, article 54 of the explicitly states that only citizens of the UAE that are registered have the permit to import or export film. Article 57 puts stringent rules by ensuring that commercial advertisements and films can only be shown in cinema halls after obtaining permit from the film censorship committee. The censorship committee also issues permit to clubs or societies that may want to show films to its members and in charge of barring any films that display immoral content. The medial laws further enhance the governance of the media under article 67 that prohibit any person from theatre performance without obtaining a license from the relevant ministry.

The media laws also clearly outline the materials prohibited by the state under chapter 7 of the media laws. Article 1 especially ensures the protection of the sate by prohibiting the publication of any criticism against the head of state. The publications of any article that prompt any bias towards Islam or breaches public conduct and discipline, the slander of any Arabs or heritage is unequivocally prohibited by the state. The medial laws under article 10 regulate the stability of the economy by ensuring that law prohibits any publication that discredits the national currency or harms the national economy. The protection of consumers in regard to pharmaceutical products are incorporated under article 11, of chapter 7 that

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Comment [1]: ... and confrontation and fight and combat.

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Comment [2]: If you mean the Department for Economic Development, you should have written its full name.

MostAwfulEssays 9/16/14 11:44 AM

Comment [3]: I like that simple "company" in the end of the list. Why don't people name their companies just like that?

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Comment [4]: Readers can't follow your essay.

MostAwfulEssays 9/16/14 11:45 AM

Comment [5]: Of what? The Holy Bible? National Geographic filing?

MostAwfulEssays 9/16/14 11:47 AM

Comment [6]: Fujifilm? Analog film? A movie?

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Comment [7]: Are you playing a game called "missing words?"

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Comment [8]: (missing word).

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Comment [9]: Okay, the rest of the paragraph is relatively comprehensible, regardless of the parade of mistakes.

MostAwfulEssays 9/16/14 11:49 AM

Comment [10]: "Sate" means "to fill with," or "to saturate."

MostAwfulEssays 9/16/14 11:51 AM

Comment [11]: It definitely makes life safer!

forbids the advertisement of any pharmaceutical products unless having obtained a permit from the ministry of law. The media laws are therefore a key provision of law that provides a framework for the regulation vast fields in the state.

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Comment [12]: Just awkward.

Case 1

Following the infringement of intellectual and trademark rights of parties, Al tamimi and company have exerted extra effort in ensuring the protection of these rights. In regard to these, the police in the United Arab Emirates seized counterfeit products of popular brand of MOSER and WAHL dealing with shavers and clippers. The enforcement authorities conducted a raid of the warehouse located in Ajman housing over five thousand and six hundred counterfeit products bearing the trademarks of the above companies.

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Comment [13]: The police dealt with shavers and clippers? Or these brands did? Make yourself clear.

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Comment [14]: You mean the warehouse where my dad works?

The UAE Federal Trademark Law No. 37 of 1992 that was amended by the new UAE Federal No. 8 of 2002 encompasses the provision of laws of the United Arab Emirates that serves to regulate the registration and protection of the United Arab Emirates trademarks. These enable the protection of consumers, manufactures from the implications of counterfeit goods, and marks in the market. Article 2 of the UAE Federal trademark law states;- 'a

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Comment [15]: This is the only grammatically correct sentence in this paper.

trademark is any distinguished form of names, words, signatures, letters, figures, graphics, logos, titles, hallmarks, seals, pictures, patterns, announcements, packs or any other groups of marks if they were used or intended to be used either to distinguish goods, products, services from whatever sources or to indicate that certain services belong to the owner of the trademark because of their provision, manufacturing, selection or trading.'

Therefore, a trademark is of high value to a manufacturer as it benefits him to cement his market niche as well as make himself identifiable to his market. Case studies on counterfeited products in the UAE have been centred on pharmaceutical products. For instance, pharmacies, supermarket, and herbal shops in Abu Dhabi during a raid by health authorities

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Comment [16]: Whom? Is there just one male manufacturer in UAE?

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Comment [17]: What a strange expression. Reminds me of the Italian Mafia's methods of execution. You know, cement shoes and stuff.

were found to have been selling counterfeit medicines. These medicines were particularly those for sexual stimulation purposes and **dramatic weight loss** effects. The Health Authority –Abu Dhabi (HAAD) liaising with the Municipality of Abu Dhabi City reported the sale of counterfeit medicines by two licensed pharmacies, four supermarkets, and two herbal shops. The counterfeit medications in these premises such as Viagra were found to have been packed in their original Pfizer packets but the medicine inside was fake. Under Article 37 of the UAE federal law states in sub-article 1 that “ any person who counterfeits a trademark that is lawfully registered or imitates it in such a manner as to mislead the public **mala fide** uses an imitation of a trademark risks a fine of AED 30000 or **1** year imprisonment or both.” The above breached this law by imitating the trademark of Pfizer manufactures with the intention of deceiving the consumers. Sub-article 2 that prohibit the unlawful utilization of a registered trademark owned by another party on his products.” The court declared the suspension of the licences of the accused as well as the temporary closure of their business.

Case Study 2

A case study of the counterfeit products in the United Arab Emirates **include** a case filed by Al Tamimi and company that claimed action against the infringement of the trademark rights of Toyota Motor Corporation. In this particular case, unauthorised parties used Toyotas trademark on their spare parts without consent. The counterfeit goods were discovered by officials from the Intellectual Property Rights Division of the customs office in Dubai. **The case was presented to the Legal Unit of Dubai customs from which a decision was issued** to confiscate and destroy the counterfeit products in accordance with the UAE trademark law. Following the procedure, inspection of the goods by municipal officials was conducted and a permit was issued for the destruction of the counterfeit products. This was in accordance with Chapter 5 under Article 37of the United Arab Emirates trademark law.

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Comment [18]: Haha, losing weight has never been so dramatic!

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Comment [19]: Wow, you're smart!

MostAwfulEssays 9/16/14 12:01 PM

Comment [20]: What is so difficult to write "one" instead of "1"? Digits up to ten are written with letters.

MostAwfulEssays 9/16/14 4:56 PM

Comment [21]: Watch out for the attack of an incorrect subject-verb agreement.

MostAwfulEssays 9/16/14 12:03 PM

Comment [22]: I am going to sleep now. This essay is too boring to read.

While the legal framework of the UAE is credited to the level of international standards, the various government offices are tasked with implementing and giving effect to the law. In the regard of trademark law, the Ministries of Health and Trade are principal in enforcing the laws that regulate the registration and protection of trademarks. Executive committees such as the Film Censorship Committee have the role of enforcing the media laws under chapter 6. Reports indicate that despite government and business owners putting in place stringent measures, the emergence of counterfeit products has been on the rise in recent times. These products include luxury items such as designer perfumes and consumable that poses serious health risks. Pharmaceutical products especially that are counterfeited are dangerous as their manufacture or distribution is not within the guidelines of any government agency that regulates the standards of the production of goods.

Protection of Trademarks

The breach of the trademark law has a negative impact on the socio-economic aspect of a state. The production of counterfeit products brings about a slow innovation rate within the market, a rise in criminal activities and networks, as the production of these goods is a result well developed illegal frameworks. The key characteristic of production of substandard goods is the occurrence of tax evasion that occurs. This proves that a breach of the trademark law potentially leads to the breach other laws, as tax evasion is a felony offence in the United Arab Emirates. The innovation rate stalls because of the avoidance of producing one's own trademark and goods to rely on the value of another person's trademark in the sale of their goods. Bogdanich notes that a key negative effect is the infringement of the rights of consumers in the purchase of these products. Consumers have the right to goods and services of reasonable quality and the protection of their health, safety and protection of their economic interests in the use of the goods. Consumers' right also include the compensation of any loss or injury that arises from the use of the particular goods and services. The

production and distribution goods of counterfeit goods infringe fundamental rights of a consumer, as they do not assure him of any such security in the safety and quality of the goods and the consumer utility. The rights of a manufacturer that has the holders' rights are also infringed as the brand value and firm's repute associated with the counterfeit products is diminished. The manufactures also record low sales returns while incurring high production costs in their scale of operations.

The breach of the UAE federal trademark law has substantially had a direct impact on the government budget as it has led to the decrease in government revenue. According to the findings submitted by the Organization for Economic Cooperation and Development, over \$250 billion of counterfeit products formed part of the global trade in 2007. This figure reflects a growing and serious crisis as the proliferation of these products is not only dangerous but cause of grave economic crisis. The emirates being the largest producer in the world indicate to lose about the value in revenue of 150 economies through counterfeit goods. The cost of developing policies and measures to combat this difficulty incurs the government additional expenses that could have been utilized for economic planning and projects. The public institutions of the state that regulate the standards of consumer goods are also crippled through the corruption of these offices by the networks that produce and supply counterfeit goods.

Conclusion

The UAE trademark law has been sufficient in combating issues of counterfeit of the goods but the efficacy could be improved greatly. A factor of consideration in analysing the efficacy of the UAE Trademark law is the prior use doctrine that has been a controversial area of the UAE trademark law. The "prior use" doctrine is the 'point of departure in considering trademark ownership in that the party who applies for and secures registration of a trademark ownership shall be the exclusive owner of that trademark in respect of the goods

and services in relation to which it is registered.’ The issue that arises from this doctrine is the legal position of a party that has been using an unregistered trademark before the registration of that same trademark by another party. In such a scenario, the UAE trademark law has no provision in place to protect such parties and in fact proposes that the parties cease to use those unregistered trademarks regardless of their anterior use of the mark. This prior use doctrine undermines the efficacy of the UAE trademark law greatly from the point of view that it is unfair and below the threshold of international trademark laws. This is seen through reference of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights in Article 16 that bestows exclusive rights to the owner of a registered trademark and may prevent all third parties from using the mark, however sub article 1 provides the exemption of the exclusive rights not extending to any existing prior rights.

The existing trademark law efficacy on deterring repeat offenders is good as in the UAE federal trademark law; Article 39 is a provision of lack that acknowledges of likelihood of repeat offenders and how to curb it. Article 39 outlines that any person who repeats the offence of breaching the trademark law will receive the punishment that was stated in Article 37 in addition to having their commercial premises closed for a minimum period of 15 days and a maximum period of 6 months as well as publication of their judgement at their own expense. However, this law is not quite as effective in deterring future cases of counterfeit goods as most of these perpetrators walk away with as much as a lofty fine without withdrawal of their operating licences.

The legal framework as it needs to be modelled around this growing global threat. The efficacy of the trademark law is set to be increased by the enactment of the Commercial fraud law that intends to replace the enforcement systems of the existing intellectual property laws. It proposes to enhance application of the trademark law by imposing stiff penalties on

counterfeiters of imprisonment of up to two years and or a fine of up to Dh 1million. The commercial fraud law will also protect brand owners' rights by ensuring that the counterfeiters are prosecuted even when the manufacturer is not able to prove the existence of his trademark. The new law also ensures the tackling of the corruption issue that has weakened the public institutions by establishing a single independent body that scrutinizes the compliance of the trademark law.

Recommendations

Governments therefore require placing of rigorous measures that improve the enforcement of the trademark, detecting the arrival of counterfeit goods at the point of entrance and all routes of destination. There is also need to increase the awareness on sale of counterfeit good to consumers and the negative implications that result from piracy. Government authorities, companies, firms and consumers should continue to make aggressive efforts in collaboration with law enforcement agencies to ensure that users get high- quality products. The threat assessment of counterfeit products is especially high in pharmaceutical products due to the lack of fulfilment of expectations of the desired medical benefit, the possibility of resistance to actual medicines or grave direct harm. The authorities of the United Arab Emirates should endeavour to develop the regulatory and enforcement measures that put in place quality assurance initiatives to combat this problem. Companies should also realize that when their products lose their authenticity, they are primarily the ultimate losers. They should therefore ensure their products have undergone intense screening at the supply stores in order to ensure supply of genuine products. Firms should also invest in creating awareness on their products and their similarities and differences to the counterfeit. These anti-counterfeit practises will guarantee the battle against the infringement of intellectual property rights through counterfeits is won.

Works Cited

Anti-Counterfeiting Action in Dubai. Available at:

<http://www.tamimi.com/en/event/news-events/events/anti-counterfeiting-action-karama-dubai.html>

Bogdanich, Walt. "Counterfeit Drugs' Path Eased by Free Trade Zones". *The New York Times* (2007).

Chaudhry, Peggy E., and Alan Zimmerman. *The economics of counterfeit trade*. Springer,

Major Anti Counterfeit Action in Ajman. Available at

<http://www.tamimi.com/en/magazine/law-update/section-5/july-august-2/major-anti-counterfeit-action-in-ajman.html>

Staake, Thorsten, Frederic Thiesse, and Elgar Fleisch. "The emergence of counterfeit trade: a literature review." *European Journal of Marketing* 43.3/4 (2009): 320-349.

Overall Impression

The paper is incredibly difficult to read – not just because of the legal issues described, but because of poor grammar. It's not the worst essay I've read in my life – it could be quite good, actually – but the lack of grammar and boring style it was written in spoils everything.