



Intellectual property rights in the light of the Saudi Arabia's vision 2030

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Abstract

The Saudi Intellectual Property Rights are in conformity with the Trade Related Aspects of Intellectual Property Rights which constitute a significant part of International Trade Law. In light of the above, we shall explore some fields of Intellectual property rights covered by Vision 2030 announced and adapted by the Kingdom of Saudi Arabia in 2016. The expansion towards international trade is founded upon different Saudi Legislation relevant to intellectual property, assisting the stakeholders in protecting legally their Intellectual Property Rights, thus helping to improve upon business environment, attracting the elite in global investors as targeted by Vision 2030. This study will enlighten the role of Copyright and Trademark Saudi Laws in the Vision. Moreover, since trademark law encompasses the newest amendments amongst the other intellectual property laws in the Kingdom of Saudi Arabia, we shall analyze the evolution of the jurisprudence with respect to the well-known trademark protection within the Kingdom. This evolution will certainly enable the Saudi legislation to accompany the progress to be done through the Vision

Keywords: kingdom of Saudi Arabia, vision 2030, intellectual property rights, copyright and related rights; trademark, olfactory trademark, well-known trademark, cooperation council for the Arab states of the gulf

1. Introduction

The Kingdom of Saudi Arabia (the Kingdom) announced and adapted in 2016 the Saudi Arabia's Vision for the future: Vision 2030 (the Vision).

The objective of the Vision announced is to bring focus on the Kingdom's role in international trade especially through its geographic position between key global waterways, making the Kingdom "an epicenter of trade and the gateway to the world"^[1]. The international trade Law induces ipso facto its important component: the Intellectual Property Rights (IPRs).

The Kingdom has been a member of the World Trade Organization (WTO) since 2005. Consequently, the Saudi IPRs are in conformity with the Trade Related Aspects of IPRs (TRIPS) that constitutes a significant part of the international trade law. In the light of the above, we shall explore some fields of IPRs covered by the Vision.

This study will enlighten only the role of the Copyright (I) and the Trademark (II) Saudi laws in the Vision.

Moreover, since the trademark law encompasses the newest amendments amongst the intellectual property laws in the Kingdom, we shall consecrate part (III) for the evolution of the jurisprudence with respect to the well-known trademark protection within the Kingdom. This evolution will certainly enable the Saudi legislation to accompany the progress done through the Vision.

2. The Copyright Law in light of the vision

The strategic location of the Kingdom will be the focal point for international trade connecting the three continents, Africa, Asia and Europe^[2].

The expansion towards greater international trade is supported by different Saudi Laws relevant to intellectual property,

assisting stakeholders in legally protecting their IPRs, helping to improve upon the business environment, attracting the elite in global investors as targeted by the Vision. The below are the main legislation related to IPRs applicable in the Kingdom:

- Royal Decree No. M/51 of 26 Rajab 1435 (May 26, 2014) approving the Trademarks Law of GCC States (2016)
- Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs (promulgated by Royal Decree No. M/27 of 29/5/1425H (July 17, 2004))
- Copyright Law (promulgated by Royal Decree No. M/41 of 2 Rajab, 1424 (August 30th, 2003))
- Law of Trademarks (promulgated by Royal Decree No. M/21 of 28 Jumada I 1423 (August 7, 2002))
- Commercial Names Law (promulgated by Royal Decree No. M/15, 12 Sha'ban 1420 (November 20, 1999))

The copyright law, enacted in 2003 as mentioned hereinabove, will play an important role specially that the Vision "will seek to offer a variety of cultural venues - such as libraries, arts and museums - as well as entertainment possibilities to suit tastes and preferences"^[3].

Hence, the Vision aims to promote culture and entertainment and this is how the Saudi Copyright Law (SCL) will be involved in fulfilling this aspect of the Vision. The cultural evolution of society is reflected in the different components of the SCL mainly: audio works, audio-visual works, derivative works, joint works, collective works, authors and performers' rights, publication, broadcasting as well as the folklore^[4].

The SCL provides a non-limitative list of a variety of protected works in the fields of literature art and sciences^[5] enabling the protection and the enhancement of culture and

entertainment within the Kingdom.

Additionally, the enforcement of copyright is considered to be a key factor in the success of this cultural and entertainment promotion, especially that the SCL consecrated its chapter 6 to provisions of infringements and penalties to be imposed in case of copyright' usurpation. Thus, enforcement is to be empowered and awareness campaigns are to be developed.

The protection of the IPRs will be useful for the society and encourage people to create, particularly if they shall reap the benefits from their own work or investment in a creation ^[6].

As for the trademark law, the Saudi trademark office in Riyadh, has adopted the GCC trademark law and its implementing regulations with effect from 29 September 2016 ^[7] (the New Trademark Law: NTL).

The NTL goes along with the internationalization of trade via the introduction of non-traditional trademarks and the unification of the trademark registration conditions in the GCC.

3. The new trademark Law in light of the vision

The old Saudi trademark law ^[8], likewise other legislations, were silent vis à vis the protection of non-traditional trademarks such as sounds and smell.

The evolution via the NTL is clearly mentioned in article 2: "A Trademark associated with a (...) smell shall be considered as Trademark".

By incorporating the olfactory trademark' protection under the NTL, a new concept of recognizing olfactory trademarks, unifying and facilitating the registration process is born ^[9].

This would enhance the protection regime afforded to the trademarks owners within the GCC, and the Kingdom is leading the way in accordance with the Vision. This introduction of new forms of non-traditional trademarks is evolving the IPRs system to become a part of the international trade system with three continents - as mentioned previously - especially with the European continent where EU ^[10] and other countries' Laws, likewise France, are protecting sound as Trademark ^[11].

Moreover, the NTL establishes uniformity amongst the different local Trademark Laws of the GCC member states: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates; in fact, the adoption of this New Trademark Law unifies the regulations of the GCC trademarks' protection and increases the role of the Kingdom in the GCC encouraging the investors to work in a unified trademark legal system within the GCC via the Kingdom playing by this a positive role to achieve the second pillar of the Vision: "The second pillar of our Vision is our determination to become a global investment powerhouse" ^[12].

However, this NTL does not provide a unified filing system in the GCC: this is the new challenge for the Kingdom and GGC now!

Furthermore, the NTL consecrates its title V for the enforcement of rights through specific provisions of infringement and penalties, likewise the SCL. Indubitably, an awareness campaign is to be developed promoting an IPRs' friendly environment for economic and business activities attracting national and international investors to the Kingdom. A useful awareness campaign would also advise on the protection of well-known trademarks in the Kingdom

especially that national and international business activities promoted and to be developed through the Vision are related to such trademarks and that the expansion of well-known trademarks' protection is obvious through the stipulations of the NTL in the Kingdom.

4. Expansion of well-known trademark protection

In 2015, a final decision issued by the court of appeal in Riyadh, (Decision n. 1/1023, 28/2/2015) cancelled the decision of the Saudi trademark office accepting the registration of the trademark GEA 20 in class 7.

According to the facts, the plaintiff claimed that the trademark GEA 20 is similar to the pre-existing and pre-registered trademark GEA in the same class 7. The trademark GEA is a well-known trademark and this is why it was registered in many countries.

As for the defendant, he mentioned that it is very difficult to define if the trademark GEA is well-know or not according to the old Saudi trademark law due to the inexistence of criteria defining the well-known trademarks. Therefore, alleging that the trademark is well-known according to the old Saudi trademark law was impossible. The defendant would not present such interpretation concerning the well-known trademark if he was defending himself before the Saudi courts based on NTL.

While the old Saudi trademark law was silent vis à vis the criteria defining a well-known trademark, the NTL was much more explicit and determined in article 4 section 2 those criteria based on:

"the awareness of the intended public of such a trademark in light of its promotion, registration period, use, number of countries where it is registered or where it became well-known, its value or the impact of such a mark on the promotion of the goods or services in respect of which the trademark is used."

The development of the NTL in adopting those criteria is in line with the development of the Saudi jurisprudence, in particular the criteria of the number of countries where the well-know trademark is registered.

Actually, the number of countries where the trademark is registered was recognized and adopted previously by the Saudi courts proving the fact that the legislation is progressing in the direction of evolution of the jurisprudence. In the decision rendered by the administrative court in Riyadh (decision n. 1/6530 date: 22/10/2016), the court recognized that the trademark is well-know because it was registered in many countries including Lebanon, Yemen, Colombia, Maldives and the United States of America. Moreover, the court stated that this criterion was sufficient to prove that the trademark is well-known.

On the other hand, the NTL defined in article 4 section 1 the well-known trademark stipulating: "the well-known trademark is the trademark "whose fame transcends the boundaries of their first country of registration." This definition is in conformity with the Saudi jurisprudence recognizing the geographical expansion of the trademark in many countries.

Alternatively, the NTL enumerated a list of distinctive signs that can't be registered as a trademark and mentioned in article 3 section 13 and 14 specific stipulations relative to the well-known trademark. The Law prohibits the registration of a

copied, imitated or translated well-known trademark used to identify identical or similar goods and services distinguished by the well-known trademark.

The protection of the well-known trademark didn't stop at this stage; the NTL granted a stronger protection for the well-known trademarks prohibiting the registration of copied, imitated or translated trademark even if the goods and or services distinguished by the well-known trademark are different from the goods and services distinguished by the counterfeited trademark. However, a condition comes along with the expansion of such protection transcending similar goods and services, granting the protection of well-known trademarks for different goods and services: the use of the imitated well-known trademark for services and or products that are not identical nor similar to those distinguished by the well-known trademark must "raise the likelihood of bringing harm to the interests of the well-known trademark's owner." Until t date, the Saudi jurisprudence is silent towards this expansion; future decisions will reveal how the Saudi courts will apply and interpret this expansion

5. Conclusion

IPRs' protection motivates people to create and to invent, assisting the development of culture, boosting innovation, creating new jobs and industries, improving the quality and enjoyment of life ^[13]. Promoting culture and entertainment, enjoying a healthy lifestyle as well as developing the Saudi cities ^[14] is to be achieved in the course of the IPRs' protection that will no doubt create a social and cultural well-being and a thriving economy as meant by the vision ^[15].

In 27 March 2017, the Saudi Council of Ministers issued a decree approving the establishment of the Saudi Intellectual Property Authority ^[15]. No doubt that the centralization of the intellectual property rights under one Authority will strengthen the protection and organize it, empowering a stronger intellectual property environment passing through the Vision.

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