



جامعة حائل  
University of Ha'il

# مجلة العلوم الإنسانية

## دورية علمية محكمة تصدر عن جامعة حائل



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دورية علمية محكمة تصدر عن جامعة حائل

للتواصل:

مركز النشر العلمي والترجمة

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## نبذة عن المجلة

### تعريف بالمجلة

مجلة العلوم الإنسانية، مجلة دورية علمية محكمة، تصدر عن وكالة الجامعة للدراسات العليا والبحث العلمي بجامعة حائل كل ثلاثة أشهر بصفة دورية، حث تصدر أربعة أعداد في كل سنة، وبحسب اكتمال البحوث المجازة للنشر. وقد نُحِتَت مجلة العلوم الإنسانية في تحقيق معايير اعتماد معامل التأثير والاستشهادات المرجعية للمجلات العلمية العربية معامل "آر سيف Arcif" المتوافقة مع المعايير العالمية، والتي يبلغ عددها (32) معياراً، وقد أُطلق ذلك خلال التقرير السنوي الثامن للمجلات للعام 2023.

### رؤية المجلة

التميز في النشر العلمي في العلوم الإنسانية وفقاً لمعايير مهنية عالمية.

### رسالة المجلة

نشر البحوث العلمية في التخصصات الإنسانية؛ لخدمة البحث العلمي والمجتمع المحلي والدولي.

### أهداف المجلة

تهدف المجلة إلى إيجاد منافذ رصينة؛ لنشر المعرفة العلمية المتخصصة في المجال الإنساني، وتمكن الباحثين -من مختلف بلدان العالم- من نشر أبحاثهم ودراساتهم وإنتاجهم الفكري لمعالجة واقع المشكلات الحياتية، وتأسيس الأطر النظرية والتطبيقية للمعارف الإنسانية في المجالات المتنوعة، ووفق ضوابط وشروط ومواصفات علمية دقيقة، تحقيقاً للجودة والريادة في نشر البحث العلمي.

## قواعد النشر

### لغة النشر

- 1- تقبل المجلة البحوث المكتوبة باللغتين العربية والإنجليزية.
- 2- يُكتب عنوان البحث وملخصه باللغة العربية للبحوث المكتوبة باللغة الإنجليزية.
- 3- يُكتب عنوان البحث وملخصه ومراجعته باللغة الإنجليزية للبحوث المكتوبة باللغة العربية، على أن تكون ترجمة الملخص إلى اللغة الإنجليزية صحيحة ومتخصصة.

### مجالات النشر في المجلة

تهتم مجلة العلوم الإنسانية بجامعة حائل بنشر إسهامات الباحثين في مختلف القضايا الإنسانية الاجتماعية والأدبية، إضافة إلى نشر الدراسات والمقالات التي تتوفر فيها الأصول والمعايير العلمية المتعارف عليها دولياً، وتقبل الأبحاث المكتوبة باللغة العربية والإنجليزية في مجال اختصاصها، حيث تعنى المجلة بالتخصصات الآتية:

- علم النفس وعلم الاجتماع والخدمة الاجتماعية والفلسفة الفكرية العلمية الدقيقة.
- المناهج وطرق التدريس والعلوم التربوية المختلفة.
- الدراسات الإسلامية والشريعة والقانون.
- الآداب: التاريخ والجغرافيا والفنون واللغة العربية، واللغة الإنجليزية، والسياحة والآثار.
- الإدارة والإعلام والاتصال وعلوم الرياضة والحركة.

### أوعية نشر المجلة

تصدر المجلة ورقياً حسب القواعد والأنظمة المعمول بها في المجالات العلمية المحكمة، كما تُنشر البحوث المقبولة بعد تحكيمها إلكترونياً لتعم المعرفة العلمية بشكل أوسع في جميع المؤسسات العلمية داخل المملكة العربية السعودية وخارجها.

### ضوابط النشر في مجلة العلوم الإنسانية وإجراءاته

#### أولاً: شروط النشر

#### أولاً: شروط النشر

1. أن يتسم بالأصالة والجدّة والابتكار والإضافة المعرفية في التخصص.
2. لم يسبق للباحث نشر بحثه.
3. ألا يكون مستلماً من رسالة علمية (ماجستير / دكتوراة) أو بحوث سبق نشرها للباحث.
4. أن يلتزم الباحث بالأمانة العلمية.
5. أن تراعى فيه منهجية البحث العلمي وقواعده.
6. عدم مخالفة البحث للضوابط والأحكام والآداب العامة في المملكة العربية السعودية.
7. مراعاة الأمانة العلمية وضوابط التوثيق في النقل والاقتباس.
8. السلامة اللغوية ووضوح الصور والرسومات والجداول إن وجدت، وللمجلة حقها في مراجعة التحرير والتدقيق النحوي.

#### ثانياً: قواعد النشر

1. أن يشتمل البحث على: صفحة عنوان البحث، ومستخلص باللغتين العربية والإنجليزية، ومقدمة، وصلب البحث، وخاتمة تتضمن النتائج والتوصيات، وثبت المصادر والمراجع باللغتين العربية والإنجليزية، والملاحق اللازمة (إن وجدت).
2. في حال (نشر البحث) يُزوّد الباحث بنسخة إلكترونية من عدد المجلة الذي تم نشر بحثه فيه، ومستلاً لبحثه .
3. في حال اعتماد نشر البحث تؤل حقوق نشره كافة للمجلة، ولها أن تعيد نشره ورقياً أو إلكترونياً، ويحق لها إدراجه في قواعد البيانات المحليّة والعالميّة - بمقابل أو بدون مقابل - وذلك دون حاجة لإذن الباحث.
4. لا يحقّ للباحث إعادة نشر بحثه المقبول للنشر في المجلة إلا بعد إذن كتابي من رئيس هيئة تحرير المجلة.
5. الآراء الواردة في البحوث المنشورة تعبر عن وجهة نظر الباحثين، ولا تعبر عن رأي مجلة العلوم الإنسانية.
6. النشر في المجلة يتطلب رسوما مالية قدرها ( 1000 ريال) يتم إيداعها في حساب المجلة، وذلك بعد إشعار الباحث بالقبول الأولي وهي غير مستردة سواء أجاز البحث للنشر أم تم رفضه من قبل المحكمين.

#### ثالثاً: توثيق البحث

أسلوب التوثيق المعتمد في المجلة هو نظام جمعية علم النفس الأمريكية (APA7)

## رابعاً: خطوات وإجراءات التقديم

1. يقدم الباحث الرئيس طلباً للنشر (من خلال منصة الباحثين بعد التسجيل فيها) يتعهد فيه بأن بحثه يتفق مع شروط المجلة، وذلك على النحو الآتي:
    - أ. البحث الذي تقدمت به لم يسبق نشره (ورقياً أو إلكترونياً)، وأنه غير مقدم للنشر، ولن يقدم للنشر في وجهة أخرى حتى تنتهي إجراءات تحكيمه، ونشره في المجلة، أو الاعتذار للباحث لعدم قبول البحث.
    - ب. البحث الذي تقدمت به ليس مستلماً من بحوث أو كتب سبق نشرها أو قدمت للنشر، وليس مستلماً من الرسائل العلمية للماستير أو الدكتوراة.
    - ج. الالتزام بالأمانة العلمية وأخلاقيات البحث العلمي.
    - د. مراعاة منهج البحث العلمي وقواعده.
  - هـ. الالتزام بالضوابط الفنية ومعايير كتابة البحث في مجلة العلوم الإنسانية بجامعة حائل كما هو في دليل المؤلفين
- كتابة البحوث المقدمة للنشر في مجلة العلوم الإنسانية بجامعة حائل وفق نظام APA7
2. إرفاق سيرة ذاتية مختصرة في صفحة واحدة حسب النموذج المعتمد للمجلة (نموذج السيرة الذاتية).
  3. إرفاق نموذج المراجعة والتدقيق الأولي بعد تعبئته من قبل الباحث.
  4. يرسل الباحث أربع نسخ من بحثه إلى المجلة إلكترونياً بصيغة (word) نسختين و (PDF) نسختين تكون إحداها بالصيغتين خالية مما يدل على شخصية الباحث.
  5. يتم التقديم إلكترونياً من خلال منصة تقديم الطلب الموجودة على موقع المجلة (منصة الباحثين) بعد التسجيل فيها مع إرفاق كافة المرفقات الواردة في خطوات وإجراءات التقديم أعلاه.
  6. تقوم هيئة تحرير المجلة بالفحص الأولي للبحث، وتقرير أهليته للتحكيم، أو الاعتذار عن قبوله أولاً أو بناء على تقارير المحكمين دون إبداء الأسباب وإخطار الباحث بذلك
  7. تملك المجلة حق رفض البحث الأولي ما دام غير مكتمل أو غير ملتزم بالضوابط الفنية ومعايير كتابة البحث في مجلة حائل للعلوم الإنسانية.
  8. في حال تقرر أهلية البحث للتحكيم يخطر الباحث بذلك، وعليه دفع الرسوم المالية المقررة للمجلة (1000 ريال غير مستردة من خلال الإيداع على حساب المجلة ورفع الإيصال من خلال منصة التقديم المتاحة على موقع المجلة، وذلك خلال مدة خمس أيام عمل منذ إخطار الباحث بقبول بحثه أولاً وفي حالة عدم السداد خلال المدة المذكورة يعتبر القبول الأولي ملغى.
  9. بعد دفع الرسوم المطلوبة من قبل الباحث خلال المدة المقررة للدفع ورفع سند الإيصال من خلال منصة التقديم، يرسل البحث لمحكمين اثنين؛ على الأقل.
  10. في حال اكتمال تقارير المحكمين عن البحث؛ يتم إرسال خطاب للباحث يتضمن إحدى الحالات التالية:
    - أ. قبول البحث للنشر مباشرة.
    - ب. قبول البحث للنشر؛ بعد التعديل.
    - ج. تعديل البحث، ثم إعادة تحكيمه.
    - د. الاعتذار عن قبول البحث ونشره.
  11. إذا تطلب الأمر من الباحث القيام ببعض التعديلات على بحثه، فإنه يجب أن يتم ذلك في غضون (أسبوعين من تاريخ الخطاب) من الطلب. فإذا تأخر الباحث عن إجراء التعديلات خلال المدة المحددة، يعتبر ذلك عدولاً منه عن النشر، ما لم يقدم عذراً تقبله هيئة تحرير المجلة.
  12. في حالة رفض أحد المحكمين للبحث، وقبول المحكم الآخر له وكانت درجته أقل من 70%؛ فإنه يحق للمجلة الاعتذار عن قبول البحث ونشره دون الحاجة إلى تحويله إلى محكم مرجح، وتكون الرسوم غير مستردة.

13. يقدم الباحث الرئيس (حسب نموذج الرد على المحكمين) تقرير عن تعديل البحث وفقاً للملاحظات الواردة في تقارير المحكمين الإجمالية أو التفصيلية في متن البحث
14. للمجلة الحق في الحذف أو التعديل في الصياغة اللغوية للدراسة بما يتفق مع قواعد النشر، كما يحق للمحررين إجراء بعض التعديلات من أجل التصحيح اللغوي والفني. وإلغاء التكرار، وإيضاح ما يلزم. وكذلك لها الحق في رفض البحث دون إبداء الأسباب.
15. في حالة رفض البحث من قبل المحكمين فإن الرسوم غير مستردة.
16. إذا رفض البحث، ورغب المؤلف في الحصول على ملاحظات المحكمين، فإنه يمكن تزويده بهم، مع الحفاظ على سرية المحكمين. ولا يحق للباحث التقدم من جديد بالبحث نفسه إلى المجلة ولو أجريت عليه جميع التعديلات المطلوبة.
17. لا تردّ البحوث المقدمة إلى أصحابها سواء نشرت أم لم تنشر، ويخطر المؤلف في حالة عدم الموافقة على النشر
18. يحق للمجلة أن ترسل للباحث المقبول بحثه نسخة معتمدة للطباعة للمراجعة والتدقيق، وعليه إنجاز هذه العملية خلال 36 ساعة.
19. هيئة تحرير المجلة الحق في تحديد أولويات نشر البحوث، وترتيبها فنياً.

## المشرف العام

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## Legal Protection of Trademarks in Saudi Legal Framework (A Contemporary Vision)

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أستاذ القانون التجاري المساعد، قسم القانون، كلية الشريعة والقانون،

(تاريخ الاستلام: 2025/02/10، تاريخ القبول: 2025/04/27، تاريخ النشر: 2025/05/30)

### Abstract

The aim of this research is to demonstrate the legal protection of trademarks in the Saudi law issued by Royal Decree No. (M/21) dated 5/28/1423 AH. It uses both the descriptive and analytical methods. The research discusses the concept of trademarks both linguistically and technically, the criteria for trademark fame and its importance, the civil protection of famous trademarks in the Saudi system, the criminal protection of famous trademarks in the Saudi system, and the forms of trademark protection in the Saudi system. The research concludes with the following key findings: A trademark is a symbol or feature that takes a specific, distinctive form, adopted by merchants, manufacturers, farmers, or service providers to differentiate goods or services and indicate their source, type, status, guarantee, or method of preparation; The Saudi legislator grants the trademark registrant the right to own and exploit the trademark; One of the rights to exploit a trademark is that the owner has the right to transfer its ownership to others; The Saudi legislator grants the trademark owner the right to continue exploiting and using the trademark; To protect the trademark criminally, the Saudi legislator has outlined the crimes associated with infringing upon a trademark.

**Keywords:** Legal protection, trademarks, Saudi law.

### المستخلص

هدف البحث إلى بيان الحماية القانونية للعلامة التجارية في النظام السعودي والصادر بالمرسوم الملكي رقم (م/٢١) بتاريخ ١٤٢٣/٥/٢٨هـ، واستخدمت فيه المنهج الوصفي، والمنهج التحليلي، وتحدثت فيه عن مفهوم العلامة التجارية لغة واصطلاحاً، ومعايير شهرة العلامة التجارية وأهميتها، وحماية العلامة التجارية المشهورة مدينياً في النظام السعودي، وحماية العلامة التجارية المشهورة جنائياً في النظام السعودي، وصور حماية العلامة التجارية في النظام السعودي، ثم الخاتمة، وفيها أهم النتائج: العلامة التجارية هي إشارة أو سمة تتخذ شكلاً معيناً، مميزاً، يتخذها التجار، أو الصناع، أو الزراع، أو مقدم الخدمة؛ لتمييز البضائع، أو الخدمات، للدلالة على مصدرها، أو نوعها، أو مرتبتها، أو ضمانتها، أو طريقة تحضيرها؛ منح المنظم السعودي مسجل العلامة التجارية حق تملك العلامة التجارية واستغلالها؛ من حقوق استغلال العلامة التجارية أنه مالكةا له الحق في نقل ملكيتها للآخرين؛ منح المنظم السعودي مالك العلامة التجارية الحق في الاستمرار في استغلال تلك العلامة واستخدامها؛ ولحماية العلامة التجارية قانونياً قام المنظم السعودي ببيان العقوبات المترتبة على الاعتداء على العلامة التجارية.

**الكلمات المفتاحية:** الحماية القانونية، العلامات التجارية، النظام القانوني السعودي.

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التمويل: لا يوجد تمويل لهذا البحث

### Introduction:

A trademark is: “Everything that distinguishes a specific product, whether a commodity or service, from others, such as names that take a distinctive form, signatures, words, letters, numbers, drawings, symbols, raised engravings, or a group of colors that take a distinctive form, and others (Eisa, 2013). A trademark can also be defined as “a sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitor (Emruli, Safet, Agim , & Kadriu, 2016).

Trademarks have received great attention that is different from other trademarks, due to the importance of a trademark, and this attention was not limited to local laws, but the famous trademark was the subject of interest of international agreements and laws(The Gulf Cooperation Council Trademark System Agreement, the unified system was issued in 2006 and entered into force in the Kingdom of Saudi Arabia in 2016), as Arab and international laws were interested in famous trademarks, their controls, and methods of protecting them.

In the present era of highly competitive markets, the protection of trademarks has become a crucial need for preventing actions or forms of misuse that could harm legitimate trademark owners (Rosalind, Monica , & S.T. Kansil, 2025)

In the Kingdom of Saudi Arabia, the trademark system guarantees the protection of trademarks on similar products or services even if they are not registered, and this is largely consistent with what is stated in the Paris Convention(The Paris Convention for the Protection of Industrial Property, which the Kingdom of Saudi Arabia joined in 2004) and the TRIPS Agreement on the Protection of Trademarks (The Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which is supervised by the World Trade Organization, and which the Kingdom of Saudi Arabia joined in 2005), and due to the importance of this topic, this study came under the title: “Legal Protection of Trademarks in Saudi System”.

### Significance of the Study:

The importance of the study is attributed to the following:

1. The spread of trademark locally and internationally.
2. The urgent need to protect these trademarks from infringement.

3. There are several cases of infringement on trademarks.
4. The keenness of many people to obtain the famous trademark.

### Research Objectives:

1. Explaining the concept of the trademark.
2. Identifying the criteria for the fame of the trademark.
3. Highlighting the methods of protecting the trademark in the Saudi System.
4. Focus on recent amendments to the Saudi system.
5. Integration with trademark protection under international agreements.
6. Highlighting the shift toward protecting non-traditional trademarks.

### Previous Studies:

Although there are relevant previous studies, they are outside the scope of focus of the present research (i.e., Saudi Arabia). However, they were reviewed for the research’s structural framework. These studies include the following:

#### • First Study:

Noha Khaled Eisa, The Famous Trademark: A Comparative Study, Journal of Babylon University for Humanities, vol. (21), iss. (1), 2013.

The study aims to explain the concept of famous trademarks, the criteria for the fame of a trademark, and the civil and criminal protection of famous trademarks.

1. Despite the importance of famous trademarks, the legislation that stipulated it did not define it, but rather left that within the framework of the task of jurisprudence and the judiciary.
2. Objective criterion: It relates to the extent of the public’s knowledge of the trademark, the duration of its use, the duration of advertising and publicity, the number of countries in which it was registered, and its value in commercial markets.

Through the above results, the study recommended the following:

1. We hope that the Iraqi legislator, when enacting a law regulating the provisions of famous trademarks, will explain to us the criteria that we can

rely on to determine the fame of trademarks.

2. We would like the Iraqi legislator to explain to us the limits of the fame of trademarks, i.e., is fame within the country sufficient to consider it a famous trademark, or should this fame be at the global level.
3. Difference between the present study and this previous study: previous study focused on trademarks in the Iraqi law, while the present study focuses entirely on trademarks in the Saudi law.

### • Second Study:

Hamza, Waleed Saleh, Legal Protection of Trademarks, Doctoral thesis, Faculty of Sharia and Law, Omdurman Islamic University, 2014.

The study aims to clarify the concept of trademark and what distinguishes it from others, the historical evolution of trademarks, the civil and legal protection of trademarks, and the international protection of trademarks.

From the above, the study concluded the following findings:

1. Trademark is of great importance, as it is linked to people's rights and interests, thus, the Sudanese legislator attached trademark registration and responsibility to the position of the Public Prosecutor, or his appointee.
2. Yemeni and Sudanese legislations approve a single penalty for trademark infringement.

### The study recommended the following:

Delete paragraph (2) of Article (27) of the Trademark Law of 1969. And increase the penalty for recidivism, as recidivism indicates that the penalties resulting from infringement of trademarks have no effect.

This study focused on famous trademarks in Yemen and Sudan, unlike the present study, which focuses on the Saudi system only.

### Research Problem:

The problem that the present research addresses concerns the following: the protection of famous trademarks. The present research focuses on the Saudi law by answering the following questions.

The problem that the studies are studying and imposing hypotheses to solve, is legal protection of famous trademarks, by answering the following questions:

1. What is the concept of a trademark?
2. What are the criteria for the fame of a trademark in the Saudi System?
3. What are the methods of protecting a trademark in the Saudi System?

### Study Limits:

Objective study limits: Methods of protecting a trademark in the Saudi System.

### Study Approach:

The study followed the descriptive, analytical, and deductive approach, by collecting data and information related to the protection of a famous trademark, and analyzing it in a neutral manner, in order to reach objective and neutral results.

### Research Structure:

The research consists of an introduction and two themes, they are as follows:

- 1- The introduction includes:
  - a. Research importance
  - b. Research objectives
  - c. Research problem
  - d. Previous studies
  - e. Research limits
  - f. Research approach
- 2- Theme one: Definition of research terms
  - a. First topic: Definition of the mark in language and technically.
  - b. Second topic: Definition of the trademark in language and technically.
- 3- Theme two: Trademark Fame Criteria and Importance.
  - a. First topic: Trademark Fame Criteria.
  - b. Second topic: Importance of Trademarks.
- 4- Theme three: Trademark Protection Methods in the Saudi System.
  - a. First topic: Protection of a Civilly Registered Trademark in the Saudi System.
  - b. Second topic: Protection of a Criminally Registered Trademark in the Saudi System.
  - c. Third topic: Forms of Trademark Protection in the Saudi System.
- 5- Conclusion:
  - a. The most important findings.
  - b. Recommendations.
- 6- Sources and references.
- 7- Table of contents.

## Theme One: Definition of Research Terms

### • First Topic: Definition of the Mark in Language and Technically

#### o First Section: The Notion of the Mark in Language:

Mark: feature. Plural: marks. Landmark: place of mark. Mark and sign: separation between two lands. Mark and sign: something that is erected in the wilderness to guide the lost. Sign: tall mountain (Ibn Sidah, 2000) He designated a mark for him made for him a feature or sign which he could recognize. Mark: feature, sign, or emblem by which things are known. From this: trademark (Omar, 2008).

Ibn Faris said: "The letters 'ayn, lam, and mim are one sound root, indicating a trace on something that distinguishes it from others, such as the mark, which is well-known. It is said: I put a mark on something (Ibn Faris, 1979).

Through the definition of the mark by linguists, we find that it is a trace of the thing, a prominent feature of it, a slogan, and a sign by which things are known. From this, the concept of the trademark was taken, which distinguishes one company from another, or one activity from another.

#### o Second Section: Definition of the Mark Technically:

The mark: "It is the sign that requires knowledge of it to assume the existence of the meaning, and it is inherent in the thing, it does not leave it (Al-Jurjani, 1983).

### • Second Topic: Definition of the Trademark in Language and Technically:

#### o First Section: Definition of Trade in Language:

A person trades: he trades, he engages in buying and selling. A merchant: someone who engages in commercial activities, buying and selling, professionally (Omar, 2008); He trades and commerce. He also trades, so he is a merchant. The plural is merchants. The Arabs call a wine trader a merchant, and a merchant's marketable, meaning salable in trade and the market. A commercial land: one where there is trade (Al-Jauhari, 1987).

#### o Second Section: Definition of Trade Technically:

Trade: "selling or buying for profit (Qalaji, Qunaibi, 2008).

Trade is defined as: "the exchange of goods,

services, and other various elements of production between individuals or countries ( (Abdullah, The 8th Annual Conference).

#### o Third Section: The Concept of Trademark:

The trademark has been defined in several ways, including:

The trademark: "A symbol or sign used by the producer, manufacturer, or merchant to distinguish his products or goods from their counterparts (Hamza, 2014).

This definition is one of the narrow definitions of the trademark, as it did not address the service within the trademark.

It was also defined as: "Any material sign placed by the manufacturer on his products, or the merchant on his goods, or by the one who provides a specific service on the interface of providing this service, and this sign can distinguish it from its counterparts of other manufactured goods, commodities, and services (Hamza, 2014)..

This definition is distinguished by the fact that it was not limited to the signs and symbols used by manufacturers or merchants, but rather expanded the concept of the trademark to include the signs placed by service providers for their services.

It is defined as: "The economic project's means of distinguishing its products or services from other products or services. This is achieved by using distinctive signs or marks that stick in the minds of consumers of these products or service seekers, leading to the product or service becoming more popular in proportion to the value of the mark associated with it (Hamza, 2014).

It is defined as a sign or feature that takes a specific, distinctive form, adopted by merchants, manufacturers, farmers, or service providers to distinguish goods or services, to indicate their source, type, rank, guarantee, or method of preparation (Hamza, 2014).

The Egyptian law defines it as: names that take a distinctive form, signatures, words, letters, numbers, drawings, symbols, shop addresses, stamps, seals, pictures, raised engravings, and any other mark, or any combination thereof if they are used, or intended to be used, to distinguish the products of industrial work, agricultural exploitation, forest exploitation, or land extracts, or any goods to indicate the source of the products or goods, their type, rank, warranty, or method of preparation, or to indicate the performance of a service (Egyptian Trademarks Law, 1939).

The Saudi System defined the trademark, stating: “A trademark, in application of the provisions of this system, is considered to be names that take a distinctive form, signatures, words, letters, numbers, drawings, symbols, seals, or raised engravings, or any other sign or any combination thereof that is visually perceptible and suitable for distinguishing industrial, commercial, craft, or agricultural products, a forest exploitation project, or a natural resource, or to indicate that the thing on which the mark is to be placed belongs to the owner of the mark due to its manufacture, selection, invention, or trade, or to indicate the performance of a service (The Law of Trademarks, 1423 AH).

According to this definition, the Saudi legislator has sought to establish a comprehensive definition of the trademark, as he considered that all names that can be used as a distinctive mark, including signatures, words, letters, numbers, drawings, symbols, seals or raised engravings, are considered elements of the trademark. He also set a basic condition for the use of these elements, which is that they are visually perceptible and suitable for distinguishing different products, whether industrial, commercial, craft, agricultural, or related to forest exploitation projects or natural resources.

A famous trademark is defined as: a brand known to a wide segment of the public and has a prestigious position.

This definition narrows the definition of a famous trademark, because it limits fame to the public's knowledge, and that the product's reputation is good.

It is defined as: a distinctive mark that can distinguish between a commodity, product, or service, or similar, of the same type, and is clearly known to the public concerned (Saeed & Mustafa, 2007).

A famous trademark is also defined as: a brand that has spread widely among the public and is recognized by many the public, where this brand becomes famous worldwide, such as: Coca-Cola for soft drinks, and Mercedes for cars.

From the above, it becomes clear to us that there are many laws related to trademarks; however, they did not address the trademark, nor did they set a specific limit for it, which would cause many problems and legal issues in the event of a dispute. Therefore, the laws must address this matter and seek to define the famous trademark, distinguishing it from other trademarks. This is what the Saudi regulator did, as it recognized the seriousness of the matter and the

urgent need for it and set a definition that distinguishes it from others (Abu Al-Rab, 2014).

It also becomes clear to us that the famous trademark is nothing but an ordinary trademark in origin, but it was able to achieve international fame in many countries of the world and became known to a large segment of the public on the global level. The spread of the trademark and its crossing the borders of the country in which it was registered, earns it global fame.

### Theme Two: Trademark Fame Criteria and Importance:

#### • First Topic: Trademark Fame Criteria:

It was previously stated that a famous trademark is a regular trademark that gained its fame through its worldwide reputation, until it gained its global fame, and exceeded its original country in which it was registered, and which international agreements and conventions work to protect. Many Arab and non-Arab legislations, and international conventions stipulated the availability of certain criteria for a trademark to become famous and set many criteria for the fame of a trademark, and among those criteria.

The Paris Convention for the Protection of Industrial Property held many meetings to determine the objective criteria for a famous trademark. In 1999, the WIPO organization held a meeting attended by the General Assembly of the Paris Union for the Protection of Industrial Property, and the meeting resulted in a joint recommendation for it related to famous trademarks, and the recommendation determined the absolute freedom of countries in which trademarks were registered; to estimate the objective bases for the fame of a trademark (Abu Al-Rab, 2014).

#### o Objective Criteria:

There are many objective criteria for the fame of a trademark, including:

The fame and spread of the trademark among a large segment of the public, which is measured by the extent of the public's demand for consuming goods bearing that trademark.

The geographical scope of the use of the trademark, and the extent of its use, as it is not a condition for the protection of a famous trademark that it be registered in the country in which the trademark protection is required, but it is sufficient that the trademark be known among the consumer public,

through advertising and publicity of that trademark among people.

It is not necessary for a famous trademark to be in the name of one person. Rather, it is possible for the trademark to be owned by more than one company in many countries, but on the condition that these companies belong to the parent company that owns the trademark, and in whose name the trademark was registered.

Determining the value of the trademark, the higher the value of the trademark, the more it indicates its fame, as the increase in the financial value of the trademark is a criterion for the fame of the trademark (Abu Al-Rab, 2014).

The objective criterion plays a major role in the fame of the trademark, as through this criterion the fame of the trademark is known, which has exceeded the borders of the country in which it is registered to be widespread across the countries of the world, through what the company that owns the trademark produces of distinctive products, distinctive services, in addition to the advertisements that accompany this trademark, and good marketing and promotion of it, in order to reach the largest possible segment of the public across the different countries of the world, as the agreement considered advertising a condition of the legal protection of the trademark.

According to the TRIPS Agreement of 1994, Article 16, paragraph 2, stipulates that "...When determining whether a trademark is famous, member states shall take into account the extent of knowledge of the trademark in the relevant public sector, including its knowledge in the member state concerned as a result of the promotion of the trademark (Al-Sagheer ,2007).

According to this agreement, the objective criterion for the fame of a trademark is determined by the competent authority in the country in which the trademark is promoted, and the objective criterion depends on the fame of the trademark across the countries of the world (Abu Al-Rab, 2014).

### **o Subjective Criteria:**

Just as there are objective criteria for the trademark, there are also subjective criteria. The subjective criterion for the trademark depends on the extent of the trademark's spread locally and internationally, as the trademark attracts customers internationally and globally, and expands the company's commercial activities.

The subjective criterion for the trademark is the

extent of the public's spread and knowledge of this trademark. The subjective criterion is the segment of the public that consumes and benefits from goods, as the public buys goods and services bearing the trademark. Accordingly, the spread of the trademark among the public is the basis for its acquisition of fame, and it becomes a famous trademark.

The TRIPS Agreement of 1994 took interest in the subjective criterion of the famous trademark. This criterion is based on the public's knowledge of this trademark. The agreement also clarified that member states must consider, when assessing the description of a trademark as famous, that the trademark is widespread among the public of beneficiaries and consumers, and the more widespread the trademark is among the public of consumers and beneficiaries, the more famous it is.

There is a dispute over defining the concept of the public, which stipulates as a subjective criterion that the trademark be well-known to them, for the trademark to enjoy fame. There is a trend that sees the audience as: the consumer audience, and the beneficiaries of the product or service that bears the distinctive trademark.

Others thought that the public are those who deal with the goods that bear the trademark, and this opinion is consistent with what was stated in the recommendation of the Paris Joint Convention regarding the protection of the famous trademark, which defined the public as the sector of actual consumption of goods, and actual use of services, and this category can be determined through the consumption and use of goods and services that bear the trademark.

According to this view, the public includes distributors, representatives, and agents who deal with goods bearing these trademarks, as well as importers, and owners of companies that deal with goods that bear such trademarks.

Considering the first and second points of view, taking the first point of view in considering the public in its broad sense as a subjective criterion for the fame of the trademark is a theoretical criterion more than a practical one, as taking it is a kind of theorizing, which is far from reality, and the closest to reality are the owners of the second point of view, which defined the categories of the public, who consider the fame of the trademark to them, and their knowledge of the trademark that the goods or services carry is the subjective criterion for the fame of the trademark that is closest to reality (Abu Al-Rab, 2014)

From the above, it becomes clear to us that in order for a famous trademark to enjoy international protection, there are many criteria stipulated in international agreements and conventions, which stipulated the existence of objective and subjective criteria in order to consider the trademark a famous trademark, and not an ordinary one, and among those criteria was the fame of the trademark among the public within the country, and at the global level, although there were multiple points of view on the concept of this public, but the closest to reality is defining the public as consumers, and the actual beneficiaries of goods and services, and that expanding the scope of the public makes it closer to theory than to reality.

### Second Topic: Importance of Trademarks:

The importance of the trademark stems from the multiple functions it performs, whether for the manufacturer, merchant, service provider or consumer, as it gains its value for all parties. The functions of the trademark can be summarized as follows:

#### • Identifying the Source of Products, Goods and Services:

The trademark identifies two main sources of the product: the first is the personal source, i.e. the party responsible for its production, whether it is an individual establishment, a company or an institution. The second is the regional source, i.e., the geographical location where the product was produced. Through these two sources, the consumer can easily distinguish between products, as the trademark indicates the source of goods and services.

#### • Symbol of Trust in the Qualities of Products, Goods and Services:

The trademark reflects the qualities of products that distinguish them from others, whether in terms of type, i.e., the characteristics that make the product different from similar products, or rank, which indicates the degree of quality and mastery. Thus, the trademark contributes to enhancing confidence among consumers, which prompts them to prefer these products over others.

#### • A means of Advertising Products, Goods and Services:

The trademark is an effective means of advertising products and services. It is a primary tool for merchants, manufacturers, and service providers to promote their brands, which facilitates their access to the public through various advertising means, especially in the era of satellites and the Internet. There-

fore, companies are keen to emphasize the quality of their products through advertising campaigns, as the trademark is the cornerstone in attracting the attention of consumers.

#### • A Means of Legitimate Competition:

The trademark plays a pivotal role in the success of economic projects, as it contributes to distinguishing products from other similar goods, which helps merchants reach the consumer audience. On the other hand, the trademark serves consumers by helping them identify the products they prefer. Therefore, the trademark is an important tool in legitimate competition, as it contributes to achieving justice among workers in trade, industry, and services, which enhances consumers' confidence in products.

#### • Guarantee to Protect Consumers:

The trademark is one of the most important means of protecting consumers, as it protects them from fraud and deception. Consumers may be exposed to attempts by some producers to hide the defects of their products and promote them in a misleading manner, which makes them think that these products have the announced specifications. Thanks to the trademark, consumers can verify the accuracy of this information, thus protecting them from counterfeit products.

#### • The Trademark is a Guarantee for the Product:

The trademark provides protection for the product, as it guarantees it the benefit of using the trademark as an indicator of its association with its facility or producer. The trademark also enhances the spirit of competition in the markets, as producers seek to constantly improve their products to attract consumer confidence, which contributes to the development of quality and innovation (Al-Turki,2024).

### Theme Three: Trademark Protection Methods in the Saudi System:

The protection of a famous trademark plays a major role in protecting the owner of these trademarks from being exploited by others, which causes him many harms. The protection of a trademark is one of the topics that has a great connection to economic and commercial development at the global level. The famous trademark has received global and local attention, which paid off, and had a great impact on protecting famous trademark from being abused. There are many means and ways to protect famous trademarks, and this is what we will study in the first and second sections.

### • First topic: Protection of a Civilly Registered Trademark in the Saudi System:

Based on international agreements such as: TRIPS Agreement, Paris Convention and Arab agreements, and under these agreements and legislations, the owner of a famous trademark enjoys legal protection for the trademark he owns, if that trademark is abused by someone other than its owner. This legal protection for famous trademarks comes to preserve the reputation of the company and the product, and to prevent the misuse of that trademark, which causes the company owner huge losses.

The trademark has been granted civil protection by the relevant civil legislation, as there is a consensus among Arab legislations to protect famous trademarks from infringement, and this is represented by the right of the owner of the famous trademark to claim compensation if another person infringes on that trademark registered in his name.

Trademark has received civil protection from relevant civil regulations, as there is consensus among Arabic regulations in Egypt, UAE, Kuwait, and other Arab countries on the protection of famous trademarks from infringements. This is achieved in giving the registered trademark's owner the right to demand compensation in the event that someone else infringes the trademark.

The owner of a famous trademark may also resort to the court to demand the cancellation of the trademark like his, and to prevent those products that use the trademark he owns, in accordance with the rules and laws in force.

International agreements are concerned with protecting the owner of a famous trademark with international protection, "and according to the first paragraph of Article 16/1 of the TRIPS Agreement, the owner of a registered trademark has the absolute right to prevent others from using his trademark, or any similar trademark, in relation to goods or services distinguished by the trademark, or similar goods in relation to which the use of the trademark would lead to the possibility of confusion (Al-Saheer, 2007).

#### The Paris Convention of 1979 states:

A- The countries of the Union undertake, either on their own initiative if their legislation allows for this, or at the request of the interested party, to refuse or invalidate the registration and to prohibit the use of an industrial or commercial trademark which constitutes a copy, imitation or translation likely to

create confusion with a trademark which the competent authority in the country of registration or use considers to be well-known as the trademark of a person enjoying the benefits of this Convention and used on identical or similar goods.

B- A period of not less than five years from the date of registration must be granted to request the cancellation of such a trademark.

C- No period may be specified to request the cancellation or prevention of the use of trademarks that have been registered or used in bad faith (Paris Agreement, 1979).

The TRIPS Agreement expanded the protection of famous trademarks, so their protection included trademarks for service sectors, and did not limit protection to trademarks specific to industry or trade (Abu Al-Rab, 2014)

In the TRIPS Agreement: "The owner of a trademark shall have the exclusive right to prevent any other person from using signs or a similar trademark in relation to identical or similar goods or services, whenever such use is likely to result in a likelihood of confusion. The likelihood of confusion is presumed when the goods or services are similar (Article 16-1), and members may provide for limited exceptions such as the legitimate use of descriptive terms (TRIPS).

This article confirmed what the Paris Convention stipulated regarding the protection of a famous trademark from being abused by anyone other than its owner. Rather, it added to this Convention the protection of trademarks specific to the service sector, which the Paris Convention overlooked. In addition, the Paris Convention did not set specific standards for a famous trademark that enjoys legal protection and left the determination of that to the member states. In contrast, the TRIPS Agreement, which defined the famous trademark as: "Any sign that allows the goods and services of an establishment to be distinguished from the goods and services of other establishments is considered eligible to be a trademark (including service trademarks) Article 15-1 (TRIPS).

Thus, the importance of the famous trademark and its international civil protection from exploitation or infringement becomes clear to us. The Paris Convention and TRIPS Agreement have combined in an integrated manner on the need to protect famous trademarks, as they have defined the rights of the owner of the famous trademark and granted him all the rights that enable him to prevent others from

infringing on his trademark.

From the above, it becomes clear to us the Arab and international interest in protecting famous trademarks, as famous trademarks have received great attention, as many agreements and meetings have been held, and many decisions have been taken in order to protect the owners of famous trademarks, and give their owners the right to prevent others from using or abusing them, and even has the right to prevent products bearing the famous trademark that has been abused from being circulated in the markets, and thus famous trademarks enjoy great civil protection from civil organizations concerned with protecting intellectual property, including protecting trademarks from illegal exploitation by individuals or institutions, due to the severe damages resulting from this illegal use, or abuse on the trademark, which holds the wrongful abuser fully legally responsible, and gives the owner of the trademark the right to request compensation, request the cancellation of the trademark, and stop the circulation of those products bearing the abused trademark.

According to the legal texts in the Saudi laws, the trademark is civilly protected by four legal entities:

- The Law of Trademarks issued by Royal Decree No. M/21 dated 28/5/1423 AH, which prohibits all forms of trademark infringement and grants the affected party the right to claim compensation and stop the infringement of his trademark.
- Competition Law issued by Royal Decree No. M/75 dated 6/29/1440 AH, in its article 2, which states that the law aims to protect and encourage fair competition, and combat and prevent monopolistic practices that affect legitimate competition or the interest of the consumer, which leads to improving the market environment and developing the economy. Since trademark infringement is considered an act of unfair competition, Article 25 of this law stipulates that any natural or legal person who suffers harm because of practices that violate the provisions of the law may submit a request for compensation before the competent court.
- Trademarks Law of the Gulf Cooperation Council States of 1435 AH.
- The general rules of civil liability contained in the Civil Transactions Law issued by Royal Decree No. M/191 dated 11/29/1444 AH, as infringement of a trademark causes damage to the commercial establishment and requires compensation (Ghawanmeh, 2024).

- Second Topic: Protection of a Criminally Registered Trademark in the Saudi System:

Criminal laws are concerned with protecting famous trademarks, to protect the owner of these trademarks from illegal exploitation of or infringement on the trademark. The civil protection of the trademark has resulted in a dispute over the acts that fall under unfair competition, which results in harm to the owner of a trademark, which is a justification for claiming compensation. This problem includes criminal protection, by imposing a penalty for a crime. The crime has two elements: material and moral. The legal principles and rules require the right of the owner of a trademark to sue whoever abused his trademark. For the trademark to enjoy protection, a famous trademark must be registered, and the abuse must occur on the trademark itself (Abu Al-Rab, 2014).

The Law of Trademarks has defined the acts that constitute crimes affecting a trademark, which achieves criminal liability and entails punishment, in application of the rule “no crime and no punishment except by text”. Here, we will limit ourselves to mentioning the acts that constitute crimes and the penalties prescribed for them, in addition to other penal measures stipulated by the law, which are:

#### o Trademark Counterfeiting:

The crime of counterfeiting or imitating a trademark is one of the most widespread crimes, as it leads to misleading and deceiving the consumer, making him believe that he is buying the original product. For this crime to be committed, its elements must be present. As is the case with other crimes, the crime of counterfeiting a trademark is based on two main elements: the material element and the moral element.

The material element: The material element in this crime consists of the act of counterfeiting, which is achieved by creating a trademark that is completely identical to the original trademark. This act may be done through imitation, i.e. by placing a trademark similar to or close to the original trademark. One of the most important principles decided by the judiciary in the context of imitation is that it leads to deceiving and misleading the consumer and makes it difficult for him to distinguish between goods bearing a counterfeit or imitated trademark and goods bearing the original one. The counterfeiting must also be done without the consent of the trademark owner.

The moral element: The moral element in the crime of counterfeiting or imitating a trademark is represented by the presence of the intent to defraud

on the part of the perpetrator, which is assumed, meaning that the perpetrator's will, while knowing that the trademark is registered, has been directed towards committing the act of counterfeiting or imitating the trademark with the aim of violating the right to the trademark and misleading the consumer. Counterfeiting is only punishable in the event of bad faith, which is represented by the presence of intent and will on the part of the perpetrator to violate the scope of the trademark by deceiving and misleading the consumer using this fraud. In other words, the perpetrator's will have been directed towards committing the act of counterfeiting or imitating; if the will to carry out the act constituting the crime is absent, the perpetrator is not punished (Ghawanmeh, 2024).

#### **The Saudi Trademark Law states:**

A- Anyone who forges or imitates a registered trademark in a manner that misleads the public, and anyone who maliciously uses a forged or imitated trademark.

B- Anyone who maliciously places on his products or uses in connection with his services a trademark owned by another.

C- Anyone who displays, offers for sale, sells, or possesses with the intent to sell products bearing a forged, imitated, or illegally placed or used trademark, knowing that, as well as anyone who offers services under such a trademark, knowing that (Article 43, 1423 AH) .

#### **o Use of a Trademark with Malicious Intention:**

This crime occurs is when the perpetrator possesses or displays goods and merchandise for sale or for trading bearing a counterfeit or imitated trademark. The material element of this crime is the physical act based on the act of possessing or displaying goods bearing a counterfeit or imitated trademark. The punishable use is the use for commercial purposes related to the trading of goods, merchandise and services bearing the counterfeit trademark, except for personal use. Regardless of the method used, this crime includes all goods, merchandise and services bearing the counterfeit trademark wherever they are, whether those goods are located inside the commercial establishment or displayed in front of the establishment or in any place that follows the movement of the merchant's commercial activity for the purpose of selling and achieving his interests at the expense of the interests of other merchants.

In this context, the Saudi judiciary has issued sev-

eral judicial rulings, including the ruling issued by the Second Appeal Circuit of the Commercial Court in Dammam, where the defendant was accused of selling goods bearing counterfeit trademarks of high-value trademarks in large quantities. The court ruled that the defendant pay a fine, along with confiscating and destroying the goods.

When the moral element is represented by the necessity of the general criminal intent and the special criminal intent, i.e. the intent to defraud and deceive, this means that the perpetrator is aware and knowledgeable that the goods in his possession or in the possession of his representative bear a counterfeit or forged trademark, and he intends to sell them in any way according to what is followed in commercial custom. Consequently, the perpetrator uses a trademark that he knows is counterfeit or forged and aims to deceive and defraud others. For this crime to occur, the perpetrator must be aware that he is using a counterfeit or forged trademark, i.e., his intention has been directed towards the act of using the counterfeit or forged trademark with the intent to mislead the consumer about the source of the products (Ghawanmeh, 2024).

#### **o Crime of Displaying, Selling or Possessing a Counterfeit Trademark with Intent to Sell:**

The Saudi legislator distinguished between the crime of forgery, imitation or use as stated, and the crime of displaying, selling, or possessing counterfeit or forged goods. Sale here means selling goods bearing a counterfeit or forged trademark, and the legislator considered each of these two crimes as an independent crime.

The perpetrator's act in this crime is manifested in selling goods bearing a counterfeit or forged trademark, or in displaying these goods for sale, or possessing them with intent to sell. As is clear, the material element of this crime takes several forms, represented in the act of selling, displaying for sale, or possessing with intent to sell goods bearing a counterfeit or forged trademark, as well as in possessing goods or things on which a counterfeit or forged trademark has been used. Accordingly, the legislator considers these three acts to be one crime, whether the goods are in the storefront, in stores, warehouses or in any place belonging to the merchant.

As for the moral element in this crime, it is represented by the presence of criminal intent, i.e. the perpetrator knows that the goods in his possession bear a counterfeit or forged mark, and intends to sell, offer for sale, trade or possess them with the intent to

sell (Ghawanmeh, 2024).

The Trademark Law states: 43/C: “C - Anyone who displays or offers for sale or sells or possesses with the intent to sell products bearing a counterfeit, imitated trademark, or a trademark that is placed or used unjustly, knowing that, as well as anyone who offers services under such a trademark, knowing that (Article 43, 1423 AH).

### Third Topic: Forms of Trademark Protection in the Saudi System:

There are many measures taken by the Saudi regulator to protect famous trademarks from exploitation or infringement, including:

1. Preventing the registration of a trademark that infringes on a famous trademark.
2. Article 2 of the Law of Trademarks states: “J - Trademarks that are identical or similar to famous trademarks in the Kingdom, even if they are not registered therein on identical or similar goods or services, and trademarks that are identical or similar to those well-known in the Kingdom and registered therein on goods or services that are not identical or similar, provided that such use causes harm to the owner of the famous trademark.
3. Trademarks owned by natural or legal persons who are prohibited from being dealt with according to a decision issued by the competent authority.
4. Signs that are identical or like trademarks previously deposited or registered by others on identical or similar products or services, as well as signs whose registration for some products or services results in diminishing the value of others’ products or services.
5. Objection to the registration of a trademark that infringes on a famous trademark (Al-Sharairi, 2006)

There is no explicit text in the Saudi law that prohibits objecting to the registration of a trademark that infringes on a famous trademark, but in Article 15 of the Law of Trademarks: “Any interested party may object to the approval of the registration of a trademark before the Board of Grievances within ninety days from the date of its registration, with a copy of the objection and evidence of its submission being deposited with the competent department at the Ministry of Commerce (Article 15, 1423 AH).

### Conclusion:

The Most Important Findings:

- Trademark is a symbol, sign, or label that has a distinctive shape and is adopted by traders, manufactures, farmers, or service providers, with the purpose of distinguishing products or services in a manner that expresses their sources, types, quality, arrangement, or method of preparation or maintenance. Trademark is one of the most important marketing and introductory methods that contribute to building a commercial reputation and cultivating trust among the public.
- The Saudi law gave trademark owners exclusive legal rights, including mainly the right to own and fully use the trademark (e.g., placement on product packing or in service locations), transferring ownership to others through legal agreements, and licensing to others under specific conditions. These right guarantees to the trademark’s owner control over how to use the trademark without harming its value or reputation.
- The Saudi regulator acknowledged the trademark owner’s right in using it without suspension, providing consistent legal protection as long as the trademark is registered and used with accordance to the law.
- In order to provide effective legal protection, the regulator indicated the importance of penal protection of trademarks. The regulator considers any violation against a trademark, either by imitating or illegal use, is a punishable offense, as it causes both material and moral damage to the trademark’s owner, in addition to being misleading to consumers and affecting legitimate competition.
- The Saudi legislator paid special attention to famous trademarks, driven by awareness of the economic value and global reputation of such trademarks. In this context, several legal measures and regulatory decisions were taken to prevent the registration or use of similar or infringing trademarks. These measures are in line with relevant treaties, such as Paris Convention and TRIPS, which emphasizes the importance of providing expanded protection to this particular type of trademarks.
- To provide protection, the Saudi law has been keen on establishing effective mechanisms to prevent the registration of trademarks that infringe or are like famous trademarks, as evident in criminal charges associated with infringing

a trademark, thereby increasing investors' confidence, and protecting intellectual property rights in the Saudi market.

- The Saudi trademark system is witnessing significant development in the regulatory and procedural aspects, which enhances the protection of commercial rights. However, the challenge of raising awareness, unifying judicial interpretation, and combating digital counterfeiting remain the most prominent areas that need further development.

### Recommendations:

- The study recommends further studies on the legal protection of famous trademarks.
- Holding seminars and conferences to identify the methods of protecting famous trademarks civilly and criminally.
- Developing legal texts dedicated to each type of trademark licensing contracts.
- A law must be enacted that criminalizes the registration of a famous national trademark if it conflicts with a trademark used within the Kingdom.
- Appealing to the Saudi regulator to impose stricter penalties for violating trademark exploitation contracts and failure to comply with them.

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