

connection is made here between increases in those factors and national well-being, although through the literature it is possible to trace the association between international linkages and economic growth and rising per capital income, including that for the poorest docile. The results presented here should benefit policymakers in developing countries wishing to understand the possible benefits of strengthened IPRs. The analysis requires a means of measuring the relative strength of national IPR protection, the review of operation of the TRIPS Agreement a mutual check of the state of operation of the laws and regulations in each Member country, looking at the internal laws and regulations notified by each country. Since 1996 reviews were conducted with respect to developed countries, and then for those developing countries that had completed reform of their legal systems ahead of schedule by the end of 1999 expiry of the transitional arrangements for developing countries. Thereafter reviews were conducted

successively with respect to other developing countries and new Members.

Suggestions

- 1- There is a need for developing proactive, transparent and integrated IPR management regime. Such regime shall be promptly implemented.
- 2- There is need to exchange information on the latest research findings and development efforts relating to the IPR.
- 3- Develop new guidelines and recommendations for administering the IPR.
- 4- Expanding the work of the TRIPs to develop the regulations for protection of the international copyright is very much required.
- 5- There ought to be amendment of or review to the existing Conventions. There is urgent need to frame conventions to make a comprehensive estimation of the hitherto growth of the legal framework and enable appropriate changes along with continuity.

explanatory analysis of the legal problem of implement Trademark and TRIPs rules from a contemporary perspective.

2. It is therefore necessary to evaluate the dichotomy between IPR and Domestic Legal in the contemporary perspective.
3. There is a felt need to analyze the functional deficiencies of the TRIPs in member's countries.
4. Information gathering and the establishment and development of the database of scientific information with a view to obtaining better information pertaining IPR & Trademark.
5. To evaluate and asses the role TRIPs in the modern of Domestic Legal.
6. To develop a stronger link between IPR and Trademark.

Research Methodology

Doctrinal method has been employed to do the research work. The task involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institution, authorities and organizations International treaties, resolution, recommendation, declaration, judicial decision from primary source of research and text books, journal articles, periodicals, and reports are use as secondary source of research. Through internet various information has been collected as primary and secondary sources.

A critical, comparative and analytical method are employed in the analysis of the involve keeping in view of the judicial decision. With regard to analysis of the role of TRIPs in domestic legal perspective, the methodology adopted has been analytical. These survey and analysis have been conducted by studying the initiations rendered by the TRIPs, brief facts question involved principles or policy

laid down the relief given to the parties both normative and analytic approaches are employed.

Hypothesis

The TRIPs agreement obliges all member countries to protect intellectual property rights "Trademark". It has special implications for Trademark when the technology of producing life saving drugs, for instance drugs for AIDS, is controlled by a handful of pharmaceutical companies that can charge prices way above what poor people can afford. The main international human rights treaties of relevance to a rights-based approach to IP policy include the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with about 160 parties each. These international conventions, treaties and agreements protect IPR by the principle of mutuality, which is again a concept of TRIPs or in other words preemptory norms of general international law.

Where an inventor invents a new product in a foreign country, he is allowed to get patent in that foreign country itself provided the state of origin is a member of the agreement and allows similar rights to inventors there. This is nothing but the concept of reciprocity as imbibed from general international law.

Conclusion and Suggestions

Under TRIPs, signatory countries are required to establish a prescribed minimal level of IPR protection. This is, and has long been, a contentious matter for countries where the costs of strengthened IPR in royalty payments is easily identified. Benefits though are more elusive to document. Here, a link is examined between stronger IPR protection and two key international factors, foreign direct investment and imports. No specific

For the purpose of developing the trade mark and maintaining uniformity in the law of trademark have signed money conventions. Now the world has seen money conventions and has adopted a common and uniform law to avoid the trade mark problems in the world.

TRIPs Agreement

The history of the TRIPS negotiations shows that it took a long time to reach a final conclusion. Every country both developed and developing countries, intended to protect their own interests rather than protect intellectual property per se. As a result, a conflict arose not merely between developed and developing countries, but also among dispute prevention and settlement, transitional arrangements, and institutional arrangements; final provisions.

Obviously, members have been obliged to comply with TRIPS since 1 January 1996. However, developing countries benefited from a transitional period of four more years, but had to comply with TRIPS by 1 January 2000. The least developed countries were given six more years to implement TRIPS.

TRIPS as an international agreement which deals with all aspects of intellectual property, including trade related aspects. This is supported by the TRIPS aims which are intended to reduce distortions and impediments to international trade. In particular, they are intended to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

It is obvious that the issue of trade marks in TRIPS was influenced by the Paris Convention (1967). The Paris Convention Article 6bis, for instance, will apply in TRIPS *mutatis mutandis*. Furthermore, any registrations of marks under the definition in TRIPS Article 15(1) would be refused if such marks are prohibited by the provisions of the Paris

Convention (1967), such as the use without an authorization of armorial bearings, flags or other state emblems.

Generally, a registered trademark owner has an exclusive right to prevent other persons from using identical or similar signs: 1) in trade, 2) without the owner's consent, 3) for goods or services which are identical or similar to those of which the trademark is registered, and 4) if they are likely to cause confusion.

This exclusive right will be protected indefinitely, subject to the requirement of use. Nevertheless, actual use should not be required as a registered condition. Similarly, this right may be assigned with or without the transfer of the business to which the trademark belongs. Furthermore, this exclusive right should not be restricted by compulsory licensing. However, an exclusive right will not prejudice any existing prior right, nor affect the availability of an unregistered trademark.

Statement of Problem

There is a lack of regulations, legislations and decisions related to the trademark in National Law. The civil law is the authorized body and applicable for Intellectual Property which is the main reason leading to the weakness of International Trademark Registration.

That being the situation there will be no legislations to protect the registration of the ownership of a trademark which has an adverse effect to the consumers who may not have the quality of the desired trademark. It also has the adverse effect in the protection of the owners of trademarks in commercial identity (goodwill, reputation, and investment in advertising).

Objective of the study

1. The primary objective of this study is to bring out more information and give an

conventions have been specifically advised to aspects of trademark protection.

These include:

1. The Madrid Agreement concerning the international registration of marks of 1891.
2. The Madrid Agreement for the repression of false or deceptive indication of source on goods 1891.
3. The Trademark Registration Treaty adopted by the Vienna Diplomatic Conference in June 1973.
4. The Lisbon Agreement for the protection of appellations of origin, which entered into force in September 1966.
5. The Nairobi Treaty on the protection of the Olympic symbol of September 26, 1981.
6. The Nice Agreement concerning the international classification of goods and services for the purpose of the registration of marks of June 15, 1957.
7. The Vienna Agreement establishing an international classification of the figurative elements of marks of 12, June, 1973.

The Functions of a Trade Marks

The function of a trademark is to give an indication to the purchases or possible purchases as to the manufacture or quality of the goods, to give an indication to his eye of the trade source from which the goods came, of those hands through which they pass on their way to the market. It tells the person who is about to buy that what is presented to him is either what he has known before under the similar name as coming from a source with which he is acquainted or that it is what he has heard of before as coming from that similar

source. It gives the purchase a satisfactory assurance of the marks and quality of the article he is buying, the particular quality not being discernible by the eye. It is on the faith of the mark being genuine and representing a quality equal to that which he has previously found a similar move to indicate that the purchaser makes his purchase. A trademark may be used to indicate not only that the goods are of a particular maker but are goods of that making of a particular kind of quality. Thus a trade may indicate his best quality by one trademark, his second quality by another trade mark and so on.

Under modern conditions a trade mark performs the following four functions:

1. It identifies the product and its origin.
2. It guarantees it unchanged quality.
3. It advertises the product.
4. It creates an image for the product.

A trademark can be protected on the basis of either use or registration. Both approaches have developed historically, but today trademark protection systems generally combine both elements. The "Paris convention" for the Protection of Industrial Property of March 20, 1893 places contracting countries under the obligation to provide for the trade mark register. Over one hundred States have attended to the Paris Conventions. Nearly all countries all over the world today provide for a trademark register and full trademark protection is properly seemed only by registration.

Use does still play an important role. However first of all in countries that have traditionally based trademark protection use the registration of a trademark merely confirms the trade marks right that has been acquired by use. Consequently, the first uses have priority in the trademark dispute.

substantive provisions.

Subsequently in 1 January 1996 countries members have been obliged to comply with TRIPS. However, developing countries benefited from a transitional period of four years, but had to comply with TRIPS by 1 January 2000. The least developed countries were given six more years to implement TRIPS. The Paris Convention makes provision for the independence of each country in the protection of trademarks (Article 5), the protection of well-known marks (Article 6(2)), the protection of state emblems etc. (Article 6(3)), the assignment of marks (Article 6(4)), the protection of marks registered in other countries (Article 6(5)), the protection of service marks (Article 6(6)), the protection of collective marks (Article 7), and the protection of trade names (Article 8).

The TRIPS Agreement supplements these provisions with extra provisions concerning protectable subject matter (Article 15), rights conferred (Article 16) and the term of protection (Article 18), etc. Further, in contrast to the Paris Convention, which only provided that service marks must be protected, the TRIPS Agreement requires the establishment of a registration system for service marks.

Literature Review

Trademarks, as marks of origin, were affixed by the marks of bricks, bottles, books, weapons, cooking ware and other things in the ancient cultures. These works were either letters; usually initials of other symbolic signs stamped on the goods signify the works of the product. Certainly these works did not eclipse the produce any further of facilitating distribution of goods in a complex economy. Nevertheless, they signify an important element in trade mark law, still varied today namely that marks create a relation between goods and this marks. Such markings were

also used and symbols of ownership.

Trademarks, although not yet called by that term created only in the 19th century. They continue to play a similar role throughout the greater part of history including media and times and centuries beyond.

Marks were of particular significance in the growing production of goods for export. Thus, metal goods were made in England long before the industrial age and the production of steel, weapons and cutlery carried the traditional signs of their English markets. This is also of goods made from precious metals. Even today, the marks mixed by the markers of silver reports or trays in "Augsburg", "Braunschuleing", "London" "Paris," "Amsterdam," or "Petersburg" in the 16th and 17th centuries still seems to be guidelines for ascertaining the quality and origin of such goods.

The trademark law would be incomplete if no national development would be mentioned. The national developments were influenced to a substantial degree by developments in the intervention field. Particular reference should be made to the "Paris Connection" which will be dealt with more fully elsewhere. The Paris Convention is the basic international convention in the field of industrial property including trademarks. It is supplemented by the Madrid Agreement on the intervention as registration of marks signed in 1891, as special union for members of the Paris Convention. The important aspect of the history of the trademark is that the ratification of these international treaties and their transformation international legislation has contributed substantially to marking the field of industrial property law as international as it is today. The international conventions embody the common views of the international community in industrial property law, and the standard of the treaties were carried into national legislation and again, especially where the communications were required.

There are a number of international

Role of Trade-Related Aspects of Intellectual Property Rights (TRIPs) for Protection of Trademark in Domestic Legal Provisions

Nashat Mahmoud Abdalla Jaradat

Introduction

Intellectual Property a creation derived from human's brain itself such as inventions, designs, artistic works serve an important role, and in order to promote such creative activity, inventions, industrial designs, literary and artistic works, layout-designs of integrated circuits, trademarks are protected to secure the trust obtained through economic value, as well as protect consumers and ensure fair competition. Trademarks are signs that identify goods or services offered on a market¹.

Trademark is a consumer is duped if he buys a commodity presuming it to have originated from a certain identified source when actually it is not and later he finds the commodity substandard. In the process the reputation of the trader suffers if spurious goods are sold as those originating from him.

Today the trademark is a way to attract the public. Consumers look at trademarks to choose goods and services, which increases the role of trademarks in global marketing. The economic value of trademarks in attracting customers requires that firms manage and protect them comparably to other assets².

In international trade, the proportion of goods and services consisting of intellectual property has increased dramatically³, and if the Trademark protection offered by member's countries is inadequate or inappropriate, there is a danger of distorting the international trade

order.

However, in developing countries, although systems existed for the protection of trademark, there were many countries where the standard of protection was inadequate, for example the extent of protection was limited or the period of protection was extremely short, or enforcement of trademark could not be guaranteed to be sufficiently effective. Even among developed nations, there were some countries with systems that gave too much protection to intellectual property or discriminated between internal and external sources⁴.

For these reasons, from the perspective of improving the international trade order, there was increasing recognition of the necessity to develop a framework to ensure appropriate protection of trademark. In the intellectual property field there already existed a number of agreements for the international protection of trademark⁵, such as the Paris Convention, signed in 1883 and TRIPS, TRIPS is the most complete international treaty in intellectual property⁶.

The TRIPS Agreement covers the issues of protection of intellectual property in trade-related areas to a significant degree, and is seen as a comprehensive new framework prescribing standards of intellectual property protection. Further, the TRIPS Agreement has the added significance of being the first international agreement concerning all types of intellectual property with numerous

دور اتفاقية تريبس في حماية العلامات التجارية في القوانين المحلية

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الملخص

يبين هذا البحث كيفية دراسة تأثير المنظمات الدولية في القانون الوطني لتسجيل العلامات التجارية، حيث إن الهدف من اتفاقية تريبس هو حماية العلامات التجارية بشكل مناسب. الإحصاءات في الوقت الحاضر تشير إلى عدم توضيح المخالفات المرتكبة في عدم تسجيل العلامات التجارية حسب ما تقتضيه الاتفاقيات الدولية ومنها تريبس. كما تشير هذه الإحصاءات إلى الحماية المناسبة التي تتمتع بها العلامات التجارية المسجلة، وذلك من خلال تنفيذ الالتزامات الدولية. ويمكن التلخيص بالقول أنه لا يزال يجري انتهاك العلامات التجارية وخاصة غير المسجلة منها في القوانين المحلية.

Role of Trade-Related Aspects

of Intellectual Property Rights (TRIPs) for Protection of Trademark in Domestic Legal Provisions

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Abstract

Abstract: This research set out to examine the impact of International Organizations in National Law for International Trademark Registration and was selected to be represented in this study. It was expected that, in line with the aim of TRIPs for Trademark owners would be appropriately protected. The statistics, at present do not illustrate a downward trend in Trademark registration or infringements. Also, nothing indicates that Trademark owners have been efficiently protected, or remedied to implement International obligations to protect un-register or infringement Trademark. The fact is that a few cases concerning these measures have been reported. At this stage, it may be summarized only that Trademark in National Law is still being infringed.

Keywords: Trade-Related Aspects of Intellectual Property Rights (TRIPs), Trademark, National Law.

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