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THE THEORETICAL GROUNDS FOR THE PROVISION OF TRADEMARK'S PROTECTION

Review
Article

Keywords

Trademark;
Trademark protection;
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Dilution

Abstract

The paper aimed to explore the theoretical grounds for the provision of trademark protection based on the dilution theory and economic-social planning theory with shedding a light on famous, non-famous and luxury trademarks. Based on the economic-social-planning theory, it's necessary to protect all trademarks because there are economic and social benefits derived from providing such protection. Such benefits include: saving the searching cost incurred by the customer for searching for products that meet their needs. The study concluded that the counterfeited non-famous trademarks can be protected by the customer confusion's calming. According to that study it can be concluded that trademark owner shall claim that customers will not be able to distinguish between the product of the original non-famous trademark and product of the fake trademark in case that the famous trademarks are counterfeited, it can be protected by dilution's claiming, but not confusion due to the fact the customers can distinguish between the product of the original famous trademark and the fake one. However, the owner must prove that the trademark is famous. Luxury trademarks can be protected through anti-dilution protection methods by default.

INTRODUCTION

Since the emergence of capitalism, traders have been highly interested in distinguishing their products from other products. That is needed especially when exporting products to foreign countries. Therefore, trademark was created. A trademark refers to a sign put on the product to identify its source and origin. It serves as a mean through which the owner of the enterprise can directly contact the ultimate consumers. Due to the creation of trademarks, owners of enterprises became motivated to improve their products and reputation, and satisfy their customers. They become interested in improving customer attitudes towards their goods and services. That shall enable them to raise their profits (Basma, 2016). After the industrial revolution, many trademarks were created. After the latter revolution, an intensive competition has emerged between trademark owners in Europe. In addition, the worth of many trademarks has increased dramatically. For instance, some trademarks may be sold by millions of Dollars. Therefore, some people infringed other's right to trademark property in order to gain profit. Such infringements include: imitation, counterfeiting, unfair use, parody and etc (Basma, 2016). However, these infringements shall lead to incurring major financial and moral loss. They also represent a threat for the reputation of the trademark owner. They can affect the price and sales volume of the trademark. Thus, a protection method emerged. It is represented by establishing a trademark registration system. Through the latter system, trademark owners can register their ownership for trademarks. That shall enable trademark owners to protect their right to trademark property in case an infringement occurred against this right (Basma, 2016). In addition, there are other protection methods used for protecting one's right to trademark property. For instance, many laws and legislation were enacted to protect this right. Through such laws and legislation, the trademark owner can claim for a compensation in a case an infringement occurred. Through such laws and legislation, the trademark owners can claim for stopping the infringement (Basma, 2016). The attention provided to trademark protection is attributed to the significance of trademark functions. It is suggested that the primary function of trademark is represented in identifying origin and source. For many years no scholar provided an opposing opinion. Later on, Frank wrote his book: *The Rational Basis of Trademark Protection*. Through it, he provides an opposing opinion. He also sheds a light on the trademark functions, and provides grounds for the protection of trademarks (Schechter 1927). He also emphasized the significance of providing trademark protection. He believes that trademark owners should be permitted

to forbid others from infringing their trademark property rights (Schechter, 1927). Due to the significance of trademark functions and protection, the researcher of the present study aimed to identify the trademark functions and their historical development. He also aimed to shed a light on the theoretical grounds for the provision of trademark protection.

STATEMENT OF THE PROBLEM

Trademark was created many years ago. It was created due to the need of owners of enterprises to distinguish their products from other products. Through trademarks, customers shall be able to identify the product's source and origin (Schechter, 1927). That shall enable trademark owners to raise their profits and gain a good reputation in the marketplace. It shall motivate these owners to develop their products. After the industrial revolution, many trademarks emerged and the intensity of the competition between trademark owners increased. Thus, many methods were used to protect one's right to trademark property, such as: the registration system, conventions, and laws. These methods enable trademark owners to forbid others from infringing their right to trademark property (Basma, 2016). Due to the attention provided to trademark protection, the researcher aimed to explore the theoretical grounds for the provision of trademark protection. He aimed to explore that with shedding a light on famous, non-famous and luxury trademarks. He aimed to explore that based on the dilution theory that was proposed by Schechter (Schechter, 1927) and the economic-social planning theory that was proposed by Mr Naser (Naser, 2007).

THE OBJECTIVES OF THE PRESENT STUDY

The researcher of the present study aimed to:

1. Identify the functions of trademarks, especially from Schechter's (1927) perspective.
2. Identify the historical development of trademark functions.
3. Identify the meaning and features of luxury trademarks.
4. Explore the theoretical grounds for the provision of protection for famous, non-famous and luxury trademarks based on Schechter's (1927) theory.
5. Explore the theoretical grounds for the provision of protection for trademarks based on Naser's (2007) theory (i.e. the economic-social-planning theory).

6. Identify whether the theories of Hegel and Locke provide any theoretical grounds for the provision of protection for trademarks.

THE SIGNIFICANCE OF THE STUDY

The present study is significant due to the following reason:

1. It is the first study in Jordan that sheds a light on the functions of trademarks
2. It shall participate in promoting knowledge about the significance of preventing trademarks infringement
3. It shall participate in promoting knowledge about the significance of enacting legislations that identify the rights and obligations of trademark owner and customers
4. It shall participate in promoting knowledge about the methods that can be used for trademark protection.
5. It shall participate in achieving business development. That is because promoting knowledge about the means used for protecting trademarks shall encourage people to make their own trademarks and open business entities.

THE STUDY'S METHODOLOGY

In order to meet the study's goals, the researcher of the present study adopted a descriptive analytical approach. That was done through reviewing studies, books, court judgments, PhD dissertations and MA theses. The researcher divided the present study into sections. These sections are presented below:

First: The historical development of trademark functions and Schechter's (1927) views about trademark primary function.

Second: Trademark Protection Methods: The Registration System and Laws.

Third: Luxury trademarks: Concept and characteristics.

Fourth: Dilution: Concept and types

Fifth: Grounds for the provision of protection for non-famous and famous trademarks based on Schechter's (1927) theory (i.e. the dilution theory).

Sixth: Grounds for the provision of protection for luxury trademarks based on Schechter's (1927) theory (i.e. the dilution theory).

Seventh: Locke's Theory: Does it provide a ground for the provision of trademark protection?.

Eighth: Hegel's Theory: Does it provide a ground for the provision of trademark protection?.

Ninth: Grounds for the provision of trademark protection based on Naser's (2007) theory (i.e. the economic-social-planning theory).

First: The historical development of trademark functions and Schechter's (1927) views about trademark primary function.

Based on article 15 / paragraph 1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a trademark can be defined as: a sign, or a set of signs that is used for enabling one to distinguish goods and services. Such signs may include: numbers, letters, names, figurative elements and a mixture of colours. The owners of trademarks can register their trademarks to protect their trademark property right (TRIPS Agreement, 1994). A trademark can be defined as a sign put on the product to enable customer to identify its source and origin. It serves as a mean through which the owner of the enterprise can directly contact the ultimate consumers (Basma, 2016) Trademarks were established 4000 years ago. They emerged before the emergence of copyrights (Long, 2011). At the beginning, they were used for distinguishing the property of animals and cattle (Naser, 2008). Later on, during the medieval ages, the government obliged craftsmen to use marks. That was decided to identify the craftsman who shall be held liable when a defect is detected in a product made by a craftsman (Fletcher, 1982). During medieval ages in England, marks were used to distinguish cities, towns, and quality of goods. They were used in the guild system. During that time, trademarks were used for identifying the owners of goods. Trademarks enabled owners of goods to claim for a compensation for their lost goods when shipping them, especially when they are shipped by sea (McKenna, 2007). *Southern v. How (1618)* is considered as the first reported trademark case in the common law system. It is the first English case that involves an imitation of a registered trademark (McKenna, 2007), As for *Blanchard v. Hill (1742)*, it is considered as the second reported trademark case in the common law system (Stolte, 1998). Before 1860, trademarks didn't receive much attention. That is attributed to the nature of the dominant life style. To be specific, the rural life style was the dominant life style in many communities before 1860. It is also because people were used to buy from local stores. Thus, people were able to identify the one who made the product without the need to have any mark (Bone, 2007). During the 19th century, it was easy for customers to identify the product's producer. That's because business deals were conducted mainly locally. It's because the relationship between customers and producers was close (Fletcher, 1982). However, this relationship changed during the 19th century due to the development of communication and transportation. Thus, the use of trademarks started to increase to enable customers to identify the producers, source and origin of products (Bone, 2007). The use of trademark increased due to the development of the market economy in Europe and the United States

(Cunningham, 1995). It also increased to avoid the replacement of original products with cheap ones. During the 20th century, the use of trademark increased due to the use of psychological advertising to affect customer attitudes (Bone, 2007). For many years, the most agreed upon function of trademark was represented in identifying source and origin. For years, no researcher commented on that nor showed an opposite opinion. Later on, (Schechter, 1927) provided his opposing opinion. He believes that the main function of trademark is represented in identifying quality rather than identifying origin and source (Schechter, 1927). Since then, no one proposed another function for trademark. However, the researcher of the present study believes that there is another function for trademarks. It is represented in providing one with a (prestigious) appearance and rank. This function is provided by luxury trademarks. Thus, people from the upper class buy products of luxury trademarks to preserve their social rank and meet social requirements. They buy these products to preserve their membership in the upper class and sense of belonging to it. This is considered the new function of trademark. To prove the latter function, people decide to purchase products of fake luxury trademarks to convince people that they belong to the high class by deceiving them. They do that to differentiate themselves from the lower or poor class people. In other words, they do that for social reasons, such as: feeling superior. Therefore, the functions of fake trademarks include meeting social needs (Dubois, Laurent & Czellar, 2001; Stiehler, 2016). However, one can't cheat himself! In the light of the aforementioned, trademark aims to serve the owner and the consuming public. This is considered the trademark function.

Second: Trademark Protection Methods: The Registration System and Laws

Some of the researchers don't agree that *the conflict between Southern & How (Southern v. How, 1618)* is the first reported trademark case. In fact, they believe that *Sykes v. Sykes* (in 1824) is the first reported trademark case in English courts (Schechter, 1927). In response to filling trademark lawsuits, the English Trademarks Registration Act of 1875 was enacted. The latter act aimed at allowing trademark owners to register their trademarks officially (Dean, 1954). Thus, no one can infringe one's trademark property right. Otherwise, a penalty shall be enforced on the infringer. The latter act aims to protect the trademark goodwill (Katz, 2011). It should be noted that their other methods used for the provision of trademark protection other than law. Such methods include the registration system. This system was created to protect the initial primary function of trademark (i.e. the identification of source and origin) (TRIPS Agreement, 1994). To be specific, the first

comprehensive system for trademark protection was established in England in 1905 (Basma, 2016). In the trademark case of *Erven Warnink BV v. J Townend & Sons (Hull) Ltd in 1979*, the House of Lords stated that the plaintiff needs to prove: a)- the resulting damage, b)- a goodwill acquired by the plaintiff, and c)- a misrepresentation made by the defendant related which affected the trademark goodwill negatively. Meeting these conditions shall enable the trademark owner to stop any infringement against his trademark property right (*Erven Warnink BV v. J Townend & Sons (Hull) Ltd, 1979*).

In the case of *Inland Revenue Commissioners v Muller & Co's Margarine Ltd in 1901*, the House of Lords stated that goodwill refers to the reputation, and the good name of a business entity which attracts customers and drive them to purchase from its products (*Inland Revenue Commissioners v Muller & Co's Margarine Ltd, 1901*). In 1857, the French government enacted the first French act for trademark registration (Kingston, 2006). Later on, the first American Federal Trademark Statute came into force in 1870. The latter statute includes provisions related to trademark registration (Wilf, 1999). In 1946, the Congress enacted Lanham Act. The latter act grants one a trademark property right by usage (Naser, 2009). That means that using a trademark shall grant the owner the right to prevent others from using a similar or identical trademark (McKenna, 2007).

Third: Luxury Trademarks: Concept and Characteristics

Schechter (1927) suggests that the main function of trademarks is represented in identifying quality rather than identifying origin and source. Since that time, no theories were developed about the function of trademarks (Schechter, 1927). The researcher of the present study believes that there is another function for trademarks. It is represented in providing one with a (prestigious) appearance and rank. This function is provided by luxury trademarks (Dubois et al., 2001). This function was addressed by many European Courts. For instance, in *L'Oréal -v- Bellure* case, the European Court of Justice (ECJ) stated: a compensation must be paid when exploiting the power of attraction, the reputation and the prestige of that mark (*L'Oréal SA v Bellure NV, 2009*). Luxury goods are branded goods that can be utilized functionally and grant their owner a prestigious rank and appearance. It is suggested that the characteristics of luxury goods are: high quality and price, scarce, unique, aesthetic, and valuable due to their ancestral heritage (Stegemann, 2006; Dubois et al., 2001). In addition, luxury goods provide one with a sense of pleasure. They also serve as reference for identifying how good a person's taste is (Kapferer, 1997). They can't be considered as necessary or fundamental in one's life. They are characterized with being exclusive (i.e. not easily

obtained by all people due to the high price) (Seo & Buchanan-Oliver, 2015). They are characterized with having the capability to meet psychological wishes and needs (Roper, Caruana, Medway & Murphy, 2013). According to Stegemann (2006), luxurious products have four features: unique, attracted to a social class, emotionally appealing and high quality (Stegemann, 2006). Classifying goods into luxurious and non-luxurious goods is subjective. For instance, views about the degree of quality may vary from one customer to another. Authenticity, quality and price are criteria for carrying out the later classification (Turunen, 2015). Katz (2011) states that there are several characteristics for the products of luxury trademarks. These features are: 1) high quality, 2) high cost, 3) authentic, 4) exclusive and 5) capability to meet psychological wishes (Katz, 2011). All of these characteristics must be met by the products of luxury trademarks to consider them so. For instance, if a product is expensive, but not authentic, it won't be considered as a product of a luxury trademark. Katz (2011) also states that quality is related to the degree of excellence and efficiency in serving the customer. In terms of price, each one assesses how high the price is based on his salary. In addition, luxury goods should be authentic (i.e. genuine, and original). They should be exclusive (i.e. not easily obtained by all people due to the high price). Luxury trademarks should be capable of meeting psychological wishes. Such wishes include: social and personal wishes, such as: obtaining public acceptance (Katz, 2011).

Fourth: Dilution: Concept and types

The first one who tackled trademark dilution is (Schechter, 1927) through his dilution theory. He discusses that through his book; *The Rational Basis of Trademark Protection*. Dilution occurs when a trademark loss its uniqueness because it is counterfeited or imitated. In such as case, the relationship between the original product and the mark shall be diluted in the customer's mind. The trademark value and distinctive quality shall dramatically decrease in the customer's mind. In addition, the trademark's selling power shall decrease (Schechter, 1927). Later on, the first law that fights against dilution was enacted in 1947 in Massachusetts. The latter law is a state law (Naser, 2008; Schechter, 1927). There are two types of dilution; tarnishment and blurring. As for tarnishment, it is represented in the unauthorized use of a trademark in a way that shall link the trademark with poor quality products. As for blurring, it is represented in the unauthorized use of a trademark in a way that shall affect the uniqueness and distinctiveness of the trademark (Bone, 2007; Schechter, 1927; Katz, 2011). Schechter has suggested that the protection of the trademark's distinctiveness and quality is the main goal sought

from providing trademark's protection. He suggests that this protection shall enable the consuming public to identify and purchase their preferred product (Schechter, 1927).

Fifth: Grounds for the provision of protection for non-famous and famous trademarks based on Schechter's (1927) theory (i.e. the dilution theory)

A trademark owner has the right to use his trademark and prohibit others from using it. That applies whether the trademark is registered or not (Long, 2011). The infringement occurs when a similar or identical trademark is used for selling identical or similar class of goods. According to Schechter, that shall lead to confusing customers if the trademark is not famous. In other words, customers will not be able to distinguish between the product of the original non-famous trademark and product of the fake trademark. Thus, they shall be deprived from their freedom to choose freely. However, the trademark's owner must prove that the infringement makes customers feel confused (Schechter, 1927; McKenna, 2012). Based on Schechter's theory, in case that famous trademarks are counterfeited, their value shall be threatened by dilution, not by confusion. That is because customers can distinguish between the product of the original famous trademark and product of the fake trademark. Thus, famous trademarks must be protected through anti-dilution's methods. However, the owner of the famous trademark must prove that that his trademark is famous. In order to consider a trademark a famous one, it must be known by the public (Schechter, 1927). McKenna (2012) aimed to propose his dilution theory in order to provide the owners of famous trademarks with anti-dilution protection. Through such protection, he aimed to protect the quality of famous trademarks. That is because he believes that the main function of trademark is represented in identifying quality. The latter theory was proposed in order to protect one's trademark property and achieve justice (Schechter, 1927). Thus, there are two grounds for the provision of trademark protection; customer confusion and anti-dilution based protection (Naser, 2009; Carty, 1996; Pattishall, 1952; Schechter, 1927).

Sixth: Grounds for the provision of protection for luxury trademarks based on Schechter's (1927) theory (i.e. the dilution theory)

Using an identical trademark or similar trademark for selling products can significantly affect how prestigious the luxury trademark is (Dubois et al., 2001; Schechter, 1927). In case luxury trademarks are counterfeited, their value shall be threatened by dilution, not by confusion. It shall negatively affect the way customers perceive the luxury trademark (Seo & Buchanan-Oliver, 2015; Schechter, 1927). It can affect the exclusivity and value of the luxury

trademark (Kapferer & Valette-Florence, 2016; Schechter, 1927). In case luxury trademarks are counterfeited, their value shall be threatened by dilution, not by confusion. That is because customers can distinguish between the product of the original luxury trademark and product of the fake trademark. Thus, through applying Schechter's theory, luxury trademarks must be protected through anti-dilution methods by default. That applies whether the luxury trademark is famous or not (Naser, 2008; Schechter, 1927). In terms of the protection of luxury trademarks, it is suggested that the customer confusion problem isn't faced when luxury trademarks are imitated. That is attributed to the nature and characteristics of luxury trademarks. For instance, they are characterized with having a high price and being authentic. These characteristics enable customers to distinguish the products of original luxury trademarks from the fake ones (Katz, 2011; Turunen & Laaksonen, 2011; Schechter, 1927). Therefore, the owner of the luxury trademarks doesn't need to prove that his trademark is famous to enjoy the anti-dilution protection (Bone, 2007; Katz, 2011; Schechter, 1927).

People decide to purchase products of fake luxury trademarks to show that they belong to the high class and differentiate themselves from the low or poor class people. They do that to look prestigious by cheating others. Thus, these products are bought for meeting social needs, such as: feeling superior (Stiehler, 2016). However, people can cheat others, but they can't cheat themselves! Due to the business development and emergence of famous and luxury trademarks, it is necessary to protect them under the law. That is because they are considered valuable intellectual property. Thus, it is necessary to enact legislations for providing such protection. Such legislations must be enacted professionally to avoid monopolization. They must identify the rights and obligations of the trademark owner and consuming public (Smith, 2007). Regarding the trademark owner, legislations must protect his right in using his trademark and preventing others from using it. As for the customers, they must be provided with the freedom to choose their preferred products without being deceived (Naser, 2007).

Seventh: Locke's Theory: Does it provide a ground for the provision of trademark protection?

300 years ago, John Locke proposed his theory. It is called (labor theory of property). It deals with the significance of protecting property. For instance, he states: *"For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left for others"* (Locke, 1690). In short, Locke believes that one owns himself and his body and therefore, he owns the outcomes of his own labor. He believes that the

outcomes (fruits) of one's labor shall become his own property and no one can claim for the ownership of these outcomes (Locke, 1690). Through the latter theory, Locke aims to justify the homestead principle. To illustrate more, Locke believes that one can obtain ownership of an unowned natural resource through performing an act of original appropriation. Appropriation occurs when one puts the unowned resource into active use. For instance, one can own a land if he plants it (Locke, 1690). Based on the latter theory, Locke believes that the quantity and quality of the labor outcomes must be protected from any infringement made by others. That is because labor outcomes belong to one's property (Moore, 1997). However, Locke's theory is criticized for overlooking intangible property (e.g. intellectual property), such as: trademark property (Naser, 2007). Therefore, Locke's theory provides grounds for the provision of protection for tangible property. However, it fails to provide ground for the provision of trademark protection.

Eighth: Hegel's Theory: Does it provide a ground for the provision of trademark protection?

Georg Hegel proposes a theory called the personality theory. Through it, Hegel aims at providing ground for the provision of protection for one's right to property. Hegel also aimed to justify the need to protect one's right to intellectual property. He believes that one owns his body as a result of owning his will (Hegel, 1820; Rosendorf, 1990). He believes that one's right to property is an embodiment of enjoying free will (Clark, 2004; Hegel, 1820). Hegel's theory deals with intellectual property. For instance, it suggests that an intellectual property remains the property of the creator. However, it is criticized for overlooking the intellectual property (e.g. a trademark) owned by legal entities. It doesn't deal with the case of changing the owner of the intellectual property (i.e. selling the trademark) (Hughes, 1988; Hegel, 1820). It is criticized for overlooking the consuming public (Naser, 2007; Hegel, 1820). It fails to provide grounds for the provision of trademark protection (Hughes, 1988; Hegel, 1820).

Ninth: Grounds for the provision of trademark protection based on Naser's theory (i.e. the economic-social-planning theory)

Naser (2007) proposed a theory called the economic-social-planning theory. Through this theory, Naser (2007) aimed to justify the need for protecting one's right to trademark ownership. The latter theory was developed based on two theories; the utilitarian/ economic theory and the social-planning theory (Naser, 2007). Based on the economic-social-planning theory, protecting one's right to trademark ownership shall generate economic benefits. For instance, customer shall

recall marks instead of recalling information to distinguish products. Thus, customers shall save the costs incurred for searching for products that meet their needs (Naser, 2007; Newman, 2008). Based on the economic-social-planning theory, there are economic benefits derived from protecting one's right to trademark ownership. For instance, providing such protection shall motivate companies to provide customers with products of high quality. Thus, companies shall invest much money and exert much effort to develop the quality of their products. In addition, providing such protection shall motivate people to create new trademarks that provide products of high quality. That is because customers shall be able to recognize the products of their preferred producer (Chiappetta, 2003; Naser, 2007). These benefits were also suggested by the utilitarian theory. However, the utilitarian theory is criticized for focusing on the economic aspect from the provision of such protection with overlooking the legal and social aspects (McKenna, 2012; Naser, 2007) Based on the economic-social-planning theory, there are social benefits derived from protecting one's right to trademark ownership. For instance, providing such protection shall participate in language development through the creation of new words (Levine, 2005; Naser, 2007). In addition, providing such protection shall enable customers to express their opinions about products freely. That is because products can be distinguished (Sunder, 2006; Naser, 2007). Trademark protection shall facilitate the process of making the purchasing decision by customers. It shall entitle customers to choose freely without being manipulated nor confused (Lastowka, 2005; Naser, 2007). Based on the economic-social-planning theory, the duties of the trademark owner include: 1) creating the trademark, 2) registering the trademark, 3) putting the trademark in markets, 4) advertising the trademark to enable customers to recognize the trademark. As for the customer's role, it is represented in recognizing the trademark. The economic-social-planning theory suggests that the trademark owner and consumer have rights that should be protected (Naser, 2007). To sum up, it should be noted that excessive protection to the trademark owner should be avoided. That is because such excessive protection may lead to monopolization. On the other hand, providing the trademark owner with inadequate protection should be avoided. That is because inadequate protection shall negatively affect the trademark value (Mossoff, 2003).

CONCLUSIONS

The researcher of the present study concluded the following:

1. Trademarks aim at identifying source, origin, quality, prestige and social status.
2. Based on Schechter's (1927) theory, in case non-famous trademarks are counterfeited, they can be protected through claiming customer confusion. That means that the trademark owner shall claim that the customer will not be able to distinguish between the product of the original non-famous trademark and product of the fake trademark.
3. Based on Schechter's (1927) theory, in case famous trademarks are counterfeited, they can be protected through claiming dilution, but not through claiming customer confusion. That is because customers can distinguish between the product of the original famous trademark and the product of the fake trademark. However, the owner must prove that the trademark is famous.
4. The products of luxury trademarks are characterized with all these features are: 1) high quality, and 2) high cost, 3) authentic, 4) exclusive and 5) capability to meet psychological wishes. Thus, the customer won't feel confused when the luxury trademark is counterfeited.
5. When applying the Schechter's (1927) theory, luxury trademarks can be protected through anti-dilution protection methods by default. That is because the characteristics of the products of luxury trademarks enable customers to distinguish between the product of the original luxury trademark and product of the fake trademark.
6. Locke's theory doesn't provide ground for the provision of protection for trademark property right nor any other intellectual property right.
7. Hegel's theory provides grounds for the provision of protection for intellectual property. However, it doesn't provide ground for the provision of protection to one's right to trademark property.
8. Based on the economic-social-planning theory, it is necessary to protect one's trademark property right. That is because there are economic and social benefits derived from providing such protection, such as: saving the searching cost incurred by the customer for searching for products that meet their needs.

RECOMMENDATIONS

The researcher of the present study recommend:

- a. Enacting legislation for the protection of luxury trademarks in Jordan.
- b. Holding conferences and workshops for promoting awareness about the significance of registering luxury trademarks. Such conferences and workshops must promoting awareness about the methods of protecting luxury trademarks. These conferences and workshops must be held by governments.

c. Enacting Jordanian legislations that enforce deterrent punishment on the ones who counterfeit a trademark.

d. Enacting a trademark counterfeiting act in Jordan.

REFERENCES

- [1] Basma, D. (2016). The Nature, Scope, and Limits of Modern Trademark Protection: A Luxury Fashion Industry Perspective. Manchester. UK: The University of Manchester.
- [2] Bone, R. G. (2007). Schechter's Ideas in Historical Context and Dilution's Rocky Road. *Santa Clara Computer & High Tech. LJ*, 24, 473.
- [3] Carty, H. (1996). Dilution and Passing Off: Cause for Concern. *LQ REV.*, 112, 632-666.
- [4] Chiappetta, V. (2003). Trademarks: More Than Meets the Eye. *U. Ill. JL Tech. & Pol'y*, 42-43.
- [5] Clark, M. L. (2004). Reconstructing the World Trade Center: An argument for the applicability of Personhood Theory to commercial property ownership and use. *Penn St. L. Rev.*, 109, 816.
- [6] Cunningham, M. A. (1995). A Complementary Existence: An Economic Assessment of the Trademark and Competition Law Interface in the European Community. *Tul. Eur. & Civ. LF*, 10, 144.
- [7] Dean, J. (1954). Modern Problems in the Law of Trade-Marks. *Trademark Rep.*, 44, 109.
- [8] Dubois, B., Laurent, G., & Czellar, S. (2001). Consumer rapport to luxury: Analyzing complex and ambivalent attitudes (No. 736). HEC Paris, 1-56.
- [9] Fletcher, P. K. (1982). Joint Registration of Trademarks and the Economic Value of a Trademark System. *U. Miami L. Rev.*, 36, 301.
- [10] Hegel, G. W. (1820). Philosophy of right. History of Economic Thought Books.
- [11] Hughes, J. (1988). The philosophy of intellectual property. *Geo. LJ*, 77, 339-350.
- [12] Kapferer, J. N. (1997). Managing luxury brands. *Journal of brand management*, 4(4).
- [13] Kapferer, J. N., & Valette-Florence, P. (2016). Beyond rarity: the paths of luxury desire. How luxury brands grow yet remain desirable. *Journal of Product & Brand Management*, 25(2), 125.
- [14] Katz, A. (2011). Beyond Search Costs: The Linguistic and Trust Functions Of Trademarks. *BYU L. Rev.*, 1570.
- [15] Kingston, W. (2006). Trademark Registration Is Not a Right. *Journal of Micromarketing*, 26(1), 20.
- [16] Lastowka, G. (2005). The Trademark Function of Authorship. *BUL Rev.*, 85, 1179.
- [17] Locke, John (1690). *The Second Treatise of Government*, (Electronic Version), York University, 116.
- [18] Long, D. E. (2011). Rebooting Trademarks for the Twenty-First Century. *49 U. Louisville L. Rev.*, 519.
- [19] Levine, J. K. (2005). Contesting the Incontestable: Reforming Trademark's Descriptive Mark Protection Scheme. *Gonz. L. Rev.*, 41, 34-35.
- [20] McKenna, M. P. (2007). The Normative Foundations of Trademark Law. *Notre Dame L. Rev.*, 82(5), 1849- 1850.
- [21] McKenna, M. P. (2012). A consumer decision-making theory of trademark law. *Va. L. Rev.*, 98, 81-94.
- [22] Moore, A. D. (1997). A Lockean theory of intellectual property. *Hamline L. Rev.*, 21, 78.
- [23] Mossoff, A. (2003). What Is Property-Putting The Pieces Back Together. *Ariz. L. Rev.*, 45, 415.
- [24] Naser, M. A. (2008). Re-Examining the Functions of Trademark Law. *Chi.-Kent J. Intell. Prop.*, 8, 101.
- [25] Naser, M. A. (2007). Rethinking the Foundations of Trademarks. *Buff. Intell. Prop. LJ*, 5, 9.
- [26] Naser, M. A. (2009). The Lanham Act and The Trade Mark Monopoly Phobia. *Journal of Intellectual Property Law & Practice*, 4(5), 365-375.
- [27] Newman, D. E. (2008). Portraying a Branded World. *U. Ill. JL Tech. & Pol'y*, 208, 361.
- [28] Pattishall, B. W. (1952). Trade-Marks and the Monopoly Phobia. *Michigan Law Review*, 50(7), 967-990.
- [29] Roper, S., Caruana, R., Medway, D., & Murphy, P. (2013). Constructing Luxury Brands: Exploring the Role of Consumer Discourse. *European Journal of Marketing*, 47(3/4), 377.
- [30] Rosendorf, D. L. (1990). Homelessness and the Uses of Theory: An Analysis of Economic and Personality Theories of Property in the Context of Voting Rights and Squatting Rights. *U. Miami L. Rev.*, 45, 708.
- [31] Schechter (1927). The Rational Basis of Trademark Protection. *Harvard Law Review*, 40(6), 813- 833.
- [32] Seo, Y., & Buchanan-Oliver, M. (2015). Luxury Branding: The Industry, Trends, And Future Conceptualizations. *Asia Pacific Journal of Marketing and Logistics*, 27(1), 83.
- [33] Smith, Adam (2007). *An Inquiry into the Nature and Causes of the Wealth of Nations*. Sao Paolo, edited by S.M. Soares MetaLibri digital library, 16.
- [34] Stegemann, N. (2006). Unique Brand Extension Challenges for Luxury Brands. *Journal of Business and Economics Research*, 4(10).
- [35] Stiehler, B. E (2016). Co-Creating Luxury Brands in An Emerging Market: Exploring Consumer Meaning Making and Value Creation.

- Qualitative Market Research: An International Journal*, 19(4), 398 .
- [36] Stolte, K. M. (1998). How Early Did Anglo-American Trademark Law Begin-An Answer to Schechter's Conundrum. *Fordham Intell. Prop. Media & Ent. LJ*, 8, 517.
- [37] Sunder, M. (2006). IP3, 59. *Stan. L. Rev*, 257, 331-332.
- [38] Turunen, L. L. M. (2015). Consumers' experiences of luxury—interpreting the luxuriousness of a brand, 43- 44.
- [39] Turunen, L. L. M., & Laaksonen, P. (2011). Diffusing the boundaries between luxury and counterfeits. *Journal of Product and Brand Management*, 20(6), 468-474.
- [40] Wilf, S. (1999). Who Authors Trademarks. *Cardozo Arts & Ent. LJ*,17, 20.

Agreements

- [1] TRIPS Agreement (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, 1869 UNTS 299, 33 ILM 1197.

Court Judgments

- [1] *Blanchard v. Hill* (1742). 2 Atk 484.
- [2] *Erven Warnink BV v. J Townend & Sons (Hull) Ltd* (1979). A.C. 742.
- [3] *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* (1901). A.C. 223, 224.
- [4] *L'Oréal SA v Bellure NV* (2009). Case C-487/07, 2009 E.C.R. I. Para 50 of Ground, Para 1 of Ruling.
- [5] *Southern v. How* (1618). 79 E.R. 1243.