

Trademark Regulation in Saudi Arabia: A Matter of Ambiguity

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Abstract

This article examines the legislative situation relating to the legal application of trademarks in Saudi Arabia. It argues that despite the significant development of trademarks in general in Saudi Arabia, there is no clear version as to the law applied. As at 2021, there are two laws in force for trademarks in Saudi Arabia: the Saudi Trademarks Law 2002 and the Gulf Cooperation Council (GCC) Trademarks Law 2014. As a result, there is room for ambiguity and uncertainty in how the legislation may be interpreted. To fully explore this issue, this article first examines the law regulating trademarks in Saudi Arabia and the authorities that are responsible for the application of that law. The article then examines the issue of the co-existence of the two laws, as well as the legal position of those GCC countries which have adopted the GCC Trademarks Law.

Keywords: Intellectual Property, Trademark, Gulf Cooperation Council, Regulation, Saudi Arabia

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1. Introduction

In essence, a trademark is used to differentiate products or services of a particular source from others. A trademark can take the form of names, words, signatures, letters, numbers, illustrations, logos, titles, hallmarks, seals, pictures, engravings, a sound or even a smell.¹ When a trademark is legally registered to particular goods or services, the owner of those goods or services owns the right to use that specific trademark. In Saudi Arabia, trademarks play a vital role in the development of brands. They help promote competition, drive economic growth and protect consumers. The Saudi Aramco trademark was deemed the most valuable trademark in 2020, and ranked 24th globally. Saudi Aramco was considered to be the most valuable brand in the Middle East and Africa.²

The Saudi Arabian intellectual property (IP) landscape, particularly with regard to trademarks, has grown significantly in importance since 1939 when the first trademark law was issued.³ Since then, however, trademark law has undergone dramatic development. In 2004, Saudi Arabia acceded to the Paris Convention for the Protection of Industrial Property and joined the World Trade Organisation (WTO) in 2005, as a result of which it signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). These developments accompanied the introduction of the Trademarks Law by Royal Decree No. (M/21) in 2002. The ratification of the GCC Trademarks Law by Royal Decree No. (M/51) in 2014, further aligned Saudi Arabia with international practices.

Despite these developments, the legislative position of trademarks Saudi Arabia is nevertheless still highly ambiguous. This ambiguity is principally attributed to there being two trademark laws in place in Saudi Arabia. This article is divided into two parts: the first discusses trademark regulation and the institutions that are concerned or involved with the application of the regulation, and the second deals with the main issue of this article, namely the ambiguity of trademarks regulation in Saudi Arabia.

2. Trademark Regulation and Relevant Trademark Authorities in Saudi Arabia

2.1 Trademark Regulation in Saudi Arabia

Trademark regulation has long received much attention in Saudi Arabia. The first regulation was introduced with the Trademarks Law in 1939 by Royal Decree (No. 8762). To take account of changing commercial and economic conditions. The law was updated by Royal Decree in 1984.⁴ It was the only Saudi Arabia law pertaining to IP.⁵ The law addressed various trademark issues, such as trademark registration, publication, protection, renewal, cancellation, transfer or licensing of registered trademarks, as well as the sanctions that could be imposed on those infringing the law. At its introduction, the law was considered to be a substantial development for the region at the time.⁶ On 28 May 2002, Royal Decree (No. M/21) introduced the current Saudi Trademarks Law, by which the 1984 law was replaced.

Since 2002, the IP landscape in Saudi Arabia has been subject to significant developments. In 2003, Saudi

¹ The GCC Trademark Law 2014, Art. 2

² Brand Finance Report 2020, available at: <https://brandirectory.com/download-report/brand-finance-global-500-2020-preview.pdf>

³ Majed M. Garoub, Protection of Trademarks in the Kingdom of Saudi Arabia, 14 *Arab Law Quarterly* 66 (1999) 66-67.

⁴ Bruce B. Palmer, Saudi Arabia's Trademark Law, 1 *Arab Law Quarterly* 323 (1985) 323-23.

⁵ Amir H. Khoury, The Effects of Trademark Regimes: A Case Study of Arab Countries, *Journal of Law and Commerce*, 26 (2005) 29.

⁶ *Ibid.*

Arabia signed the Paris Convention which came into force in 2004. The convention ensures the protection of industrial and commercial property rights in its member states. In 2005, Saudi Arabia attained membership of the WTO and signed the TRIPS Agreement. Furthermore, in 2013 Saudi Arabia signed the Patent Cooperation Treaty (PCT) and the Patent Law Treaty (PLT). Consequently, these developments called for Saudi Arabia's own laws to be updated in accordance with each treaty's stipulation. A Royal Decree (No. M/51), dated 25 May 2014, was therefore issued. This approved the GCC Trademarks Law which came into force in September 2016. The approval of the GCC Trademarks Law has meant that, since its introduction, two trademark laws have been in place. This has resulted in disconcerting ambiguity in the general interpretation of trademarks law. The next section discusses the Saudi Trademarks Law of 2002 and the GCC Trademarks Law.

2.1.1 The Saudi Trademarks Law 2002

The Saudi Trademarks Law 2002 consists of 58 Articles, set out in 10 parts. It governs those issues such as what may constitute a trademark and what can therefore be registered, the consequent trademark registration and publication procedure, the effect of trademark registration, trademark renewal and cancellation, transfer of ownership, pledge and attachment of the trademark, licences for trademark use, jointly owned trademarks, registration fees, and the sanctions for any infringement of trademark rights.

The law permits organisations to register a unique combination of letters, numbers, symbols or signs to a particular category of goods or services in such a way as to distinguish them from similar goods or services in the marketplace. Registered trademarks are protected for 10 years from the date of the registration of application, and are perpetually renewable for further periods of 10 years. Two years of continuous, open and uncontested use of a registered trademark ensures "irrebuttable presumption of ownership" for the registrant, granting them the right to own the trademark in perpetuity.

2.1.2 The GCC Trademarks Law 2014

In order to ensure greater protection for IP, and specifically trademarks, in Saudi Arabia the GCC Trademarks Law of 2014, came into force in 2016. Originally, the GCC Trademarks Law was published by the GCC Supreme Council in 2006 and revised and approved in 2014. It was the culmination of 20 years of industry designed to coordinate IP practices throughout the Arab Gulf.¹ The GCC Trademarks Law seeks to harmonise IP practices in the GCC members countries (Saudi Arabia, Kuwait, Qatar, Oman, Bahrain and the United Arab Emirates(UAE)).²

The GCC Trademark Law sets out provisions and standards that are applied uniformly across all six GCC states pertaining to the registration as well as the enforcement and prosecution of trademarks rights. The law consists of fifty-two Articles, set out in seven parts. It addresses issues such as trademark registration procedures, trademark protection periods, trademark deregistration, transfer, mortgage and attachments of trademarks, licensing of use, collective marks, enforcement of rights, and penalties. In practice, the law is not a unitary law which means there is no single unified method of trademark registration and no signal enforcement system across the GCC states such as may be in federal states such as, for example, the Europe Union. Trademarks still need to be registered nationally at each national trademark office. In order to successfully register a trademark across all six GCC states, including Saudi Arabia, an organisation must file six separate national trademark applications.

Since the Saudi Arabia legal system is based on Sharia (Islamic Law), the Trademark Office and the courts interpret the GCC Trademark Law and the Saudi Trademarks Law 2002 by reference to Sharia principles.³ To clarify, any trademark applications which pertain to alcohol, pork products or religious symbols, will be rejected in accordance with the laws' provisions. (Art. 2 of the Saudi Trademarks Law 2002; Art. 3 of the GCC Trademarks Law).⁴

2.2 Institutions Responsible for the Application of the Trademarks Laws

In order to fully understand the intricacies of the application of trademark laws in Saudi Arabia, it is essential to have an overview of those institutions responsible for their application. This section examines those litigation bodies in Saudi Arabia, including the Saudi Authority for Intellectual Property (SAIP).

2.2.1 Judicial Institutions

In general, the court system in Saudi Arabia is composed of two independent parallel systems: (i) the general courts which are the courts of general jurisdiction, and (ii) the administrative courts known as the Board of

¹ David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States*, (Routledge, 2012) 88.

² David Price, *The GCC Intellectual Property Regimes: Global Harmonization or Regional Integration?*, in (Mohamed A. Ramady (ed), *The GCC Economics: Stepping up to Future Challenges*, Springer-Verlag New York, 2012) 132.

³ Nidal Kadasa, *Legislative Framework and Cause of Action*, 2016, available at <https://www.cwblegal.com/trademark-litigation-2017-global-guide-saudi-arabia/>

⁴ Michael Birnhack and Amir Khoury, *The Emergence and Development of Intellectual Property Law in the Middle East*, in (Rochelle Dreyfuss and Justine Pila (eds), *The Oxford Handbook of Intellectual Property Law*, Oxford Handbooks Online, 2017) 391, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2768379

Grievances (BOG), which hears cases that involve the government.¹ Until 2007, all trademark disputes were heard by the BOG. According to Art. 13 of the Saudi Trademarks Law 2002, the BOG has jurisdiction over administrative cases such as oppositions against acceptance of trademark applications, appeals against refusal of trademark applications and trademark cancellation actions. In addition, according to Art. 53 of the Saudi Trademarks Law 2002, the BOG has jurisdiction to decide all civil and criminal cases and disputes arising out of the implementation of this law such as the imposition of sanctions.

However, as a result of a legislative reform programme of the judiciary system by a Royal Decree (No. M/78) in 2007, the BOG was restructured. This returned it to its roots as a pure administrative court. Jurisdiction over criminal and commercial disputes was transferred to criminal and commercial divisions of the general courts. Consequently, disputes of an administrative nature such as oppositions against acceptance of trademark applications, appeals against refusal of trademark applications and trademark cancellation actions are still handled by the BOG jurisdiction. Criminal action against a trademark infringer is initiated by a public prosecutor before the criminal court. In order to bring a civil action, to claim compensation, from an infringer, an organisation must apply to the commercial court.²

2.2.2 Saudi Authority for Intellectual Property (SAIP)

Until February 2020, the Ministry of Commerce and Investment was the governmental body that had the responsibility for overseeing trademark registration and cancellation. After the establishment of the SAIP, as authorised by the Council of Ministry (No. 410) dated 27 March 2017, responsibility for trademarks, in addition to other IP, namely copyrights and patents, was transferred to the SAIP. The SAIP was introduced to unify those authorities originally responsible for IP matters. It aims to devise an IP strategy, update the rules and regulations, provides IP products and services in a timely and high-quality manner, increase IP awareness for all those involved – including innovators, creators, entrepreneurs and consumers – and coordinate IP enforcement efforts with other governmental bodies.³

Appeals against the SAIP's decisions, refusal of trademark applications and opposition proceedings, are filed with respective trademark committees which operate under the SAIP. The committees' decisions may be appealed to the BOG within a 60-day period. A final appeal can be filed before the supreme BOG on point of law only.⁴

According to a report published by the SAIP, the number of trademark applications submitted to the SAIP in 2019 was 37,669 which was an increase of 18% over 2018, (22480 of which were approved for registration). The majority of these trademarks related to food, drink and temporary residence services. There was also a significant number of computer software and hardware-related trademark applications.⁵

3. Ambiguity of Trademarks Regulation

3.1 Ambiguity of the Applicable Law

In general, repeal of a law may take place at any time and under reasonable circumstances. The repeal of law can be achieved in many ways. Set out clearly and concisely, when a new law is introduced to replace a former one, the new law will repeal the former law either explicitly or implicitly. A law may be introduced explicitly, which is more common, by stating that it shall repeal the former law or repeal any of its contradictory provisions. A new law will repeal the former law implicitly by including provisions in it that contradict those of the repealed law. In Saudi Arabia, the usual way to repeal law is by explicitly stating that: "this law shall repeal the provisions of the former law".

In Saudi Arabia, it is customary to simply cancel law and replace it with a new one if it addresses the same points. This overturns any unwanted contradictions between the two laws. When Saudi Arabia approved the GCC Trademarks Law to be the law applicable to trademark matters, customary practice would have been to automatically repeal the Saudi Trademarks Law 2002. This would have been in accordance with *lex posterior derogat (legi) priori* (a later act overrules an earlier one). This was the position when the Saudi Trademarks Law 2002 was introduced, where it was explicitly laid down in Art. 58 that: "This Law ... shall repeal the Trademarks Law issued by the Royal Decree No. M/5 dated 4/5/1404H [1984]."

The Royal Decree which approved the GCC Trademarks Law stated that: "The GCC Trademarks Law shall replace the previous GCC Trademarks Law which was approved on 2 December 2007." – An old version of the current GCC Trademarks Law that has not been operated. However, as to the repealing or replacement of the Saudi Law 2002, no mention at all was made in the decree nor in the GCC Trademarks Law's provisions. As at 2021, the Saudi Trademarks Law 2002 is still referred to by the Saudi courts even though GCC Law has been

¹ Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia*, (Brill, 2000) 82-85.

² Kadasa, *supra* note 9.

³ See, the SAIP website, at: <https://www.saip.gov.sa/en/about/>

⁴ Kadasa, *supra* note 9.

⁵ The SAIP Report 2019, available at: https://www.saip.gov.sa/wp-content/uploads/publications/2019_Intellectual_Property_Information_Report.pdf

approved and has come into force. In many judicial cases, the courts base their decisions on the provisions of the Saudi Trademarks Law 2002.¹ In addition, the 2002 law is displayed on the official website of the Bureau of Experts at the Council of Ministries under the status of “being in force”.² The Bureau of Experts is the legislative arm of the Council of Ministers. It is a department affiliated with the Council of Ministries, which acts as an official body for legislations in Saudi Arabia. Furthermore, according to the SAIP, the law applicable to its operations, including its trademark quasi-judicial committee, is the GCC Trademarks Law.³ Clearly, the Saudi Trademarks Law 2002 is still in force, alongside the GCC Trademarks Law.

The fact that two laws are in force for the provision of one subject matter, namely that of trademark legislation, is a cause for great consternation in the application of trademarks law. Those seeking to understand why two laws are in place may suggest that one is a procedural law and the other substantive, but in point of fact, they generally address the same issue to a large extent. They address issues such as (trademarks registration and publication procedure, trademark renewal and cancellation, licence for trademarks use, jointly-owned trademarks, penalties, etc.). However, discord is likely to ensue at some future point to cause confusion and as long as they co-exist, it is pertinent to highlight some comparisons and disparities. The next section discusses these points.

3.1.1 *The Saudi Trademarks Law 2002 vs. GCC Trademarks Law*

Even though there are many parallels between the Saudi Trademarks Law 2002 and the GCC Trademarks Law, the discrepancies are noteworthy.⁴ According to the GCC Trademarks Law, the definition of “trademarks” is broader compared to that of the Saudi Law 2002. The Saudi Trademarks Law defines trademarks to be registered as being only those trademarks perceivable by sight such as words, logos and pictures.⁵ The GCC Trademarks Law definition is broader and includes unconventional trademarks, such as smells and sounds marks.⁶ In point of fact, in August 2020, the SAIP issued the first certificate in Saudi Arabia for a sound trademark for a Saudi Telecom Company.⁷

Another disparity between the two laws is the “famous mark” or “well-known mark”. Famous marks are protected by virtue of the Saudi Trademarks Law 2002. However, the degree of its protection depends on whether it has been registered. If a famous trademark has been registered, registration prevents any subsequent trademarks either identical or similar to such registered famous trademark for identical or similar or dissimilar goods and services. If there is any possibility of damage to the owner of the famous trademark. However, if a famous trademark has not been registered, the protection is limited and only pertains to identical or similar goods and services.⁸ With regard to the GCC Trademarks Law, there is greater protection of famous trademarks. The GCC Trademarks Law stipulates clear criteria as to the determination of well-known trademarks. These are namely the extent of consumer recognition resulting from marketing campaigns by the trademark holder, the number of countries in which the trademark is registered, the longevity and extent of registration and usage. According to the GCC Trademarks Law, a famous trademark, whether registered or not, gives the same protection of a registered trademark under the Saudi Trademarks Law 2002. The Saudi Trademarks Law 2002 clearly distinguishes between registered and unregistered famous trademarks in contrast to the GCC Trademarks Law whereby a famous trademark enjoys wide protection.⁹

A further disparity pertains to the issue of recognition of prior use of right. Under the GCC Trademarks Law, a prior use of right is recognised, whereas under the Saudi Trademarks Law 2002, there is no comparable provision which explicitly recognises prior use of right. Such a change would, without doubt, considerably impact trademark disputes in Saudi Arabia if it were implemented.¹⁰

In addition, under the GCC Trademarks Law the ownership of a trademark can be transferred to another provided the transfer details are written in the ownership transfer agreement, which, in turn, must be published and recorded with the registration provider. Under the Saudi Trademarks Law 2002, there is no provision for the trademark owner to partially assign their trademark to any other party. There is no record of judicial cases involving matters of partial assignment which could provide a definitive view of judicial practices.¹¹

¹ Appellate Court's decision No. 1452 dated 13/11/1440H (corresponded to 15/7/2019) available at: <https://sjp.moj.gov.sa/Filter/AhkamDetails/18317>; Appellate Court's decision No. 429 dated 11/5/1440H (corresponded to 17/1/2019) available at: <https://sjp.moj.gov.sa/Filter/AhkamDetails/17197>; Appellate Court's decision No. 223 dated 21/3/1440H (corresponded to 29/11/2018) available at: <https://sjp.moj.gov.sa/Filter/AhkamDetails/17850>

² The Bureau of Experts at the Council of Ministries Official Website, available at: <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/3ec4414f-2ec5-48b1-bcb4-a9a700f1aa2b/1> (accessed on 3 Jan 2021).

³ See, the SAIP website, available at: <https://www.saip.gov.sa/en/about/>

⁴ Mohammad Jomaa and others, *The Gulf Cooperation Council (GCC) Trademark Law and its Impact on current Saudi Trademark Law and Practice*, 2015, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2691888

⁵ The Saudi Trademarks Law 2002, Art. 1

⁶ The GCC Trademarks Law, Art. 2

⁷ See, the Saudi Press Agency, available at: <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=2124772> (accessed on 2 Jan 2021).

⁸ Jomaa, *supra* note 19, p. 2.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

3.1.2 The Position of the GCC States

Given that Saudi Arabia has approved the GCC Trademarks Law and yet has not repealed its own national trademark law, it is helpful to examine the laws of those other GCC member countries that have also approved the GCC Trademarks Law to determine whether they, too, have two trademark laws co-existing in practice. Trademark laws pertinent to Bahrain, Kuwait, Oman, Qatar and UAE are set out below:

Bahrain: in 1955, the government of Bahrain introduced a comprehensive law that covers patents, industrial design and trademarks designed to provide limited trademark protection.¹ In 2006, this was followed by an introduction of Trademarks Law No. 11 to fulfil its requirements under the WTO and TRIPS Agreements.² However, in 2014, the government of Bahrain passed decision No. 6 of 2014 which approved the GCC Trademarks Law. The decision expressly provides that the GCC Trademarks Law repealed the 2006 version of the GCC Trademarks Law as well as the national Trademarks Law No. 11.³

Kuwait: the government of Kuwait has passed several laws which regulate trademarks. The first trademarks legislation was addressed by Art. 61 – 95 of the Commercial Law No. 68, dated 1980, and its Implementation Regulation No. 8, dated 1995. This law has been amended several times such as by Decree law No. 10 of 1987 and Law No. 1 of 2001.⁴ By Law No. 13 of 2015, the government of Kuwait approved the GCC Trademarks Law. Later in 2015, this was followed by Ministerial Decision No. 500, which explicitly provides that: “any matter that contradicts this Decree shall be cancelled.”

Oman: the first trademarks regulation in Oman was issued in 1987 by the Trademarks and Data Law, issued by Royal Decree No. 67.⁵ In 2000, this law was replaced by the Law of Trademarks, Trade DATA, Trade Secrets, and The Protection Against Unfair Competition by Royal Decree No. 38. In 2008, as part of Oman's prerequisites for entry into the Free Trade Agreement signed with the USA, the government of Oman replaced the 2000 law with the Industrial Property Law in accordance with Royal Decree No. 67, dated 2008. In 2017, by Royal Decree No. 33, the government of Oman officially approved the GCC Trademarks Law. According to Art. 52, the version of GCC Trademarks Law that was approved by the decree set out that: “Any provision that contradicts or is in conflict with this law shall be repealed.”

Qatar: the first trademarks legislation in Qatar was the 1978 Trademarks Law No. 3 which came into force in 1981.⁶ As a consequence of commercial developments, and because of Qatar's involvement in many treaties concerning IP such as the Paris Convention in 2000, the government of Qatar passed Law No. 9 of 2002 of the Law of Trademarks, Trade Indications, Trade names, Geographical Indications and Industrial Designs and Templates. This law remained in place until Law No. 7 of 2014 was passed, which adopted the GCC Trademarks Law. Law No. 7 expressly repealed the previous law relating to the 2006 version of the GCC Trademarks Law. It also provides that any provisions which contravene it are repealed.

UAE: in the UAE, trademarks are governed by the Federal Trademark Law No. 37 of 1992. In light of the provisions of the TRIPS Agreement, this law was amended by Federal Law No. 8 of 2002, followed by further amendments. Internationally, the UAE is a party to both the Paris Convention and the TRIPS Agreement.⁷ With regard to GCC Trademarks Law, the UAE has not approved it as at 2021.

These member country comparisons clearly illustrate the extent of ambiguity in trademark regulation in Saudi Arabia.

3.2 Ambiguity in the Court Jurisdiction

By virtue of Art. 13 of the Saudi Trademarks Law 2002, the BOG has the competent jurisdiction in administrative cases: oppositions against acceptance of trademark applications, appeals against refusal of trademark applications and trademark cancellation actions against a registration provider. In addition to administrative cases, the BOG has the competent jurisdiction to hear civil and criminal cases. It should be remembered that the BOG is an administrative court, the original remit of which was to handle administrative disputes. This then raises the question of why an administrative court would hear civil and criminal cases. Given that commercial and criminal cases were heard by commercial and criminal circuits under the BOG, it is understandable. However, after the judicial restructure in 2007, the commercial and criminal courts were made independent under the auspices of the general court. Consequently, as at 2021, civil disputes are heard by commercial courts whereas criminal disputes are governed by criminal courts. Commercial courts' competent jurisdiction is based on Art. 16 of the Commercial Courts Law, and criminal court's competent jurisdiction is

¹ Khoury, *supra* note 5, p 31.

² Khalid M. Al-Dweri and Qasi K. Maaitah, Review of Bahrain's Intellectual Property Framework to Combat Counterfeiting and Illegal Competition Under International Agreements, 8 *Kilaw Journal* 45 (2020) 48.

³ *Ibid*.

⁴ Khoury, *supra* note 5, p 33.

⁵ *Ibid*, p 35.

⁶ *Ibid*, p 36.

⁷ Firas Massadeh and Fayez Al-Nusair, Consumer Protection in the UAE: The Trademarks Act in Light of TRIPS Provisions, 22 *Journal of Intellectual Property Rights*, 146 (2017) 147.

based on Art. 28 of the Criminal Procedure Law.

As long as these laws remain the current practices of the Saudi courts, Art. 53 of the Saudi Trademarks Law 2002 is redundant except in that it creates even more ambiguity in terms of competent jurisdiction. It is worth mentioning that the GCC Trademarks Law does not specify within its provisions any particular jurisdiction for the hearing of trademark disputes.

The 2020 introduction of the Commercial Courts Law (CCL)¹ makes the issue of jurisdiction even more ambiguous and misleading. The CCL was introduced to govern the procedures of the commercial courts and applies to all disputes that fall within their jurisdiction. Art. 16 of the CCL clarifies the jurisdiction of the commercial court, and specifically "claims and violations that arise from the application of the intellectual property laws." The wording of Art. 16 may account for difficulties in interpretation. If it is read literally, the Art. states that the commercial courts have jurisdiction over all disputes related to IP, that is, the commercial court has the jurisdiction to hear the administrative, criminal and commercial action. However, based on current judicial practice, it could be interpreted that by Art. 16 of CCL the Saudi legislator meant that commercial should only hear commercial disputes – not administrative and criminal ones. Administrative cases are therefore heard by the BOG, by virtue of Art. 13 of the Saudi Trademarks Law 2002, whereas criminal cases are heard by criminal courts, according to Art. 28 of the Criminal Procedure Law. Yet, in light of Art. 16 of the CCL which understandably might cause some confusion, the Art. could be amended to confine commercial court jurisdiction to purely commercial disputes.

4. Conclusion

In Saudi Arabia, the regulation of trademarks has been deemed important since the introduction of the first regulatory law of 1939 which clearly recognised the need to provide protection for both businesses and consumers and which, as a result, made trademarks an important part of running successful commercial enterprises. This importance was acknowledged by the introduction of several laws and international treaties as well as the late establishment of the SAIP. However, none of these developments are particularly meaningful unless they are founded on a clear and precise legislative base. Unfortunately, the law which governs trademarks in Saudi Arabia is characterised by some ambiguity. This ambiguity may be attributed to the existence of two laws being in force: the Saudi Trademarks Law 2002 and the GCC Trademarks Law. Having two laws in place, both of which are responsible for the same point of law has created much confusion in practice. By way of comparison, all other GCC member countries that ratified the GCC Trademarks Law have issued clear and distinct provisions with regard to trademark law, namely that they have explicitly repealed their own former trademark laws. All trademark matters in these GCC member states, therefore, are governed by the GCC Trademarks Law, with the exception of the UAE. It is therefore, strongly recommended that the Saudi Trademarks Law 2002 be repealed in order to dispel any undesirable conflict. Such action would ensure Saudi Arabia enforces rigorous trademark regulation throughout its territories and dispels all ambiguities.

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¹ Royal Decree No. (M/93) dated 8 April 2020.

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