



# **Protecting Innovation through Patents, Copyrights, & Trademarks**

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## Introduction

With traditional tangible property, businesses depend greatly in their economic plan hierarchy on another type of property which is intangible and is called intellectual property. By definition, intellectual property is the authority that a person has towards his/her intellectual product.<sup>1</sup> The intellectual products in their turn are innovations of various natures divided into three main categories: industrial innovations, literary and artistic innovations, and commercial innovations. In other words, intellectual property encompasses industrial property, literary and artistic property, and commercial property depending on the subject of the possession.

This form of property does not differ in its importance to companies from their tangible properties (such as real estate); it may even exceed it in light of the business orientation in today's world. For instance, modern companies depend greatly on intangible properties such as the ones mentioned above. Therefore, and just like real estate is protected through registration in the cadasters, intellectual property, in its different classifications, demands protection. However, is the protection, in its form and term, common for all three kinds of novelties?

The diverse characteristics found in each of the three classified intellectual products demand special treatment to achieve the goal desired by companies. Safeguarding their rank in the market and defending any trespass on their status towards customers are their main objectives. This is what led to the enactment of also three major captions of protection: Patents, copyrights, and trademarks. In other words, **the type of protection chosen along with its degree depends on the characteristics of the product subject to safeguarding.**

To know what type of protection to select, it is important to highlight the relationship between the selected protection weapon and the characteristics maintaining to industrial,

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<sup>1</sup> (Naous, 2016-2017, pp. 2).



artistic, and commercial novelties while emphasizing the requirements needed to guarantee such weapon in three chapters: Chapter One: Patents, Chapter Two: Copyrights, and Chapter Three: Trademarks.



## Chapter One: Patent- The Weapon for Industrial Property

As previously mentioned, industrial property comprises industrial products innovated by someone in light of a certain business plan. To protect such novelty, patents, one of the strongest forms of government protection,<sup>2</sup> were regulated. Although not all companies develop patentable innovations, patents are eminent in large enterprises, for they can be obtained for any area of technology from paper clips to computers.<sup>3</sup> Hence, it is essential to know what are patents with respect to the subject of possession demanding protection (Section One) in addition to the conditions for guaranteeing such protection and its process (Section Two). Furthermore, the numerous cases associated with legal issues of patents require studying some cases to highlight the role of courts in reinforcing this protection (Section Three).

### Section One: The Essence of Patent

The essence of a patent includes its definition and scope (I), and its types along with each's duration (II).

#### I. Definition & Scope

As introduced above, patents are the tools regulated to safeguard an industrial innovation. Therefore, the subject of a patent is an innovation in the industrial field which is a new product or process, and not merely an idea, a composition, or a discovery. Although the Lebanese Law didn't mention a clear definition of patents in both laws related to patents,<sup>4</sup> it stated in article one of Patent Law that every innovation can be a subject of a patent that gives its holder an exclusive right to invest in it.<sup>5</sup>

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<sup>2</sup> (Clark 2, 2019-2020, Week One, Lesson One).

<sup>3</sup> These sections will cover the Lebanese and the United States of America jurisdictions.

<sup>4</sup> Law n<sup>o</sup> 240/2000 (Patent Law) and Decree n<sup>o</sup> 2385/1924 (Industrial and Commercial Property Rights Regulation).

<sup>5</sup> Art. 1; [2000] Lebanese Patent Law.



## 1. Subject-Matter Scope

### a. Unprotected Subject-Matters

Three subject matters cannot be protected through patents: ideas, concepts, and discoveries. An idea or concept cannot be patented, but its implementation can when classified as a product using the given idea.<sup>6</sup> As for discoveries, which are limited to finding existing assets in nature, patents are also not a choice.<sup>7</sup> Nevertheless, a case that must be noticed is that of Merck. Merck got a patent for vitamin B12 which already exists in nature. The patent office rejected the patent, however, the Supreme Court approved it since Merck took a substance already found in cow liver in a diluted state and concentrated it thus reaching a composition that had never existed previously in nature.<sup>8</sup>

The Lebanese Patent Law listed expressly what is excluded from protection in article three: (1) discoveries, scientific theories, and abstract mathematics syllabuses that have no industrial application, (2) the principles and methods of practicing purely intellectual activities, in the economic or financial fields, or the field of play, and (3) the methods of medical treatment or diagnosis related to humans or animals, provided that the products and equipment that are used to apply these methods are excluded.<sup>9</sup> For instance, the intellectual principles which are not applicable industrially, such as accounting programs, computer programs, and computer games, are protected through copyright and not patents.<sup>10</sup> Most importantly, patents shall not be granted to any innovation contrary to public policy or public morals.<sup>11</sup>

<sup>6</sup> (Clark 2, 2019-2020, Week One, Lesson Two).

<sup>7</sup> (Elia, 2020, pp. 1).

<sup>8</sup> (Clark 2, 2019-2020, Week One, Lesson Two).

<sup>9</sup> المادة الثالثة من قانون رقم 2000/240: "لا تعطى براءة اختراع: أ - بالإكتشافات والنظريات العلمية ومناهج الرياضيات المجردة التي ليس لها تطبيق صناعي. ب - بالمبادئ والطرق الخاصة بممارسة نشاطات ذهنية صرفاً أو في المجالات الاقتصادية أو المالية أو في مجال اللعب. ج - بطرق العلاج أو التشخيص الطبيين المتعلقة بالبشر أو الحيوان على أن تستثنى من ذلك المنتجات والمعدات التي تستخدم لتطبيق هذه الطرق."

According to WIPO: "Its subject matter must be accepted as "patentable" under law. In many countries, scientific theories, aesthetic creations, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, methods for medical treatment (as opposed to medical products) or computer programs are generally not patentable".

<sup>10</sup> (Elia, 2020, pp. 5).

<sup>11</sup> Art. 4; [2000] Lebanese Patent Law.





b. Protected Subject-matters

Patents are weapons used to protect function which can be a product or a process, or a creation. This can be derived from the patent definition of WIPO as follows: “*a patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem*”.<sup>12</sup> For example, diamonds are not patented, but the process of their creation is patented.

As for the Lebanese Patent Law, a detailed list of what can be the subject of the different types of patents was enumerated in article two.<sup>13</sup>

Patents offer an exclusive right for the patent owner to prevent (pre-conflict) or stop (after conflict) others from commercially exploiting the patented creation. Particularly, the patent’s safeguard signifies that the invention cannot be commercially “made, used, distributed, imported or sold” by others without the patent owner's consent.<sup>14</sup> Thus, by its very nature, a patent creates a monopoly since it is defined to restrict competition through such prevention.<sup>15</sup> It is important to note that although monopoly is viewed as a negative aspect, governments usually refer to it through patents to encourage the invention of useful products and lead to the increase of investments, activities, and the number of companies creating beneficial products.<sup>16</sup> The patent also gives its holder the exclusive right to invest in his invention through manufacturing, displaying, marketing, using, and selling it...<sup>17</sup>

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<sup>12</sup> (WIPO, What is a Patent?).

<sup>13</sup> Refer to Section One (II) of this Chapter.

<sup>14</sup> (WIPO, What kind of protection does a patent offer?).

<sup>15</sup> That is called a “patent monopoly”.

<sup>16</sup> (Clark 2, 2019-2020, Week One, Lesson Three).

<sup>17</sup> Art. 20; [2000] Lebanese Patent Law.



## **2. Territorial Scope**

The protection weapon of industrial intellectual property is a territorial right. This means that the protection granted through a patent is only valid in the country or region in which it has been filed and issued, according to the law of that country or region.<sup>18</sup> To illustrate, unlike copyrights which are valid globally, a patent is valid in only one jurisdiction and hence a patent holder might need more than one patent even in one country as is the case in China where four separate patents must be filed if the inventor wants protection in Hong Kong, Taiwan, Macau, and Mainland China.

The Patent Cooperation Treaty recognized such a challenge by filing a single international patent application. Creators file a single application instead of filing several separate national or regional patent applications to get a valid patent in more than one country at the same time while paying fees to each concerned country.<sup>19</sup> This initiative helps avoid courts not reviewing cases from other countries as well as not enforcing the demanded restrictions.

## **II. Its Types & Their Durations**

Four different main types of patents emerged based on the function demanded of the patent as in the kind of protection and the subject matter: Utility Patent, Utility Model, Design Patent, and Plant Patent.

### **1. Utility Patent**

The most common type of patent and the one usually referred to when simply mentioning “patent” is the utility patent. The objective behind getting such a patent is to protect useful and brilliant things. This type occupies ninety percent of the given patents in the United

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<sup>18</sup> (WIPO, Is a patent valid in every country?).

<sup>19</sup> The Patent Cooperation Treaty was signed on June 1970 with more than 155 contracting states today.



States of America.<sup>20</sup> According to the U.S. Patent and Trademark Office,<sup>21</sup> a utility patent is issued for the invention of a new and useful process, machine, manufacture, or composition of matter, or a new and useful improvement.<sup>22</sup> This means that it protects function –how something works – and not expression – how one says something or does something or the way it appears. This type of patent appears in article two ((a), (b), (c), and (d)) of the Lebanese Patent Law through the enumeration of what can be a subject of a patent.<sup>23</sup> For example, a utility patent protects the way an iPhone connects to Wi-Fi or the way the screen is swiped with one’s finger, and not the way the iPhone looks.<sup>24</sup>

The protection ensured by the utility patent relates to permitting its owner to exempt others from making, using, or selling the novelty for a maximum period of **twenty years from the date of patent application filing**, and it is subject to maintenance fees.<sup>25</sup>

Being the most common type, the following parts related to patents’ requirements and the unified process will be about utility patents.

## 2. *Utility Model*

In some countries like Germany and China, a less common type of patent is available: the utility model. This patent protects “minor inventions” through a system similar to the communal patent system. The objective of such type is to recognize minor improvements of existing products, which don’t satisfy the patentability requirements, especially in local companies, while complying with less stringent requirements.

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<sup>20</sup> “Approximately 90% of the patent documents issued by the USPTO in recent years have been utility patents, also referred to as “patents for invention”.

<sup>21</sup> Hereinafter referred to as USPTO.

<sup>22</sup> (USPTO, Types of Patents).

<sup>23</sup> المادة الثانية من قانون رقم 2000/240: " تصدر براءة لكل إختراع يتعلق: أ - بمنتج صناعي جديد. ب - بطريقة جديدة تؤدي إلى منتج صناعي معروف أو نتيجة صناعية معروفة. ج - بكل تطبيق جديد لطريقة أو لوسيلة صناعية معروفة. د - بمجموعة جديدة لطرق أو لوسائل معروفة."

<sup>24</sup> (Clark 2, 2019-2020, Week One, Lesson Two).

<sup>25</sup> (USPTO, Types of Patents).



Utility models provide the same sort of protection i.e. granting an exclusive right to its holder to prevent others from commercially using the protected invention, without his authorization, for **various limited periods**, usually shorter than the time limit offered by other patents.<sup>26</sup>

In other words, utility models are considered principally appropriate for protecting creations that make small enhancements to, and adaptations of, existing products or that have a short commercial life.<sup>27</sup> This type of patent isn't available in the United States of America.

### 3. *Design Patent*

According to the U.S. Patent and Trademark Office, a design patent is issued for a new, original, and decorative design embodied in or applied to a manufactured object. In other words, this patent, which is similar to the safeguarding weapons, copyright, and trademark, in protecting design, is distinguished from them by the fact that it relates specifically to the ornamental design of manufactured goods such as a car or smartphone.<sup>28</sup>

The protection indemnified through a design patent gives its owner the right to eliminate the making, using, or selling of the design by others.

As for its time limit, a differentiation is made between design patents issued as a result of applications filed on or after May 13, 2015, and those issued as a result of applications filed before May 13, 2015. For the first, the term is **fifteen years** from the date of the grant, while for the latter the term is **fourteen years** from the date of the grant. Design patents are not subject to the payment of maintenance fees.<sup>29</sup>

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<sup>26</sup> (WIPO, Utility Model).

<sup>27</sup> (WIPO, What is a Utility Model?).

<sup>28</sup> (Clark 2, 2019-2020, Week One, Lesson Three).

<sup>29</sup> (USPTO, Types of Patents).



After mentioning the first three types of patents, a basic example to clarify their different subjects is essential. For instance, if one took a certain pen, a utility patent is given to protect how this pen works meaning its function; a utility model is given to protect the minor, or what is called the petty, innovations such as the grip of the pen that makes it easier to hold than other pens; and finally the design patent is to protect the design of the pen's clip.<sup>30</sup>

#### 4. Plant Patents

As for the fourth main type of patents, plant patents are issued for a new and distinct, developed, or discovered reproduced plant such as cultivated sports, mutants, hybrids, and newly found seedlings. In other words, it protects the invention of a new plant that cannot self-replicate. The protection insured through it lies in permitting its holder to exclude others from reproducing the plant and making, using, or selling the plant **for a period of up to twenty years** from the date of patent application filing. Plant patents, like design patents, are not subject to the payment of maintenance fees.<sup>31</sup>

Article two of the Lebanese Patent Law referred to this type of patent in part "F" while stating clearly the three co-existing conditions required in the plant invention or discovery: (1) to be different from previously known similar species by an important, subtle and of minimal variability characteristic, or by several characteristics that together constitute a new plant species; (2) to be homogeneous in all its characteristics; (3) to be stable as in remaining identical to its first definition at the end of each production cycle.<sup>32</sup>

Before moving further in this research, it is important to note that the Lebanese Patent Law mentioned only a one-time limit for the exclusive right of investing in an invention

<sup>30</sup> (Clark 2, 2019-2020, Week One, Lesson One).

<sup>31</sup> (USPTO, Types of Patents).

<sup>32</sup> المادة الثانية من قانون رقم 2000/240: " تصدر براءة لكل إختراع يتعلّق: و- بالمنتجات النباتية الجديدة المستحدثة أو المكتشفة اذا كانت تتوافر فيها الشروط الآتية مجتمعة: 1- أن تختلف عن الأنواع المماثلة المعروفة من قبل بميزة هامة دقيقة وقليلة التقلب، أو بعدة ميزات تشكل في مجموعها نوعًا نباتيًا جديدًا؛ 2- أن تكون متجانسة بالنسبة لمجموع ميزاتها؛ 3- أن تكون لها صفة الاستقرار أي أنها تبقى مطابقة لتعريفها الأول بنهاية كل دورة إنتاجية."



regardless of the type of patent granting such right and that is **twenty years** starting from the date of applying for a patent.<sup>33</sup>

To sum up, in comparison with the other intellectual property protection tools, and that will be further discussed in the chapters that follow, patents have a shorter life than most of them and are the costliest and the hardest to get.<sup>34</sup>

After defining the scope of a patent's subject and the protection generally insured when holding the different types of patents, the next important aspects are the conditions that must be met to secure such a protection weapon and the process to get it after meeting the requirements (Section Two).

## **Section Two: Patent's Legal Requirements & Process**

Since the utility patent is the most common type of patent around the world, the needed requirements will be studied referring to this particular type.<sup>35</sup> This patent is not granted if three main requirements are not met according to different national jurisdictions as well as the Lebanese Jurisdiction (I). Then follows starting the process of obtaining such weapon (II).

### **I. Requirements for Granting Patents**

In general, for a person to get a utility patent, the innovation must be (1) new, (2) useful, and (3) non-obvious.<sup>36</sup>

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<sup>33</sup> Art. 5; [2000] Lebanese Patent Law.

<sup>34</sup> (Clark 2, 2019-2020, Week One, Lesson One).

<sup>35</sup> A Design Patent requires (1) novelty, (2) originality, (3) a pure creation of a person with no copying, and (4) ornamental. As for the plant patent, its requirements have been discussed in section one (II)- (4).

<sup>36</sup> (WIPO, What Conditions Must Be Met to Obtain Patent Protection?).



### 1. Novelty

The first question that comes to mind when talking about novelty is whether the person was the first to invent the innovation. In other words, it is about being first in disclosing or sharing with the public a new characteristic,<sup>37</sup> whereby the latter is not known in the body of existing knowledge in its technical field called “Prior Art”.<sup>38</sup> Innovation is known to the public if details of its objective and way of use were described, whether orally or written, in a publication or online, presented at an academic conference or to a group of investors, or described in an application for a patent in another country.<sup>39</sup>

The Lebanese Patent Law also mentioned that an innovation is protectable only if it is new.<sup>40</sup> Newness doesn’t necessarily mean that the innovation was created from scratch but that it is new in principle and unknown before the filing date. This law didn’t define clearly novelty but stated that an invention is new if it wasn’t included in the “Prior Art”.

According to some jurists, Prior Art is the case in which an innovation was placed within the reach of the public meaning the public knew of such an innovation before the filing date. The concerned public includes individuals who are familiar with the subject matter of the invention, i.e. specialists and workers in this area, to which the notion of “ordinary man of the profession” refers. If he was able to assimilate it, then there is no invention. This average professional man is not required to be super smart or foolish, but rather a person who possesses the necessary practicalities for practicing his profession. After all, novelty is sufficient when the average professional man does not see anything familiar in the invention.<sup>41</sup>

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<sup>37</sup> (Clark 2, 2019-2020, Week Three, Lesson One).

<sup>38</sup> (WIPO, What Conditions Must Be Met to Obtain Patent Protection?).

<sup>39</sup> (Clark 2, 2019-2020, Week Three, Lesson One).

<sup>40</sup> Art. 2; [2000] Lebanese Patent Law.

<sup>41</sup> (Elia, 2020, pp. 3).



Novelty, besides being examined in terms of time, is also examined in terms of place according to article four of the Paris Convention for the Protection of Industrial Property 1883.<sup>42</sup> This article gave the person who has duly applied for a patent in one of the countries of the Union, a priority right to file in other countries.<sup>43</sup>

## **2. Utility**

The second question that comes to mind when searching for the presence of the necessary conditions before filing for a patent is whether the invention is useful or not.<sup>44</sup> In other words, the invention must be capable of industrial application through its use for an industrial or business purpose beyond a mere theoretical phenomenon.<sup>45</sup> When filing for a patent, the person must state plainly in which way the product or process is useful. Evidence of utility is usually demonstrated through the number of sales although this is not considered proof. It is important to note that usefulness must be related to the public and not the researcher.

The Lebanese Patent Law stated this requirement also by mentioning that the invention must be applicable in the industrial field, which is achieved if it is possible to manufacture the invention or use it in any industrial form.<sup>46</sup>

## **3. Non-Obviousness**

The third requirement for obtaining a patent is non-obviousness and the question asked in this case is whether the invention is brilliant or not. In other words, is it certainly a novel innovation that no one else would have thought of?<sup>47</sup> Non-obviousness, or “inventive step”, means that a product or a process could not be assumed by a person having ordinary skills in

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<sup>42</sup> (Elia, 2020, pp. 3).

<sup>43</sup> Art. 4; [1883] Paris Convention for the Protection of Industrial Property.

<sup>44</sup> (Clark 2, 2019-2020, Week Three, Lesson Two).

<sup>45</sup> (WIPO, What Conditions Must Be Met to Obtain Patent Protection?).

<sup>46</sup> Art. 2; [2000] Lebanese Patent Law.

<sup>47</sup> (Clark 2, 2019-2020, Week Three, Lesson Three).





the relevant technical field.<sup>48</sup> This means that non-obviousness is met by referring to someone experienced in the related field.

According to the U.S. Supreme Court, non-obviousness does not demand a genius aspect but simply requires the invention of a product or process that would have taken a lot of work for a skilled person in the same field to emanate.<sup>49</sup>

If the elements of an invention are obvious, the combination of these elements is considered to decide whether it is non-obviousness or not.

Article two of the Lebanese Patent Law likewise mentioned this requirement by emphasizing the need for a creative activity to enclose the invention and explained this condition by stating that it is met when an ordinary professional man cannot reach such an invention based on prior art.<sup>50</sup>

According to the French Jurisprudence, creative activity has two meanings: (1) a personal meaning and it involves doing effort to reach the invention, and (2) an objective meaning and it involves the novelty of an invention.<sup>51</sup>

In case all these requirements are available in an invention, the next step that a person has to do is to file for obtaining the weapon to shield such an invention through a process of several steps (II).

## **II. Process for Obtaining Patents**

A patent isn't defacto; it is only granted after performing formal obligatory and substantial procedures or steps.<sup>52</sup> Although the main steps in the process of obtaining a patent

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<sup>48</sup> (WIPO, What Conditions Must Be Met to Obtain Patent Protection?).

<sup>49</sup> (Clark 2, 2019-2020, Week Three, Lesson Three).

<sup>50</sup> Art. 2; [2000] Lebanese Patent Law.

<sup>51</sup> (Elia, 2020, pp. 4).

<sup>52</sup> (Elia, 2020, pp. 2).



are common in most jurisdictions, the details in certain steps differ depending on the type of system followed in each concerned country. For instance, there are three main systems categorized referring to the examination of the previously mentioned requirements before or after granting the patent: The Anglo-Saxon System, the European System, and the Mixed System. For this reason, the process will be studied in the U.S.A. jurisdiction (1) and the Lebanese jurisdiction separately (2).

### ***1. The Process in the U.S.A. Jurisdiction***

In the U.S.A., the system followed is the Anglo-Saxon, which is based on examining whether the invention meets the four main conditions before granting a patent. The Patent Office refers the submitted innovations to experts in the field to study their novelty, utility, and non-obviousness and decide their correctness.<sup>53</sup> This process encompasses four main steps: (a) obtaining a provisional patent, (b) filing a formal patent application, (c) navigating the patent review and appeal process, and (d) referring to the court.

#### **a. Obtaining a Provisional Patent**

Although this step isn't obligatory and may be skipped, its importance lies in the benefits it gives the person filing it. To begin with, it gives a one-year grace period that stops the timing on novelty and other conditions and allows to consider that there is a "patent pending". It also starts the clock on the patent timing which means that when the person gets the formal patent, its date will go back to the date of the provisional patent hence giving its holder priority because he is the first to file. To illustrate, if another person files for a formal patent for the same competing invention, a provisional patent protects the one who filed it before, and the latter has the right to sue, once he gets his patent, for any damage that goes back to the date of the provisional patent.<sup>54</sup>

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<sup>53</sup> (Elia, 2020, pp. 2).

<sup>54</sup> (Clark 2, 2019-2020, Week Two, Lesson One).



Nevertheless, this type of patent may discourage competition, and companies sometimes abuse it by neglecting the need to file for a formal patent and depending only on a provisional one every year. However, its benefits outweigh these minor disadvantages, since it is granted almost automatically, without serious revision, at a low cost, and without the need for an attorney. It can also be amended almost entirely as long as the modification happens before filing the formal application.<sup>55</sup>

b. Filing a Formal Patent Application

This step is considered to be the first obligatory one to obtain a patent. Usually, Patent Offices provide a specific form to fill out. This application, which must be filed within the one-year time limit stated above, requires extensive details due to the need for a description of the title of the invention, an indication of its technical field, and a thorough explanation of the background of the invention, in clear language. The details must be enough to prove novelty, utility, and non-obviousness, and to allow a person with an average understanding of the field to use or reproduce the invention. Such descriptions are usually supplemented with visual materials such as drawings, plans, or diagrams to better describe the invention and an abstract, which covers a summary of the invention. A clear and concise definition of the matter for which patent protection is sought in the “claims” part of the patent application is a must.<sup>56</sup> Although in this step also an attorney is not required, the complexity may lead to the necessity of a patent attorney consultation or a patent agent to prepare a patent application. Moreover, the legislation of many countries requires that an applicant, whose ordinary residence or principal place of business is outside the country, be represented by an attorney or agent qualified, that is residing and practicing, in the country.<sup>57</sup>

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<sup>55</sup> (Clark 2, 2019-2020, Week Two, Lesson One).

<sup>56</sup> (WIPO, What practical steps do I have to take to obtain patent protection?).

<sup>57</sup> (WIPO, Do I Need a Patent Attorney/Agent to Prepare & File a Patent Application?).



The monetary and time costs in this step are mainly expensive.<sup>58</sup> They may vary considerably from country to country as official fees usually vary widely between countries. The nature of the invention, its complexity, patent attorney's fees, the length of the application, and possible objections raised during the examination by the patent office are all factors that affect the costs. In addition to the national official filing fees, once a patent is granted by the Patent Office, maintenance or renewal fees, generally on an annual basis, are to be paid to preserve the validity of the patent.<sup>59</sup>

After filing the patent application, amendments and the addition of new claims aren't possible. The National Patent Office studies the case and decides next if the requirements are available to grant the patent.<sup>60</sup> Others may want to challenge the granting of a patent. For this reason, many Patent Offices provide administrative procedures that allow third parties to challenge or oppose the grant of a patent on the basis that the claimed invention is not new or does not involve an inventive step.<sup>61</sup> However, if the patent isn't granted, step three is put into action for the applicant.

### c. Reviewing & Appealing Process

Most of the time the Patent Trademark Office rejects granting a patent. This happens since the Patent Review Officer, entrusted with reviewing the applications and approving or rejecting them, is overworked, under-skilled for certain challenges, and often lacks the adequate background on technologies for technological inventions.<sup>62</sup>

Therefore, if the Patent Review Officer rejects the application, the primary thing the applicant has to do is negotiate with the first to try to highlight the reason behind the rejection

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<sup>58</sup> (Clark 2, 2019-2020, Week Two, Lesson Two).

<sup>59</sup> (WIPO, How much does it cost to patent an invention?).

<sup>60</sup> (Clark 2, 2019-2020, Week Two, Lesson Two).

<sup>61</sup> (WIPO, Can the decision to grant a patent be challenged?).

<sup>62</sup> (Clark 2, 2019-2020, Week Two, Lesson Three).



such as missing documents. If the negotiations fail, the next step is to refer to an internal administrative review in which the Patent Review Supervisor reviews the administrative appeal. If this appeal is also rejected, the last option and step are to refer to the external court review where court rulings set precedents for future decisions.<sup>63</sup>

d. Going to Court

After failing in all administrative options to be granted the patent, the applicant may refer to the Federal Court to appeal the rejection. In this step, the judges have to a certain extent the technical knowledge needed and can refer to experts. If the judge reaches a disagreeable decision, the plaintiff can appeal it and even reach the Supreme Court.<sup>64</sup> The time required in such a step may be years and the cost is expensive.

It is essential to note that referral to courts can even take place if the patent was granted on grounds such as challenging its validity, defending it when someone is trying to revoke it, or enforcing its rights against an infringer.<sup>65</sup>

## 2. *The Process in the Lebanese Jurisdiction*

Unlike the U.S.A, the system followed in Lebanon is the European System, which is a system of deposit and not of examination.<sup>66</sup> Therefore, the Head of the Intellectual Property Protection Department in Lebanon<sup>67</sup> only asks if the previously mentioned requirements are available without reviewing their rightness.<sup>68</sup> He doesn't have the right to test whether or not the innovation is specialized with novelty, utility, and non-obviousness, but he can examine its

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<sup>63</sup> (Clark 2, 2019-2020, Week Two, Lesson Three).

<sup>64</sup> (Clark 2, 2019-2020, Week Two, Lesson Four).

<sup>65</sup> (Clark 2, 2019-2020, Week Two, Lesson Four).

(Elia, 2020, pp. 2).

<sup>67</sup> Hereinafter referred to as HOIPPD.

<sup>68</sup> Article 16 of the Lebanese Patent Law expressly stated that patents are granted without insuring the correctness of the innovation, its value, its novelty, utility, and non-obviousness.

<sup>66</sup> نظام إيداع وليس نظام تدقيق.



kind, can check whether it is a composed invention or not, and can make sure that all demanded documents are available.<sup>69</sup>

Articles seven to nineteen of the Lebanese Patent Law specify the process of obtaining a patent in Lebanon. To begin with, the inventor in Lebanon can be a Lebanese or a Foreigner,<sup>70</sup> who has a principal place of business in Lebanon or an agent in Lebanon. A formal application for a patent is presented by the applicant himself or his agent to the HOIPPD in the Ministry of Economy and Trade in Beirut.<sup>71</sup> This application is presented in the Arabic language and has attached with it a set of documents that prove the necessary details.<sup>72</sup> The documents describing the innovations can be presented in English or French. The importance of these documents appears in case challenges are presented in front of courts since the HOIPPD doesn't examine the substance of these documents. The applicant then has to pay a legal fee for the application to be accepted.<sup>73</sup>

Next, the HOIPPD puts a detailed report including the time, in days and hours, of receiving the application.<sup>74</sup> The HOIPPD has thirty days to study the application within the limits of his duties. If the innovation falls under articles three and four of the Lebanese Patent Law,<sup>75</sup> the HOIPPD has to inform the applicant during this period otherwise it would be considered acceptable, and the latter has sixty days from the date of receiving the report, to present his notes. The HOIPPD has to send the Minister of Economy a report along with the remarks of the applicant within thirty days from the date he received the latter's answer. The minister issues a decision that either accepts the application or refuses it within sixty days from

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<sup>69</sup> (Elia, 2020, pp. 5).

<sup>70</sup> [1883] Paris Convention for the Protection of Industrial Property.

<sup>71</sup> Art. 7; [2000] Lebanese Patent Law.

The application shall encompass one invention only or several inventions on condition they form one general invention. (Art. 9; [2000] Lebanese Patent Law.).

<sup>72</sup> Art. 8 and 9; [2000] Lebanese Patent Law.

<sup>73</sup> Art. 10; [2000] Lebanese Patent Law.

<sup>74</sup> Art. 11; [2000] Lebanese Patent Law.

<sup>75</sup> Refer to Section one (I) of this Chapter.



the day of presenting the HOIPPD's report. This decision can be appealed in front of the Civil Court of Appeal in Beirut within thirty days from the date of notification.<sup>76</sup> This is a significant aspect since the decision of a minister is usually administrative and cannot be appealed in front of civil courts, but the specialization of the appeal's subject makes it possible to review these courts.<sup>77</sup>

The applicant can demand delaying the issuance of the patent for eighteen months from the date of presenting the application. However, if the invention was the subject of a previous application for a patent in another jurisdiction, the period mentioned above starts from the date of presenting the first application.<sup>78</sup>

The Intellectual Property Protection Department issues the patent, in case the application was accepted, within sixty days from the date of acceptance whenever the applicant doesn't ask for a postponement.<sup>79</sup> The patent is granted according to the documents of article eight and is published in the Official Gazette with a summary of the invention in Arabic at its owner's expense.<sup>80</sup> The granting of the patent is accompanied by a yearly fee that is due on the first day of each year that follows the date of presenting the application; in case this fee is not paid with a fine within six months from the due date, the patent expires.<sup>81</sup>

In case of patent infringement through imitation, the patent owner has the right to refer to the penal courts.<sup>82</sup>

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<sup>76</sup> Art. 12; [2000] Lebanese Patent Law.

<sup>77</sup> (Elia, 2020, pp. 12).

<sup>78</sup> Art. 14; [2000] Lebanese Patent Law.

<sup>79</sup> Art. 15; [2000] Lebanese Patent Law.

<sup>80</sup> Art. 17; [2000] Lebanese Patent Law.

<sup>81</sup> Art. 18; [2000] Lebanese Patent Law.

In such a case, the patent holder can ask for a recovery according to the conditions of article 19 of the Lebanese Patent Law.

<sup>82</sup> Art. 40; [2000] Lebanese Patent Law.

(Elia, 2020, pp. 15-16).



After discussing in detail the requirements of granting this powerful protection weapon and the process of such a grant in the U.S.A. jurisdiction and the Lebanese jurisdiction, while providing a general view of the challenges that can take place in front of the courts of law, it is now vital to provide for an overview of several cases that highlight significant points discussed in section one and section two (Section Three).

### **Section Three: Patent Case Studies**

To understand better what has been discussed in the previous sections, it is always worth referring to realistic case studies that show practically all features of patents. For this reason, the most famous case in the U.S.A. jurisdiction will be discussed first (I), then will follow a case in the Lebanese Jurisdiction (II); whereby each highlights specific and different patent legal issues.

#### **I. Samsung v. Apple**

Between Samsung and Apple, more than twenty lawsuits in many countries were filed with claims involving billions of dollars. Samsung won some cases, and Apple won others. However, the greatest court win of Apple in front of a U.S. jury highlights the case where Samsung infringed the design patent of the first in August 2012.<sup>83</sup> The jury explained that there is an overlap in design since Samsung's corners, icon grid, and swipe to unlock are similar to those of Apple. Therefore, when other aspects of Samsung's products appear to confuse consumers and make them think they may be the same product, awarding patent violations of 100% of Samsung's profits for all those infringing products to Apple is justified.

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<sup>83</sup> (Dhani and co.).





Apple was granted a one-billion-dollar award depending on the following justification:  
*“Under the US patent laws, the harm of infringing a design patent does not agree with the impairment calculation for infringing a utility patent. Although a design patent owner may recuperate the infringer’s total profits, the utility patent owner may recuperate his/her lost profits or a fair royalty. This explains why the jury’s award based on infringement of a design patent was 100X the award based on infringement of a utility patent.”*<sup>84</sup>

However, the Supreme Court overturned this award in 2016 and decided that the net profit damages for infringing design patents do not need to be calculated based on the product sold to the consumer, but based on only a constituent of that product. This led to sending the case back to the trial court.<sup>85</sup> Nevertheless, the fight continued and the case went to round two, after appealing the judgment of about \$400 million. The appeal was sent back to the trial court to try again but gets appealed again. In summary, the Supreme Court rejected the first ruling, and courts of appeals have rejected later rulings, and it's now in the trial court for the fourth time. In light of this war, the third court of appeal suggested, when the parties rejected the third verdict, a settlement between the two companies.

Meanwhile, Apple sues Samsung again on a new set of utility patent violations, claiming \$2.5 billion for damages. Samsung counter sues, but Apple wins \$112 million. According to some, this victory is a kind of an elusive victory for Apple, because their legal fees were almost as much as their win due to the large amount of money that they've spent on court cases inviting a variety of cases up to the Supreme Court. In addition, Samsung won most of its battles in Europe and Asia.<sup>86</sup>

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<sup>84</sup> (Dhani and co.).

<sup>85</sup> (Clark 2, 2019-2020, Week Four, Lesson Four).

<sup>86</sup> (Clark 2, 2019-2020, Week Four, Lesson Four).



In conclusion, Samsung and Apple agreed to settle all their lawsuits except the one in the U.S. discussed above. Therefore, filing design patents is important when considering their potential to lead to large settlements although the way of calculating damages is still unclear.<sup>87</sup>

## **II. Sobhi Saleh Tah v. Hassan Mohamad El Homs**

In Lebanon, a court case discussed the lack of the novelty requirement in using color coding to write the letters subject to the provisions of intonation in the Quran.<sup>88</sup> The plaintiff, Saleh,<sup>89</sup> sued El Homs for filing for a patent regarding using the same color coding technique while only changing some colors and adding others in Lebanon in 1995.<sup>90</sup> The lawsuit was based on the lack of a new element in the defendant's invention that is not included in the subject of the plaintiff's patent registered in Syria. The latter asked for the annulment of El Homs's patent registered in Lebanon with damages.<sup>91</sup>

The court explored that the defendant's change of some color indications in his Quran does not constitute an element of innovation. For instance, this element is represented by the idea of color coding and not by what these colors and their indications are, which in turn are not considered an invention that deserves protection. Thus, the defendant did not prove the element of novelty in his invention, but while challenging the invention of the plaintiff registered in Syria, he affirmed that the idea of color coding the rules of intonation in the Quran had been recognized since ancient times through several copies of the Quran in many Islamic countries, and testified that the plaintiff had no right to monopolize this Industry. Accordingly,

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<sup>87</sup> (Clark 2, 2019-2020, Week Four, Lesson Four).

<sup>88</sup> [2003/11] First Instance Court, Chamber 3, Beirut.

<sup>89</sup> Sobhi Saleh Tah was granted a patent in Syria in 1994 for using a color coding technique for writing letters subject to the provisions of intonation in the Quran.

<sup>90</sup> The granting of this patent was refused in Syria in 1995.

<sup>91</sup> This patent encloses the idea of implementing the way of writing the provisions of the Quran through the temporal and color coding method.



on January 14, 2003, the court reached the decision of annulling the patent granted in Lebanon to El Homsy proving two main points:

- 1- The HOIPPD does not check the validity of the patent's requirements before approving and granting it as discussed previously.
- 2- The novelty requirement is important since without it the person cannot be granted a patent when another person was the first to file for a patent of a similar subject.

After going over all vital aspects of a patent starting with its essence, duration, requirements, and the process of getting it, moving to another weapon with another subject matter and requirements is needed to attain the required differentiation for choosing the right protection weapons when businesses consider shielding their innovations. (Chapter Two)



## Chapter Two: Copyright- The Weapon for Literary & Artistic Property

Intellectual property comprises secondly literary and artistic property which encloses literary and artistic innovations. For instance, just like many businesses refer to patents to protect their industrial products and processes, some businesses base their work on artistic products and aim to safeguard them. To protect such innovation, copyrights were regulated. Although companies previously, as a moral person, scarcely developed artistic innovations, today they give great value to artistic and literary inventions, and own a vast number of them either through work made for hire or through the assignments of rights by the author himself to the corporate.<sup>92</sup> Therefore, copyrights were regulated worldwide to secure business innovations as well as those of single artists who need to be motivated to create more. For this reason, it is fundamental to know, while keeping in mind a comparing approach with what was previously deliberated regarding patents, what are copyrights with respect to the subject of possession demanding protection (Section One), what are the conditions for guaranteeing such protection and its exemption (Section Two), and finally what are some legal issues of copyrights that were the subject of court cases. (Section Three).

### Section One: The Essence of Copyright

The essence of copyrights includes its definition and duration (I) and its subject-matter scope (II).

#### I. Definition & Duration

Unlike patents, copyright is the weapon to protect artistic expression or what is called artistry.<sup>93</sup> In other words, copyright is a type of intellectual property that protects original works

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<sup>92</sup> (Clark 1, 2019-2020, Week One, Lesson Three).

<sup>93</sup> (Clark 1, 2019-2020, Week One, Lesson Two).



of authorship as soon as an author fixes the work in a tangible form of expression. In copyright law, there are a lot of dissimilar kinds of works such as paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, movies, architectural works, and plays.<sup>94</sup> Therefore, copyright is the authority that a person has on his intellectual output.<sup>95</sup>

The protection insured through copyright is mostly common in the U.S.A jurisdiction and Lebanese jurisdiction.

### ***1. In the U.S.A Jurisdiction***

The U.S. copyright law offers copyright owners five main exclusive rights:<sup>96</sup>

- a. **Reproduction Rights;** these give only the owner the right to reproduce his work in copies and the right to prohibit/authorize others from making copies. It is the most basic right.
- b. **Derivative work Rights;** these give only the owner the right to prepare derivative works based upon the original work and the right to prohibit/authorize others from making such work.
- c. **Distribution Rights;** these give the owner the right to distribute his work to the public by sale, other transfer of ownership, or rental... and the right to prohibit/authorize who can buy/sell his work. (limited to public exercise only).
- d. **Display Rights;** these give the owner the right to display the work publicly and the right to prohibit/authorize who can display his work. (limited to public exercise only).

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<sup>94</sup> (U.S. Copyright Office).

<sup>95</sup> (Naous, 2016-2017, pp. 2).

<sup>96</sup> (Clark 1, 2019-2020, Week One, Lesson Six).

(U.S. Copyright Office, What rights does Copyright Provide?).



- e. Performance Rights; which give the owner the right to perform his work publicly and the right to prohibit/authorize who can perform his work. (limited to public exercise only).

The length of the copyright safeguard depends on the date of the work creation. To illustrate, under the current law, there is a differentiation between works created before 1978 and those created on or after January 1, 1978. The latter has a copyright term of the **author's life plus seventy years after his death**.<sup>97</sup> This timeframe surpassed the mere aim of motivating the creator to create more and reached the objective of protecting corporations in marketing their investment, earning money, and protecting their businesses.<sup>98</sup>

## 2. *In the Lebanese Jurisdiction*

Chapter five of Law n<sup>o</sup> 75/1999 discussed the rights enjoyed by the holder of copyrights. These rights are divided into two categories: Economic rights, which are the economic profiteering of the product and earning its benefits, and Moral rights, which are the mental and intellectual creation inherent to the author's personality.<sup>99</sup> In contrast to patents where economic rights precede moral rights, copyright's moral rights are the heart of this weapon.<sup>100</sup>

### a. The Economic Rights

The economic rights provide the holder of copyright the exclusive right to exploit the work commercially and, accordingly, the right to authorize or prohibit the following: (a) any copying, printing, recording, and reproducing of the work in any manner or form including

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<sup>97</sup> (Clark 1, 2019-2020, Week One, Lesson Two).

If the work is a joint work, the term lasts for seventy years after the last surviving author's death. For works made for hire and anonymous or pseudonymous works, copyright protection is 95 years from publication or 120 years from creation, whichever is shorter.

<sup>98</sup> (Clark 1, 2019-2020, Week One, Lesson Two).

<sup>99</sup> Art. 14; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property. (Strauss, 1955, pp. 506). (Chafi, 2004).

<sup>100</sup> (Elia, 2020, pp. 6).



photography, cinematography, sound or visual recordings of any kind or any other form; (b) any translation, adaptation, alteration, transformation, summary, rework of the work or rearrangement of the music; (c) the sale, distribution or rental of the work; (d) the importation of copies of the work manufactured abroad; (e) the public performance of the work; (f) the communication to the public of the work by wire or wireless means...<sup>101</sup> These economic rights may be transferred in whole or in part whilst considering certain formal conditions.<sup>102</sup>

b. The Moral Rights

As for moral rights,<sup>103</sup> they are independent of the economic rights even after their assignment, and hence the author enjoys the following moral rights, that cannot be assigned or attached but maybe only transmitted by testamentary disposition or inheritance laws:<sup>104</sup> (a) the right to disclose the work and to determine the way and method of such disclosure; (b) the right to claim authorship of the work and to have his name mentioned on every copy of the work each time the work is used in public; (c) the right to use a pseudonym or to remain anonymous; (d) the right to object to any distortion, mutilation or modification of the work which would be prejudicial to his honor, reputation, fame or artistic, literary or scientific position; (e) the right to rescind contracts for the assignment of economic rights even after their publication if rescission is necessary to safeguard his person and reputation or is due to a change in his beliefs or the circumstances, provided that third parties are compensated for damage resulting from such rescission.<sup>105</sup>

As for the duration of copyright protection in Lebanese law, a differentiation is made between economic rights and moral rights. For the first category of rights, the term of protection

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<sup>101</sup> Art. 15; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>102</sup> Art. 16- 17-18-19; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>103</sup> They can be categorized into four main rights: “La Droit à Paternité, Droit de Divulgateion, Droit au Respect de l’Intégrité de l’oeuvre, et Droit de Retrait.” (Naous, 2016-2017, pp. 26).

<sup>104</sup> Art. 22; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>105</sup> Art. 21; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.



granted is the **author's life and fifty years after his death**, starting from the end of the year in which the death occurred.<sup>106</sup> As for the second category, the protection is **perpetual** and shall not be subject to prescription.<sup>107</sup>

## II. Its Subject-Matter Scope

The subject of copyright does not embrace every artistic and literary intellectual output the person makes. For instance, there are some intellectual properties protected (1) and others that are not included in the copyright safeguard (2).

### 1. Works covered by Protection

According to article two of the Lebanese Law on the Protection of Literary and Artistic Property, every production of the human spirit be it written, pictorial, sculptural, manuscript, or oral, regardless of its value, importance, or purpose and the mode or form of its expression shall be protected by this law.<sup>108</sup> Among other works, the following examples are subject to safeguarding (a) books, archives, pamphlets, publications, printed material, and other literary, scientific, and artistic writings; (b) lectures, addresses, and other oral works; (c) audiovisual works and photographs; (d) musical compositions with or without words; (e) dramatic or dramatic-musical works; (f) choreographic works and pantomimes; (g) drawings, sculpture, engraving, ornamentation, weaving, and lithography; (h) illustrations and drawings related to architecture; (i) computer programs whatever their language and including preliminary work; (j) maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science; (k) any kind of plastic artwork whether intended for industry or not.

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<sup>106</sup> Art. 49; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>107</sup> Art. 53; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>108</sup> Art. 2; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.





Derivative work, according to article three of the Lebanese Law, is also subject to similar protection as original works without prejudice to the rights in the original work:<sup>109</sup>

- translations, adaptations, transformations, and arrangements of music;
- collections of literary or artistic works and compilations of data, whether in machine-readable or another form, provided that they are authorized by the copyright owner or his public or private successors and that because of the selection and arrangement of their contents, they constitute intellectual creations.

By definition, derivative work is a work based upon or derived from one or more preexisting copyrighted works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.<sup>110</sup>

## ***2. Works excluded from Protection***

Just like in the U.S. jurisdiction, in Lebanon, several products cannot be the subject of copyright protection provided by law. The reason behind this exemption relates to the objective behind which these products were issued and the impossibility by their nature to be private property since it aims to spread education and culture.<sup>111</sup> These products include (a) daily news; (b) laws, legislative decrees, decrees, and decisions issued by all public authorities and official translations thereof; (c) judicial decisions of all kinds and official translations thereof; (d) speeches delivered in public assemblies and meetings, where only authors enjoy the sole right of collecting and publishing such lectures and presentations; (e) ideas, data, and abstract

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<sup>109</sup> Art. 3; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>110</sup> (US Copyright Office, Circular 14).

<sup>111</sup> (Naous. 2016-2017, p.54-59).  
(Chafi, 2004).



scientific facts; (f) artistic folkloric works of all kinds, yet works inspired by folklore shall enjoy protection.<sup>112</sup>

In other words, the following are not protected:<sup>113</sup> (a) ideas and concepts, such as  $E=mc^2$ , even if they meet the requirements;<sup>114</sup> (b) names such as Michael Jordan, although creative names such as “Darth Vader” can be protected due to their originality and uniqueness; (c) common phrases; (d) facts and data such as phone lists; (e) methods of operation, which state how something works such as equipment maintenance instructions and machines manuals; (f) useful things in which the utility exceeds the artistic expression, although dictionaries, textbooks, and software are protected;<sup>115</sup> and (g) manufactured goods, which are protected through patents since copyright is concerned with artistic expression and not manufactured things although DVDs, books, clothes, and toys, which are manufactured, are protected through copyright since the content’s value importance is greater than its incidental manufactured aspect.<sup>116</sup> In summary, when the useful aspect is essential to the thing’s value, the right weapon of protection is a patent.

As mentioned above, ideas are not subject to protection through copyrights unlike expressions; hence a distinction between ideas and expressions is necessary. A very thin line separates an idea from an expression, a non-protectable subject from a protectable subject, and an individual case revision is demanded.<sup>117</sup> A way that this distinction was treated was through the Merger Doctrine by the Ninth Circuit: “*When the “idea” and its expression are ... inseparable, copying the “expression” will not be barred, since protecting the “expression”*”

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<sup>112</sup> Art. 4; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>113</sup> Section 102(b); [1976/ Title 17- Chapter 1] US Copyright Act.

<sup>114</sup> Refer to Section Two (I) of this Chapter.

<sup>115</sup> The court uses “the useful article doctrine” to deny protection if the useful aspect is essential.

<sup>116</sup> (Clark 1, 2019-2020, Week One, Lesson Four).

<sup>117</sup> “*Copyright law generally protects the fixation of an idea in a “tangible medium of expression,” not the idea itself, or any processes or principles associated with it. The nuances of this distinction are sometimes difficult to grasp, and the reality of the situation is that the facts of each case have to be looked at individually.*” (Strebeck, 2021).



*in such circumstances would confer a monopoly of the “idea” upon the copyright owner free of the conditions and limitations imposed by the patent law.”* In other words, when the idea and expression merge, the latter is not protectable. Such is the case of the usage of a photo of cinnamon sticks on a cinnamon tea box where no violation is registered if another party creates the same box with the same photo unless he copied the exact details of the original.<sup>118</sup>

After defining the scope of a copyright’s subject and the rights it grants, the next important aspects are the conditions that must be met to secure such a protection weapon and the limitations of using copyright as a defense (Section Two).

## **Section Two: Copyright’s Legal Requirements & Limitations**

Unlike patents, copyright as a weapon of protection has minimal legal requirements to be secured and mostly no need for a process to be granted (I). However, if sued for copyright infringement, many limitations can be used as a defense to overturn the power of this safeguarding weapon (II).

### **I. Requirements of Copyright Protection**

Although the requirements for gaining copyright protection are minimal in comparison to those of patents, they can be divided into conditions related to the literary and artistic invention itself (1), conditions related to the author of this invention (2), conditions related to the place of publication of the invention (3), and conditions related to formal registration (4).

#### ***1. Conditions Related to the Literary and Artistic Invention***

The conditions related to the artistic invention itself and allowing a person to hold a copyright are the creation of an original innovation by himself from scratch without depending

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<sup>118</sup> (Strebeck, 2021).



on somebody else's work and its recording through a tangible expression since ideas are not protected as previously mentioned.<sup>119</sup>

The form of recording does not matter for it can be fixed in a written, pictorial, sculptural, manuscript, or oral form as long as a tangible expression holds the artistic or literary invention which is a production of the human spirit.<sup>120</sup> The importance of such fixation appears when a person sends his artistic invention to someone else and then loses the original or no longer has it in his possession. This guarantees that ownership of the copyright remains with the first for it was recorded in a tangible form and the original or a copy of it was recovered.<sup>121</sup> The value, importance, or purpose and the mode or form of its expression do not matter in granting the necessary safeguard since the moral is in innovation.<sup>122</sup>

In Lebanon, copyright demands some kind of personal innovation in the artistic and literary product which means there must be an intellectual effort from the author.<sup>123</sup> Unlike patents, copyright protection does not mandate novelty, but demands a transformation like in the industry. The inventor transforms a product into another by imprinting it with a special personal feature.<sup>124</sup> In other words, an innovative product encompasses a distinguished intellectual effort going down to the limits of insignificance and up to the highest levels of creativity.<sup>125</sup>

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<sup>119</sup> (Clark 1, 2019-2020, Week One, Lesson Three).

<sup>120</sup> Art. 2; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>121</sup> (Clark 1, 2019-2020, Week One, Lesson Three).

<sup>122</sup> A literary work can be innovative either by its plan of authorship, by the sequence display of its facts and event, by the way of expression and style, by the personality of its characters, by their names, or by its title.

Scientific work can be innovative either by its way of addressing the subject through personal views of the author's subject of protection (even if the subject matter itself cannot be protected for being an idea), by a creative plan, or by its distinctive expressions that can affect the mind of its readers.

A computer program can be innovative either by the writing of the original program or the source i.e. the lines encompassing the commands, by its composition or engineering i.e. the interdependence of the derivative programs, by its telecast expression, or by the sum of capabilities it provides and their interrelations. (Naous, 2016-2017, pp. 44).

<sup>123</sup> (Naous, 2016-2017, pp. 42-43).

<sup>124</sup> (Naous, 2016-2017, pp. 42-43).

<sup>125</sup> (Naous, 2016-2017, pp. 44).



However, if the principle is the necessity of innovation for copyright protection, there are two exceptions whereby the work does not demand originality and the court simply searches for the novelty to deduce the first and hence grant safeguarding. This classification is due to the difficulty in highlighting innovation in (1) the musical work and (2) designs and models which approach the protection terms of Industrial Property as per the French jurisprudence.<sup>126</sup>

## ***2. Conditions Related to the Author***

There are certain requirements, as mentioned in Lebanese Law, that relate to the author of the literary and artistic work. For instance, the protection through copyright applies to the artistic and literary works of (a) Lebanese authors, no matter where their place of residence is, (b) non-Lebanese authors who are nationals of, or resident in, a State party to the Berne Convention for the Protection of Literary and Artistic Works or the Universal Authors' rights Convention, (c) authors who are nationals of any State that is a member of the Arab League but which is not a party to the above-mentioned Conventions, provided reciprocal treatment is applied, and (d) producers of audiovisual works who have their headquarters or habitual residence in Lebanon or any State party to the above-mentioned Berne Convention.<sup>127</sup>

In this context, a distinction between the author and the copyright owner must be made. For instance, the author can only be a physical person whereas a copyright owner can be a physical person or a moral person.<sup>128</sup> This distinction highlights the possibility of having companies and organizations own copyrights to safeguard their business through what is called collective work, work made for hire, and audiovisual work.<sup>129</sup> In other words, many companies, organizations, or groups of people can also be copyright owners, since the Copyright Law

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<sup>126</sup> (Naous, 2016-2017, pp. 46).

<sup>127</sup> Art. 12; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>128</sup> Art. 1; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>129</sup> Art. 7-8-9; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.



permits ownership by the moral person which took the initiative to create the work and supervise its execution, by the employer of works created by an employee within the scope of employment,<sup>130</sup> and by the producer. Copyright ownership can also derive from contracts like assignments or other types of transfers like wills.<sup>131</sup>

### ***3. Conditions Related to the Place of Publication of the Invention***

Also in light of Lebanese Law, the place of publication can play a role in deciding whether copyright protection is gained or not. To illustrate, the protection applies to (a) literary and artistic works first published in Lebanon, (b) literary and artistic works first published in a State party to one of the above-mentioned Conventions, or (c) literary and artistic works first published outside Lebanon and the States party to one of the above-mentioned Conventions, as long as they are published in Lebanon or a State party to the above-mentioned Conventions within thirty days starting from the date of their publication in the other country.<sup>132</sup>

### ***4. Conditions Related to Formal Registration***

In general, copyright, contrary to patents, is an automatic weapon of protection that does not need formal procedures to be granted and cannot be subject to any type of revision.<sup>133</sup> Literary and artistic work is protected once invented without the need for registration.<sup>134</sup> This can be deduced from article five of the Lebanese Law n<sup>o</sup> 75/1999 which provides that the author of any artistic or literary work has, once he creates his work, an absolute property right over it and reserves all his rights without having to follow any formalities.<sup>135</sup>

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<sup>130</sup> (U.S. Copyright Office, What is a Copyright?).

<sup>131</sup> (Naous, 2016-2017, pp. 16).

<sup>132</sup> Art. 13; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>133</sup> (Elia, 2020, pp. 2).

<sup>134</sup> (Naous, 2016-2017, pp. 41).

<sup>135</sup> Art. 5; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.



However, few countries in the world require registration such as China. As for most countries, including Lebanon,<sup>136</sup> registration is optional.<sup>137</sup> The optional registration in Lebanon requires depositing the invention at the Intellectual Property Protection Office at the Ministry of Economy and Trade.

Although this deposit is not mandatory, it is recommended since first it constitutes a presumption as to the ownership by the depositor of the work, the sound recording, the performance, or the radio or television program, even though such presumption may be refuted by all available means, and second it proves the date of the creation in case a dispute related to such matter arises.<sup>138</sup> In other jurisdictions, optional registration may enhance protection by insuring the gain of more money in case of litigation.<sup>139</sup>

In summary, copyrights don't demand a process to be granted but are almost automatic in most countries unlike patents; hence, the second part of this section won't discuss the process but the limitations to this protection weapon in case a lawsuit deals with the infringement of copyright. (II)

## II. Copyright Limitations

Copyright owners may refer to courts to stop any infringement that appertains their literary or artistic product. Under U.S. law, there are two main types of infringement: primary or direct infringement – which involves a direct infringement by the defendant such as reproducing, distributing, displaying, or performing copyrighted work like photocopying a text - and secondary infringement – which happens if someone aids another person or group in

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<sup>136</sup>Therefore, Lebanon does not require formalities due to Lebanon being a State party of the Berne Convention, article 5 of the above law, and the decision number 17/2004 of the Urgent Matters Judge in Beirut, proves that formalities are not mandatory. [2004/17] Urgent Matters Judge, Beirut.

<sup>137</sup> Art. 5; [1979] Berne Convention for the Protection of Literary and Artistic Works.

“The enjoyment and the exercise of these rights shall not be subject to any formality”.

<sup>138</sup> Art. 76; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property. (Naous, 2016-2017, pp. 70-71).

<sup>139</sup> (Clark 1, 2019-2020, Week One, Lesson Three).



infringing on a copyright. This type is in turn divided into contributory and vicarious.<sup>140</sup> The first occurs when a person induces and encourages another person or materially contributes to infringement such as stating that there is a copy of the textbook in the print shop and offering to copy it. The second occurs when a person, indirectly and illegally, uses copyrighted work even if he is not aware of such as sharing illegal music. Neither of these two types is explicitly prohibited under the Copyright Act, but their prohibitions resulted through case law.<sup>141</sup>

Usually, when referring a copyright infringement to the court, the defendant is the one who has to prove innovation of his work or the lack of innovation in the author's previously created "similar work" to be either granted protection for his work or to prove the lack of protection as a result of the lack of originality.<sup>142</sup>

When sued for the copyright infringements discussed above, the most common defenses used are related to the limitations of this tool's powers as a protective weapon. These limitations allow the use of copyrighted work without the authorization of the author and without obligation to pay him compensation.

### ***1. Fair Use Doctrine***

The first and most popular limitation to copyright is the doctrine of fair use. It is the largest area of exception used as a defense that only applies when a person does something he does not have permission to do. Specifically, fair use is the right to use a copyrighted work under certain conditions without the authorization of the copyright owner.<sup>143</sup> To determine whether this limitation applies, a test of assessment of four primary factors together must be considered:<sup>144</sup>

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<sup>140</sup> (Clark 1, 2019-2020, Week One, Lesson Seven).

<sup>141</sup> (Justia, 2022).

<sup>142</sup> (Naous, 2016-2017, pp. 45).

<sup>143</sup> (Harvard University office of the General Counsel, 2016, pp. 8)

<sup>144</sup> (Clark 1, 2019-2020, Week Two, Lesson Three).





- a. The Purpose of the Use i.e. whether the use is of commercial nature, or nonprofit educational nature... It is essential to specify if the use promotes a socially beneficial activity such as criticism, comment, news reporting, teaching, scholarship, or research if it is commercial or noncommercial, and if it is “transformative.”<sup>145</sup> Noncommercial use is more likely to be deemed fair use than commercial use.
- b. The Nature of the Copyrighted Work i.e. whether the work encompasses mostly facts and data with some artistic features or the opposite. Specifying whether the work is published or unpublished and how creative it is, are the contemplations of this factor. If the work is unpublished more protection is accorded to it than a published one, for the author has a strong right to control publishing it or not. Factual and less creative works are more vulnerable to fair use than imaginative and highly creative works.
- c. The Amount and Substantiality of the Portion Taken from the copyrighted work considering its whole i.e. whether the heart of the work is taken or simply minor aspects. For instance, the percentage of the original work used decides whether there is fair use or not. The higher the percentage, the more likely fair use limitation is inapplicable. However, if the percentage is fairly small, but the material used is of great importance qualitatively, fair use won’t be applied also.
- d. The Economic Impact of the Taking i.e. the effect of the use upon the potential market for the copyrighted work or its value. Use that simply affects the copyrighted work’s market negatively is less likely to be fair use.

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<sup>145</sup>“A work is transformative if, in the words of the U.S. Supreme Court, it “adds something new, with a further purpose or different character, altering the first with new expression, meaning or message.” Use of a quotation from an earlier work in a critical essay to illustrate the essayist’s argument is a classic example of transformative use.” (Harvard University office of the General Counsel, 2016, pp. 9).



Fair use usually includes face-to-face education and not online, literature such as citations and criticism, parody,<sup>146</sup> and news reporting.

The above-mentioned factors and places of application appear, although not clearly, in Lebanese Law through different articles whereby each article states the applied actions regarding the copyrighted work while explicitly explaining the conditions under which such actions are allowed without the authorization of the copyright owner. For instance, in articles twenty-three and twenty-four, fair use applies when a **physical** person copies, records, or makes a single copy of any protected work, on condition (a) that the work has been legally published, (b) is not prejudicial to the other rights and interests of the copyright owner, (c) does not execute an architectural work in the form of a complete or partial construction, (d) does not relate to published work in a limited number of original copies, (e) does not reproduce the whole or a significant part of a book...<sup>147</sup>

Articles twenty-five and twenty-six mention the limitation in the case of non-profit educational purposes such as criticism, argumentation, or citation while emphasizing the previously mentioned conditions in addition to certain formal requirements.<sup>148</sup>

Article thirty limits copyright protection for news reporting whereby the media, within the limits of fair practice, is permitted to use short extracts of works that are displayed or heard during current events in the course of reporting such events in the media on condition that the author's name and the source are mentioned.<sup>149</sup>

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<sup>146</sup> Parody is a non-prohibited derivative work that relies on commenting on another work, making fun of it, or imitating it. It is usually legal since it targets a different market than that of the original work and it usually falls under fair use. (Clark 1, 2019-2020, Week Three, Lesson Five).

<sup>147</sup> Art. 23-24; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>148</sup> Art. 25-26; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>149</sup> Art. 30; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.



Finally, according to article twenty-nine, permission is granted when a copyrighted work is used in judicial or administrative proceedings and within the limits required by such proceedings.<sup>150</sup>

## 2. *First Sale Doctrine*

The second defense that encompasses another limitation to copyright is the first sale doctrine. According to section 109 of title 17 of the U.S. code, this doctrine provides that “*an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner.*” The privileges generated by the first sale exemption do not cover a person who has acquired possession of the copy from the copyright owner, by rental, lease, or loan, without acquiring ownership of it.<sup>151</sup>

In other words, this exception relates to permitting a person, the purchaser, who lawfully purchases a copy of a copyrighted movie, book, song, computer program, or other copyrighted work, to sell, lease, loan, gift, display, or dispose of his or her copy of the work, without the authorization of the copyright owner.<sup>152</sup> Modification and writing in the book, for example, are also allowed under this doctrine.

An interesting example is that of the rental of DVDs from stores. This is legal even though the copyright owner argued against it since the first sale doctrine applies. Renting the video, just like borrowing the book from the library, makes the person the temporary owner. The rights of ownership and the usage of the work are temporarily transferred to the new owner and then revert to the video store.<sup>153</sup>

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<sup>150</sup> Art. 29; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>151</sup> (U.S. Department of Justice, 2020).

<sup>152</sup> (Copyright Alliance, 2023)

<sup>153</sup> (Clark 1, 2019-2020, Week Two, Lesson Five).



The Lebanese Law didn't mention this exemption whilst keeping the authorization or prohibition of selling or loaning the product in the copyright owner's hands,<sup>154</sup> yet this doctrine is of logical application when considering the transfer of ownership to the purchaser and its legal effects.

### ***3. Performance Rights***

The third limitation of copyright is performance rights. Although generally speaking, the performance of an artistic or literary work requires the authorization of the copyright owner, this exemption allows its performance while submitting to certain conditions. Performance rights limit the extent to which the copyright owner can prohibit people from performing. Usually, the exemption applies if the purpose of the performance is non-commercial especially for face-to-face educational purposes, for charity, for religious purposes, for a limited home reception, for a fair which is a public setting encompassing government-sponsored activities, and performances by or for the handicapped.<sup>155</sup>

In Lebanon, article thirty-two of Law n<sup>o</sup> 75/1999 referred to this exemption by stating that it is permitted to display or perform a work in public during official ceremonies within the limits required for such ceremonies and during activities carried out by educational institutions if the teachers or students use the work, on condition the audience is limited to the teachers, students, students' parents and persons directly involved in the activities of the said educational institution.<sup>156</sup>

### ***4. Statutory Limitations***

The fourth limitation relates to those mentioned explicitly in laws called "Statutory limitations" such as those granted to a library. A library has what is called library rights that

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<sup>154</sup> Art. 15; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>155</sup> (Clark 1, 2019-2020, Week Two, Lesson Five).

<sup>156</sup> Art. 32; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.



encompass the right to do an inter-library loan, to copy an article, to send it to another library, and to fax things between libraries.

Information providers on the Internet are also granted certain limitations under copyright law, especially in the U.S. For example, Google was allowed by the U.S. court to have virtual libraries of every work in the universe which is considered copying. Such limitations include the right to search and find the information and not to sell it. Although the U.S. courts allowed such conduct as a right passed by Congress, the European courts had a different attitude.

Another statutory right in the U.S. is to report the news through Yahoo News or Google News for example. However, in Europe, such as France, Germany, and Spain, there is no such right and payment is a must for reporting the news.<sup>157</sup>

Article twenty-seven of the Lebanese Law mentions the exemption of the library while placing several conditions. The concerned library must be a non-profit public one that is allowed to make an additional copy of a work to be used only in case of loss or damage of the original work, provided that it possesses at least one copy of the original work.<sup>158</sup>

### ***5. Right to Use for Archive***

In U.S. jurisdiction, archival rights only apply to the software. In other words, backups for software on a person's computer or phone are legally allowed, but making a copy of the music is illegal since the law does not allow archives of music.<sup>159</sup>

Under Lebanese Law, the right to use for archive is expressly stated in article twenty-eight whereby a decision of the Minister of Culture permits copying, reproducing, or recording

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<sup>157</sup> (Clark 1, 2019-2020, Week Two, Lesson Eight).

<sup>158</sup> Art. 27; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>159</sup> (Clark 1, 2019-2020, Week Two, Lesson Eight).



a valuable audiovisual work, to keep it in the Ministry's archives, in case the copyright owner unfairly refuses to authorize the making of the said copy.<sup>160</sup>

It is important to mention that article twenty-seven, mentioned above, can also be categorized under archival rights since it aims to secure a copy of the artistic work in the archive.<sup>161</sup>

### **6. Right to Use for Promotions**

Some legal entities are in the business of promoting some copyrighted work with limited samples or in a limited context. For example, listening to a song in a music store is legal without having to pay for its owner under what is called the right to use for promotions. If a person is in the business of selling songs with no harm to the related providers, a fair use defense is applied. For example, this person allows the customer to play a fifteen-second clip from each song before deciding whether to buy it or not. In this way, the customer won't listen to the whole song, won't be able to download it, and won't be able to make a recording.<sup>162</sup>

Article thirty-four of the Lebanese Law permits copying or reproducing an artistic work for the purpose of publishing it in catalogs anticipated for facilitating the sale of the work, provided that such copying or reproduction is not prejudicial to the legal interests of the author.<sup>163</sup>

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<sup>160</sup> Art. 28; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>161</sup> Art. 27; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>162</sup> (Clark 1, 2019-2020, Week Two, Lesson Eight).

<sup>163</sup> Art. 34; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.



### 7. *Expired Copyright*

As mentioned previously, the protection insured through copyright has a specific duration after which the literary and artistic work enters the public domain and its holder no longer enjoys the above-discussed rights.<sup>164</sup>

An interesting example of expired copyright is a copyright that was carefully protected but expired by accident. It's one of the most profitable and popular songs in the history of music: Happy Birthday. This song can be sung for education or at home. Yet, for a long period, paying the copyright holder was a must to be able to sing it in a restaurant or any public setting. This song was the subject of many lawsuits. However, recently, the copyright of the song expired. This expiration was proved through a court case where a company defended its use of Happy Birthday by finding an earlier publication than the one registered for copyright. In one place it found the words published, and in another place, it found the tune published. Both were older than the mentioned version. Therefore, the copyrighted song has expired.<sup>165</sup>

In summary, copyright law highlights one main principle but is full of exceptions that limit the exercise of this protection weapon greatly. Court cases in U.S. and Lebanon will help analyze the safeguard insured by copyright for business innovations (Section Three).

### **Section Three: Copyright Case Studies**

To understand better what has been discussed in the previous sections, it is always worth referring to realistic case studies that show practically all features of copyright. For this reason, the most famous case in the U.S.A. jurisdiction will be discussed first (I), then will

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<sup>164</sup> In the U.S. jurisdiction: the life of the author plus seventy years after his death (for work invented after 1978). Before 1978, there were different durations, and renewal of copyright was a must after 28 years if protection was still desired.

In the Lebanese jurisdiction: the life of the author plus fifty years after his death.

<sup>165</sup> (Clark 1, 2019-2020, Week Two, Lesson Six).



follow a case in the Lebanese Jurisdiction (II), whereby each highlights specific legal issues related to copyright.

### **I. Facebook v. Zenimax**

This is a case that proves ownership of copyright by companies when work is made for hire. John Carmack, a previous employee at Zenimax, contacted Palmer Luckey, who was working on the Oculus Rift headset's earliest prototypes from his parent's house, and got the prototype headset from him.

Carmack worked on the machine technically, but his exertion in the VR was represented by the code he wrote for it. There was a problem with this product related to having Luckey slap a cheap magnifying lens on the display. This led to a distorted image underneath. Hence, Carmack coded a version of 'Doom 3' that pre-distorted the image, counteracting the effects of the magnifying lens and making the picture appear correct to the viewer.

On March 2014, Facebook acquired the Oculus VR. On January 2017, ZeniMax sued Oculus and, by extension, Facebook, claiming copyright infringement by Oculus (owned by Facebook). For instance, ZeniMax's technology may not be licensed, transferred, or sold without ZeniMax Media's approval, since ZeniMax's intellectual property rights ascend from extensive VR research and development works done over several years by John Carmack as a ZeniMax employee. According to Carmack, ZeniMax owns the code he wrote, but they don't own VR. In other words, Carmack claimed that he did this work in his free time and not while he was on the clock at ZeniMax, while the latter contends that the work integral to the Rift was done while Carmack was an employee at ZeniMax.<sup>166</sup>

On February 2017, a jury found Oculus guilty of copyright infringement, failure to comply with a nondisclosure agreement, and misuse of Oculus trademarks (“false

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<sup>166</sup> (Gilbert, 2018).





designation”) for there's evidence that copyright material owned by Carmack’s former employer was used without authorization in Oculus Rift.<sup>167</sup> Therefore, Facebook, the owner of Oculus Rift was liable.<sup>168</sup> It awarded ZeniMax a total of \$500 million whereby Facebook had to pay \$50 million for copyright infringement and \$250 million for false designation, and the employee, jointly liable, had to pay \$200 million for violation of non-disclosure agreements. Nevertheless, a district court in Dallas reduced the verdict to \$250 million. Later, the two parties reached a private settlement after both sides appealed the last verdict.<sup>169</sup>

## **II. Public Prosecution v. Daher and Co.**

In Lebanon, a court case discussed the infringement of a copyrighted product by Daher and Co. The case relates to copying without authorization a copyright-protected product according to article two of the Lebanese Law which is a computer program that organizes all real-estate registration data in Lebanon.<sup>170</sup> This computer program was developed by the Real-Estate General Directorate and according to article seven of the same law, the copyright owner of this protected program is the moral person which took the initiative to create the work and supervise its execution i.e. the Real-Estate General Directorate. Therefore, only the latter has the right to exploit the work materially and the exclusive right to authorize or prevent some actions such as copying, printing, recording, and photocopying the work by all available means.<sup>171</sup>

Daher, who is an employee in this government entity and responsible for the mechanization of information in it under his job description,<sup>172</sup> committed copyright

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<sup>167</sup> This proves that ownership in work made for hire is for the company, a moral person.

<sup>168</sup> (Clark 1, 2019-2020, Week Four, Lesson Six).

<sup>169</sup> (Castillo, 2018).

<sup>170</sup> According to article 1 of Law n<sup>o</sup> 75/1999 a computer program is: “a set of orders expressed in words or symbols or in any other form which when entered into a matter readable by a computer shall enable the computer to perform or execute a certain task or give a certain result.”

<sup>171</sup> Art. 15; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>172</sup> Where work made for hire can also be taken into consideration.



infringement since he didn't get authorization from its owner to duplicate the information from the copyrighted computer program. He committed it in return for a bribe from another person H.S. proving secondary contributory infringement since the latter induced and encouraged Daher.

Moreover, the exceptions permitted by the legislator of making a single copy of any work protected by the Law without the authorization of the copyright owner, are based on the following conditions: the copyst must be a physical person, the copying must be made for his personal use, the work must be published, and the copying does not prejudice the other rights and interests of the copyright owner.<sup>173</sup> In the present case, the copying was made for the benefit of a moral person, not a physical person, and for company use, not for private use. Furthermore, the copied information was not legally published to the public but a person can get them after presenting a formal application and paying a certain fee.

In addition to that, article twenty-four excluded from the aforementioned exemptions recording or transmitting compilations of data of all kinds and recording or copying computer programs.<sup>174</sup> In the present case, the Real-Estate Registry's records are included within "information groups of all kinds" when copied as a programmed group, and the conditions for copying the computer program are not available.

In summary, copying the computer program, which comprises the real estate registry entries in a programmed way, constitutes a knowing infringement on the copyright of the Lebanese state, specifically the offense stipulated in article eighty-six of Law n<sup>o</sup> 75/1999.<sup>175</sup>

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<sup>173</sup> Art. 23; [1999/75] Lebanese Law On the Protection of Literary and Artistic Property.

<sup>174</sup> Unless the record or copy is made by an authorized person to use the program and for the purpose of making a single copy for use in the case of loss or damage of the original copy.

<sup>175</sup> [2000/139] Criminal Court, Beirut.



After going over all vital aspects of copyright starting with its essence, duration, different requirements, and limitations, moving to another shield, with other subject matters and requirements, is needed to attain the required differentiation for choosing the right protection weapons when businesses consider safeguarding their innovations. (Chapter Three)



## **Chapter Three: Trademark – The Weapon for Commercial Property**

The third category of intellectual property is the property related to the trade sector and is called Commercial Property. As with other intellectual properties of a company, commercial property also demands protection from infringement to shield its business plan. Such innovations encompass the greatest share in a company's business plan since they form the fundamental elements of a business enterprise. The value of a trademark or brand, in many companies, far exceeds the value of their copyright or patents, even combined.<sup>176</sup> This proves that a trademark is of great financial importance and hence matters a lot as a weapon of protection. For instance, a brand creates the reputation of the company that in turn creates customer trust in any product that holds this trademark. Therefore, trademarks were regulated to secure business innovations as well as a craftsman.

For this reason, it is fundamental to know, while keeping in mind a comparing approach with what was previously deliberated regarding patents and copyright, what are trademarks with respect to the subject of possession demanding protection (Section One), what are the conditions for guaranteeing such protection and its process (Section Two), and finally what are some legal issues of trademarks that were the subject of court cases to highlight the role of courts in reinforcing the protection (Section Three).

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<sup>176</sup> (Clark 3, 2019-2020, Week One, Lesson One).



## Section One: The Essence of Trademark

The essence of a trademark requires specifying its definition and subject-matter scope (I) along with its types and duration (II).

### I. Definition & Scope

By definition, a trademark is a sign capable of differentiating the goods or services of one enterprise from those of other enterprises.<sup>177</sup> Although the Lebanese Industrial and Commercial Property Rights Regulation didn't define explicitly a trademark, a clear designation can be deduced from article sixty-eight as follows: a trademark is a symbol that accompanies a product, rather than that is put on a product since some trademarks aren't put on certain goods and can't be seen. For instance, a perfume composition might not have a name, and yet the trademark can be present in the fragrance's smell.<sup>178</sup> The product's nature i.e. whether it is of major industrial effort or a minor one, and whether it is a good or a service, does not matter in granting it a trademark. The trademark escorts the product in a market where there are other competing similar products for distinction and for granting a higher value.

The mark that reaps the trademark protection can be a variety of things. To illustrate, a word, or a combination of words, letters, and numerals are the most common forms of a trademark. However, trademarks may also entail drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds, or fragrances, or color shades used as distinguishing features.<sup>179</sup> In other words, the following can be subject to trademark protection: (a) brands such as "Coca-Cola", (b) logos where images are associated with brands such as the logo of a certain University with its name, (c) phrases such as Crepaway's phrase "Come as You Are", (d) names such as "Microsoft", (e) colors such

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<sup>177</sup> (WIPO, What is a Trademark?).

<sup>178</sup> (Elia, 2020, pp. 21).

<sup>179</sup> (WIPO, What kind of Trademark can be Registered?).



as the red color of a shoe's sole, (f) sounds such as the sound of a cellphone when turned on, (g) designs that represent the way the packing of a product appears, (h) smells such as the fragrance that a customer smells when entering Verizon pumps stores,<sup>180</sup> and finally (i) patterns such as Burberry.<sup>181</sup>

Regarding trademarks for designs, a distinction between a copyright for design, a trademark for design i.e. the way something appears and a design patent is important to make. The first relates to artistic expressions whereby innovation is a must and the latter is usually for a manufactured good. As for the trademark, its requirements are different from those of copyright and patents, and hence its granting for a design is based on different features.<sup>182</sup>

Just like patents and copyrights, the objective behind getting a trademark is to protect one's business commercial inventions. Such protection is secured by granting the trademark owner an exclusive right to use the registered trademark and an exclusive right to license it to another party. However, unlike copyrights, this exclusive right is generally granted after conferring a formal requirement – registration.<sup>183</sup>

## **II. Its Types & Duration**

There are many types of trademarks, however, three types are of primary importance in their distinguishing features: Certification marks, personal marks, and collective marks.

### **1. Certification Marks**

A certification mark is any word, phrase, symbol, design, or combination of any of these owned by one party that certifies that the goods and services of others comply with certain standards or requirements. A certification mark detects either the nature of a product or service,

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<sup>180</sup> What is meant here is not the smell of perfume because that is a part of the product itself, whereby separately trademarking its smell is impossible.

<sup>181</sup> (Clark 3, 2019-2020, Week One, Lesson Four).

<sup>182</sup> Refer to Section Two of this Chapter.

<sup>183</sup> Refer to Section Two of this Chapter.



such as a toothpaste meets the quality criteria of “FDA approval” and the International Standard Office (ISO) that contains different protocols, or the origin of products or services, such as the certification mark “Washington State” granted to apples grown in that state.<sup>184</sup> Therefore, a certification mark may be issued by an organization to indicate geographical origin, quality, type or process of manufacture, or other attributes.<sup>185</sup>

A private sector company usually aims at getting this type of mark, which is also collective,<sup>186</sup> for its product to insure more customer trust and flourish its business through increasing its prices along with its selling rates.

## **2. Personal Marks**

According to article seventy of decree 2385/1924, a mark can be personal. This means that a mark can belong to one person, whether a physical person or a moral person. Not all marks are personal for there might be a group of people or legal entities such as the government that own it.<sup>187</sup>

Personal marks can include trademarks for goods and service marks which denote the source of services instead of goods.

These marks can co-exist with the collective marks.<sup>188</sup> For example, there are several personal marks belonging to the different companies that produce wine in the Beqaa Valley such as Ksara and Kefraya; yet all these companies have a collective mark that insures membership to the Wine Producers Association in Beqaa and another that insures membership to Wine Producers Association in Lebanon.<sup>189</sup>

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<sup>184</sup> (Michelson, 2022).

<sup>185</sup> (Mandour & Associates, 2018).

<sup>186</sup> Refer to 3. Collective Marks.

<sup>187</sup> (Elia, 2020, pp.22).

<sup>188</sup> Refer to 3. Collective Marks.

<sup>189</sup> (Elia, 2020, pp. 23).



### 3. Collective Marks

The above-mentioned article also cited collective marks. For instance, “... *literary professional associations, provincial companies, and agricultural or industrial licensed companies by the government are authorized to possess a common collective mark to preserve the quality of the manufacturing or source of their products or crops, and only the members of these companies have the exclusive right to use the collective mark which is independent of the personal mark that each one can possess.*”<sup>190</sup>

By definition, a collective mark is a trademark that indicates membership in an organization, association, or union. To illustrate, the collective mark CPA, which refers to the Society of Certified Public Accountants and its members, can be used by a certified public accountant to inform others of his/her membership in this society and hence of his/her qualification as an accountant.<sup>191</sup>

This means that a collective mark is a common mark between a group of people that belong to the same work industry or that have shared objectives. For example, lawyers belonging to the Beirut Bar Association are authorized to use the latter’s mark on their cars and door offices on condition they joined it. The lawyer also has the right to a personal mark for his own office.<sup>192</sup>

From the above definitions and examples, a distinction is made between two categories of collective marks: collective trademarks/ service marks, or collective membership marks. The first category is any word, phrase, symbol, or design that is owned by a cooperative, association, collective group, or organization and is used by its members to indicate the source of goods or services.<sup>193</sup> Whereas the second category is any word, phrase, symbol, or design

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<sup>190</sup> Art. 70; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>191</sup> (Mandour & Associates, 2018).

<sup>192</sup> (Elia, 2020, pp. 23).

<sup>193</sup> (Michelson, 2022).





used to designate that a person is a member of some organization, such as a trade union or an association.<sup>194</sup>

As for the duration of a trademark, unlike patents whereby each type has a different duration, and unlike copyright whereby the duration is long, all discussed types have one term during which the protection is insured in Lebanon. This duration is **fifteen years** always **renewable** for another equal term.<sup>195</sup> This duration starts only when the trademark is registered, a formal requirement for safeguarding.<sup>196</sup>

In other jurisdictions, the term of protection assured through trademark registration can vary but is principally **ten years** also **renewable** indefinitely provided additional fees are paid.<sup>197</sup>

After defining the scope of a trademark's subject, its duration, and its types, the next important aspects are the conditions that must be met to secure such a protection weapon and the process of acquiring it along with its limitations used as defenses (Section Two).

## **Section Two: Trademark's Legal Requirements & Process**

Similar to patents, a trademark is not granted if certain requirements are not met according to different national jurisdictions as well as the Lebanese Jurisdiction (I). One of those requirements relates to a formal condition leading to studying the process of obtaining such a weapon (II).

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<sup>194</sup> (Michelson, 2022).

<sup>195</sup> Art. 78; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>196</sup> Refer to Section Two.

<sup>197</sup> (WIPO, How long Does Trademark Protection Last?).



## I. Requirements for Granting Trademarks

Although not clearly stated altogether, there are certain requirements deduced from various legal texts that must be present in commercial innovation – the mark – to guarantee trademark protection.

### 1. *The Mark must be Distinctive*

The most important requirement for a mark to be classified as a trademark and thus protected is to be distinctive. By definition, distinctive is the capacity of a trademark to identify and distinguish particular goods as originating from a specific manufacturer or source.<sup>198</sup> This requirement was set in a judicial decision taken by the First Instance Court of Mount Lebanon through the use of the words “the trademark must be distinctive, innovative, and new in an unusual way to acquire protection.”<sup>199</sup> In order to stipulate whether this requirement is met, four categories of distinctiveness are present: generic marks, descriptive marks, suggestive marks, and arbitrary/fanciful marks.

#### a. The Mark must not be too Generic.

A trademark is considered generic whenever it comprises common terms to name products or services, such as a brand of shoes called "shoes". In other words, a generic trademark has a general meaning to the public.<sup>200</sup> These marks categorize a product, and therefore cannot be registered as protected trademarks. In the above-mentioned court case, it was stated clearly that whenever the mark is formed of common words or forms known by the public, protection is not granted.<sup>201</sup>

<sup>198</sup> (Legal Information Institute, Trademark).

<sup>199</sup> For instance, the mark used by the plaintiff and the defendant was the word “Parquet” which is neither innovative nor distinctive, or novel but simply represents a generic and descriptive mark. [1999/468] First Instance Civil Court, Chamber 3, Mount Lebanon.

<sup>200</sup> (Clark 3, 2019-2020, Week One, Lesson Four).

<sup>201</sup> “حيث لا بد من التنويه والتذكير الى أن العلامة التجارية لا تكون محلا للحماية القانونية إلا اذا انطوت على صفة مميزة وابتكار وجدة غير معتادة، وبالتالي لا تعد علامة قابلة للحماية العلامة العادية التي تتكون من كلمات شائعة أو شكل شائع مألوف أو من اشارات أو بيانات تستعمل للدلالة على صفة المنتوجات أو الغرض منها أو مصدرها أو زمن انتاجها أو نوع المنتوجات أو العناصر الأساسية التي تدخل في تركيب المنتوجات؛” [1999/468] First Instance Civil Court, Chamber 3, Mount Lebanon.



The reason behind this condition lies in the fact that any person has the right to use generic words to designate the goods they are selling. In case protection is insured for such trademarks, the English language becomes poor and competition becomes restricted.

A test made up of two questions allows classifying a mark as generic or not: (a) Is the type of service or goods determined in the mark?<sup>202</sup> (b) Do consumers comprehend that the mark identifies the type of the concerned goods or services without instructing them? Whenever the answer to both questions is “yes”, then the mark is generic and protection is not a choice.<sup>203</sup>

Examples of generic marks include the brand “Dry Cleaning” for such service and “General Computers” for such goods. However, previously, this was not always the case, for businesses were capable of getting some trademarks on names like “General Electric”, “General Motors”, and “General Foods”. These were viewed in the past as distinctive enough and carrying a connotation beyond the generic meaning of the words and demonstrating a particular company. Today, most firms avoid generic marks to secure protection.

Nevertheless, over time, strong trademarks can become generic and hence lose their protection, such as “Google” since people today use the verb "to google" to denote searching the web, regardless of the search engine used.<sup>204</sup> For instance, when the trademark becomes a reference for a whole group of products after it was exclusive to a particular product, this safeguarding weapon is no longer available.<sup>205</sup>

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<sup>202</sup> For example, if the products are tables and wardrobes, is the word "furniture" in the mark?

<sup>203</sup> (Upounsel 4, 2022, Strength of Trademarks).

<sup>204</sup> (Upounsel 3, 2022, When Fanciful Trademarks Become Generic).  
(Clark 3, 2019-2020, Week One, Lesson Four).

<sup>205</sup> (Upounsel 4, 2022, Understanding Genericide: How Trademarks become Generic).



b. The Mark must not be too Descriptive.

A trademark is considered descriptive whenever it identifies a major characteristic of the concerned product or service and only serves to describe the product such as its ingredient, quality, function, purpose, or use.<sup>206</sup> For example, Quality Dry Cleaning or Korean barbecue is too descriptive, and hence protection is not granted.<sup>207</sup> The question asked to classify whether the mark is descriptive or not is: “Does this word describe the product or service?” Whenever the answer is yes, trademark safeguarding is not applicable.<sup>208</sup> The only advantage of descriptive marks, which can't be registered, lies in being an option for a low-advertising budget business.

For a descriptive mark to insure being protected, it must be distinctive. While a distinctive mark differentiates a corporation's goods and services from those of competitors, a non-distinctive mark simply describes and names a trait or quality of goods or services.<sup>209</sup> In other words, descriptive marks can be trademarks i.e. can be protected once there has been a secondary meaning recognized, making it unique. For example, “Chop Chop Barbecue” is a protected mark of Korean barbecue due to the secondary meaning it holds eliminating descriptiveness.

c. The Mark can be Suggestive.

A suggestive trademark is characterized by distinctiveness and isn't descriptive. By definition, it is a mark that does not describe a product but suggests it, requiring consumers to use their imagination in connecting it to the product.<sup>210</sup> In other words, it is a mark that suggests a characteristic or quality of goods and services without expressly stating their nature, whereby

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<sup>206</sup> (Upounsel 2, 2022, What is a Descriptive Trademark?)

[2019/52] Lebanese Supreme Court. Beirut.

<sup>207</sup> (Clark 3, 2019-2020, Week One, Lesson Four).

<sup>208</sup> For example, “Cold and Creamy” is a mark of ice cream that describes one of the product's features. Therefore, it isn't likely to qualify as a trademark.

<sup>209</sup> (Upounsel 2, 2022, Strength of Trademarks).

<sup>210</sup> (Upounsel 5, 2022, What is a Suggestive Trademark?)



an association between the said goods and its trademark is possible through a basic relationship. Examples of such trademarks in the technology sector include Microsoft,<sup>211</sup> and Android.<sup>212</sup> The Microsoft and Android trademarks don't expressly show a relation with computer or technology software, but when engaging imagination in comprehending their names an association can be formed.<sup>213</sup>

Therefore, a suggestive trademark is considered to be fundamentally distinctive, and hence protection with exclusive rights to the mark is available.<sup>214</sup>

d. The Mark can be Arbitrary or Fanciful.

An arbitrary or fanciful trademark is also characterized by distinctiveness and hence secure protection. By definition, an arbitrary trademark is a word or image that already exists, but it has nothing to do with the business that uses it. The most famous and classic example is Apple Computers for neither iPhones nor laptops have anything to do with fruits.<sup>215</sup>

As for fanciful trademarks, by definition, they are invented terms for the sole purpose of operating as a trademark. They can be either neologisms - words that don't mean anything in the English language - or archaic - words that are out of common usage. This trademark only has a meaning when used in relation to a specific product. This makes fanciful marks the strongest type of trademarks like Kodak, Pepsi, and Clorox.<sup>216</sup>

Fanciful trademarks are the strongest marks, yet with time, they may become generic marks. This happens when the used word as a unique trademark becomes so common that

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<sup>211</sup> A microcomputer software.

<sup>212</sup> An artificially intelligent user interactive software.

<sup>213</sup> (Upounsel 5, 2022, What is a Suggestive Trademark?)

<sup>214</sup> (Legal Information Institute, Trademark).

<sup>215</sup> (Upounsel 1, 2022, What is an Arbitrary Trademark?)

<sup>216</sup> (Upounsel 3, 2022, What are Fanciful Trademarks?)



people use it for generic items that are not the original product. For example, the word Kleenex which was once a trademark now is used to refer to tissue paper.<sup>217</sup>

Back to arbitrary marks, their strength may be categorized between fanciful and suggestive marks. Although they don't have the above-mentioned problems,<sup>218</sup> using words that already exist may be faced with their prior use by other businesses. For example, the word “Apple” was first used by the Beatles as a record label “Apple Corps” before Steve Jobs’ use of Apple for computers.<sup>219</sup>

In summary, the first requirement to guarantee trademark protection is for the mark to be distinctive either through being suggestive or through being arbitrary or fanciful. Whenever such a mark is too generic or too descriptive, a trademark as a safeguarding weapon is not granted.

## **2. The Mark must not be too Functional**

The second main condition to assure trademark protection is for the mark to not be functional. If a product’s characteristic is considered functional i.e. it describes how and what the product does, it cannot serve as a trademark.<sup>220</sup>

The functionality doctrine prohibits registration of functional product features and intends to encourage legitimate competition by sustaining a proper balance between trademark law and patent law.<sup>221</sup> In other words, this doctrine ensures a time-limited protection for useful

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<sup>217</sup> These marks also face the disadvantage of enclosing a word that has no meaning or relationship with the company or product, making it hard for people to remember.

<sup>218</sup> The problems faced by fanciful trademarks i.e. becoming generic or being difficult for people to remember them.

<sup>219</sup> (Upcounsel 1, 2022, Why Avoid an Arbitrary Trademark?)

<sup>220</sup> (Clark 3, 2019-2020, Week One, Lesson Four).

<sup>221</sup> According to the Supreme Court in *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 164-165, 34 USPQ2d 1161, 1163 (1995): “The functionality doctrine prevents trademark law, which seeks to promote competition by protecting a firm’s reputation, from instead inhibiting legitimate competition by allowing a producer to control a useful product feature. It is the province of patent law, not trademark law, to encourage invention by granting inventors a monopoly over new product designs or functions for a limited time, 35 U.S.C. Sections 154, 173, after which competitors are free to use the innovation. If a product’s functional features could



product characteristics through utility patent, instead of unlimited trademark protection. This leads to having the patented invention in the public domain after its expiration along with its functional features to be copied by others.<sup>222</sup>

The Supreme Court emphasized this doctrine while mentioning the futility of acquired distinctiveness's evidence in affecting functionality.<sup>223</sup> This means that even if consumers were able to link a functional product feature with a single source, trademark protection will not be approved due to the above-stated public policy reasons.

### ***3. The Mark must pertain to Public Policy and must not be prohibited by law***

Although the use of a trademark is optional whereby anyone can manufacture and sell products without a trademark unless otherwise imposed by law,<sup>224</sup> whenever the choice is to invent a trademark, neither national medals nor foreign medals can be represented in it; and no revolutionary or contrary to public policy or safe moral standards word, sign, or symbol should be mentioned in it.<sup>225</sup>

A prohibition by law also includes the Geneva Convention of 1905 whereby it is not permitted to use the Red Cross sign as a trademark.<sup>226</sup>

A trademark is contrary to public policy whenever it misleads the consumer; this means it is deceptive to the consumer in terms of its content, nature, or geographical source for example.<sup>227</sup>

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*be used as trademarks, however, a monopoly over such features could be obtained without regard to whether they qualify as patents and could be extended forever (because trademarks may be renewed in perpetuity)."*

<sup>222</sup> [1995/93-1577] U.S. Supreme Court.

<sup>223</sup> [2001/99-1571] U.S. Supreme Court.

<sup>224</sup> Art. 69; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>225</sup> Therefore, the use of medals is prohibited by article seventy-one.

Art. 71; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>226</sup> Lebanon signed this Convention.

<sup>227</sup> (Elia, 2020, pp.24-25).



Regarding trademarks contrary to moral standards, these are trademarks that usually encompass sexual features. For instance, in a court case related to whether the trademark of a salad spinner in the shape of two hands holding a woman's buttocks is accepted or not, the decision was to refuse its registration.<sup>228</sup>

#### 4. *The Mark must be Used in Commerce*

According to the Lanham Act, a trademark is a mark used in commerce, or registered with a bona fide intent to use it in commerce. This means that if at the time of filing the application for registration, a mark is not in use in commerce, registration may still be permitted if the applicant explains, in writing, that he intends in good faith to use the mark in commerce at a future date.<sup>229</sup>

According to Section 1127 of Title 15- Chapter twenty-two of the U.S. Code, “*The term “use in commerce” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark...*”<sup>230</sup> If this section’s requirements are not met, a mark will be considered “abandoned”.<sup>231</sup>

Actual use in commerce requires more than advertisements alone, only internal trade channel sales such as sales to a car dealer or supermarket, or token sales whereby there is no

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<sup>228</sup> (Elia, 2020, pp. 24).

<sup>229</sup> (Legal Information Institute, Trademark).

<sup>230</sup> “...For purposes of this chapter, a mark shall be deemed to be in use in commerce: (1) on goods when: (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, **and** (B) the goods are sold or transported in commerce and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

Section 1127; [1946/ Title 15 – Chapter 22] U.S. Code (Lanham Act).

<sup>231</sup> In other words, “A mark shall be deemed to be “abandoned” if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.”

Section 1127; [1946/ Title 15 – Chapter 22] U.S. Code (Lanham Act).





actual and serious use; actual usage that secures priority necessitates sales to consumers that prove their use and consumption of the product whereby the sale is not token i.e. is not on a small level.<sup>232</sup>

For the use of the trademark in commerce, or a serious good faith intent to use it, great importance since non-usage leads to its loss.<sup>233</sup> This can be deduced from the title of article seventy-five in the concerned Lebanese Law that gives significance to the free and consecutive use of a trademark before registration.<sup>234</sup>

Therefore, acquiring a trademark for protection emerges from its use and is devoted through the process of registration in light of two doctrines (II).<sup>235</sup>

## II. Process for Obtaining Trademarks

Similar to patents, trademarks require formal a set of procedures for the protection insured through them to be activated officially. These procedures descend from the formal condition of registration. However, to decide for whom the registration must be granted, two different doctrines are followed (1). Once the protection is secured, litigation may arise whereby the defendant claims certain trademark limitations and different tests are followed to decide the presence or absence of an infringement (2).

### 1. The Doctrines of Registration

Copyright is international and automatic, however, a trademark in general requires registration that forms the core of its process. The registration is either granted for the first person to use the trademark (a) or for the first person to apply for its registration (b); as for

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<sup>232</sup> There must be actual market sales in trade **and** commerce.  
(Clarks 3, 2019-2020, Week Two, Lesson Two).

<sup>233</sup> Non-usage for five years and without objection to someone else's usage in England, and non-usage for three years in the U.S.A. led to its loss proving the essentiality of its use in commerce.  
(Clark 3, 2019-2020, Week Two, Lesson Five).

<sup>234</sup> Art. 75; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>235</sup> (Elia, 2020, pp.26).



Lebanon, it is fundamental to skim the legal texts to know which regime it follows in the process for obtaining a trademark (c).

a. First-to-Use Regime

In Anglo-Saxon jurisdictions, such as in U.S.A and Canada, the first person to use the trademark acquires the exclusive rights granted by it regardless of the mark being unregistered at the time of actual use in commerce. This means that the first users of the marks in commerce gain trademark rights and priority over others in the geographical territories where the marks were used in commerce.

Nevertheless, the U.S. trademark system is not an entirely first-to-use trademark system. For instance, an applicant may be granted priority rights whenever he is the first to file for registration of his mark with the USPTO even though he didn't use it yet in commerce.<sup>236</sup> Under the requirement of “use in commerce”, it can be inferred that the U.S. trademark applications can be filed in reference to either actual use of the mark in commerce,<sup>237</sup> or bona fide intention to use the mark in commerce on condition such use happens within a specific time limit.<sup>238</sup>

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<sup>236</sup> This is deduced from section 1127 of the U.S. Code mentioned above along with section 1057(c):

“(c) **Application to register mark considered constructive use**

*Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—*

*(1) has used the mark;*

*(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or*

*(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 1126(d) of this title to register the mark which is pending or has resulted in registration of the mark.”*

<sup>237</sup> Section 1051(a); [1946/ Title 15 – Chapter 22] U.S. Code (Lanham Act).

<sup>238</sup> Section 1051(b); [1946/ Title 15 – Chapter 22] U.S. Code (Lanham Act).

The time limit is either 1) before the application is approved for publication, 2) within six months of the Notice of Allowance issue date, or 3) during the extension of time obtained after the Notice of Allowance issue date. (Section 1(b); [Trademark Timelines] USPTO).



In other words, if a business has already used an unregistered mark in commerce in certain geographical territories, and then another business files a trademark application for the same mark, the latter, even after registration, cannot claim priority to the mark and declare trademark rights against the prior user in the same territories. Nonetheless, an applicant acquires priority against a user of an unregistered mark, as long as three conditions are met: (a) his date of filing for trademark registration predates the date of actual use of the mark in commerce by the other user, (b) he has either actually used the mark in commerce, or has shown in good faith the intention to use it at the time of filing the trademark application, provided this intention is followed by actual use within the specified period of time, and c) he is successful in obtaining a trademark registration.<sup>239</sup>

In summary, registration matters in the U.S.A when there is no actual usage prior to the date of registration and when a business wants to sue for infringement as a plaintiff and not as a defendant.<sup>240</sup> This registration can be a state registration or a federal registration. The first is as good as the second within the U.S. in terms of secured protection. However, federal registration safeguards rights and priority across the nation, even in states where businesses aren't yet in commerce, but federal registration depends on interstate commerce whereby the trademark subject matter isn't local in its nature.<sup>241</sup>

#### b. First-to-File Regime

Mainly, the regime followed in most countries, including China and European countries, is the first-to-file system. This system insures trademark rights and priority for the business which applies first for registration of its mark notwithstanding whether it had used the mark in commerce or whether the mark was previously used in commerce by others.

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<sup>239</sup> (Mahaseth, 2022).

<sup>240</sup> (Clark 3, 2019-2020, Week One, Lesson Four).

(Clark 3, 2019-2020, Week Two, Lesson Two).

<sup>241</sup> (Clark 3, 2019-2020, Week Two, Lesson Three).



The importance of this regime lies in the easiness of controlling all trademarks for it is easier to define which business filed for registration first than which business used first the unregistered mark in commerce and in which geographical territories.<sup>242</sup>

However, even in countries that meet this regime's standards, first-to-use plays a main role in case more than one application is filed for the registration of similar trademarks for similar goods on the same day. In such a case in China, registration is granted for the trademark which was first used.<sup>243</sup>

The first-to-file regime can lead to bad faith trademark registration whereby an applicant knows that the subject-matter trademark has been used first by another business without registration and nevertheless proceed with its registration. In China, amendments were made to avoid such practices.<sup>244</sup>

In summary, due to trademarks' local effects, in a first-to-file regime and first-to-use regime, companies must register their trademarks in every country they might expand their businesses to. To illustrate, they must file an application for registration with the national registration trademark office and pay the required fees in every geographical region that matters.<sup>245</sup> Globally, only the European Union preserved the need for registration in every region through an EU registration for trademarks.

However, internationally, and unlike copyright, trademark lacks international law. The Paris Convention for the Protection of Industrial Property solely recognizes the right to protect a global brand without identifying an international registration system.<sup>246</sup>

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<sup>242</sup> (Mahaseth, 2022).

<sup>243</sup> Art. 31; [1982] Trademark Law of the People's Republic of China.

<sup>244</sup> Art. 4 [1982] Trademark Law of the People's Republic of China: "*A mala fide trademark registration application not made for the purpose of using the trademark shall be rejected.*"

<sup>245</sup> The process of registration is kind of similar to that regarding patents.

<sup>246</sup> (Clark 3, 2019-2020, Week Two, Lesson Three).



For instance, this Convention didn't regulate the conditions for the filing and registration of marks on an international level leaving the matter for regulation by domestic law. Consequently, the registration of a mark acquired in one Contracting State, or its annulment is independent of its potential registration in any other country.<sup>247</sup>

Recently, WIPO managed to create an international centralized system called the Madrid System that helps in registering and managing trademarks worldwide conveniently and cost-effectively. This occurs by allowing the filing of a single international trademark application for one set of fees to secure protection in about 129 countries.<sup>248</sup>

c. Mixed Regime in Lebanon

Although Lebanon is not categorized as an Anglo-Saxon country, it is considered in principle as a first-to-use country, while granting vital consideration for businesses that are first-to-file for trademark registration in good faith.<sup>249</sup> No one can claim personal ownership of a trademark unless previously registered in the Protection Office.<sup>250</sup> However, precedence in use is recognized and requires, in case it is claimed, written proof.<sup>251</sup>

This recognition expands to article seventy-four of the concerned Law and entails the need for a written document that proves the applicant's bad faith in knowing before filing for registration that another person used the trademark first.<sup>252</sup> In case this proof is available and the person, who used the trademark first, provides evidence of his free, consecutive, and

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<sup>247</sup> [1883] Paris Convention for the Protection of Industrial Property.

<sup>248</sup> (WIPO, Madrid System).

<sup>249</sup> A civil court case considered the first-to-use as the principle to gain ownership in Lebanon. Refer to Section Three (II) of this chapter.

<sup>250</sup> Art. 72; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>251</sup> Art. 73; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>252</sup> Art. 74; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation. This applies whenever the time limit of five years from the date of registration to challenge it expires.



previous usage, he preserves his right in using it for fifteen years only starting from the registration date.<sup>253</sup>

In summary, Lebanon adopts a mixed approach requiring the necessity to file a registration application to secure trademark ownership and thus protection from its date, as a simple presumption capable of being refuted, while keeping the first-to-use's rights in mind as a principle according to jurisprudence and doctrines.<sup>254</sup>

The process of trademark registration is similar to that of patents to a certain extent. For instance, articles seventy-nine to eighty-eight of the Lebanese Law present in detail the steps to be followed for registration by the first-to-use or first-to-file applicant while keeping in mind the refutable ownership presumption.<sup>255</sup>

The trademark owner, or his agent,<sup>256</sup> send a written application containing the necessary information to the HOIPPD with the needed attachments to prevent annulment.<sup>257</sup> The applicant has to pay the demanded fees, depending on the time limit he chooses for his trademark protection,<sup>258</sup> for his application to be accepted.<sup>259</sup> The HOIPPD studies, after reception of the said documents, whether registration is possible or not based on public policy and safe moral standards.<sup>260</sup> In case of refusal, the HOIPPD has to send the Minister of Economy a detailed report on the issue. The latter issues a decision either accepting the

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<sup>253</sup> Art. 75; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>254</sup> Refer to Section Three (II) of this Chapter.

<sup>255</sup> Art. 79 till Art. 88; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>256</sup> He can be Lebanese or a foreigner who chooses an agent whose domicile is in Lebanon.

Art. 77; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>257</sup> Art. 79; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>258</sup> The time limit is usually fifteen years capable of renewing.

Art. 78; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

The applicant can file from the beginning for protection that remains for thirty years, forty-five years, or sixty years...

<sup>259</sup> Art. 80; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>260</sup> Art. 71; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.



trademark registration or refusing it within fifteen days. This decision can be challenged in front of the State Council, unlike challenging a patent's refusal decision.<sup>261</sup>

Nevertheless, in case the trademark is legal, registration takes place on the Trademark Registers, and the applicant is granted a registration certificate within fifteen days from the date of registration.<sup>262</sup> Of course, trademark registration is renewable through filing a new application along the same documents.<sup>263</sup>

## 2. Trademark Limitations

In case of trademark infringement, the trademark owner may refer to court to stop the breaches. This owner has to prove four main features: (a) the similarity of the marks,<sup>264</sup> (b) the similarity of the goods or services,<sup>265</sup> (c) the character of the market,<sup>266</sup> and (d) the evidence of the likelihood of confusion.<sup>267</sup>

The U.S. courts' jurisprudence led to the formation of two trademark violation tests whereby each test depends on eight factors to decide whether there is trademark infringement or not, depending on the judge's choice.<sup>268</sup>

The first test is called "The Frisch Test". This test studies (a) the strength of the mark, (b) the similarity of the marks, (c) evidence of actual confusion, (d) the likely degree of

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<sup>261</sup> Art. 81; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>262</sup> Art. 82-83-84; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>263</sup> Art. 87-88; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.

<sup>264</sup> How much do the marks look alike overall?

<sup>265</sup> How similar are the goods? If the goods are very different, the similarity of the marks won't matter.

<sup>266</sup> Where are the goods sold? In some markets, consumers buy in a hurry without a lot of attention to the goods. In others, consumers buy carefully and diligently the goods, hence the infringement is less in the second case.

<sup>267</sup> Is there any evidence that consumers actually were confused?

(Clark 3, 2019-2020, Week Three, Lesson Two).

<sup>268</sup> (Clark 3, 2019-2020, Week Three, Lesson Four).



purchaser care,<sup>269</sup> (e) the defendant's intent in choosing the mark,<sup>270</sup> (f) the likelihood of product lines expansion,<sup>271</sup> (g) the relatedness of goods,<sup>272</sup> and (h) the marketing channels.<sup>273</sup>

The second test is called "The Polaroid Test". This test is analogous to the first one in the first three factors. The other factors are as follows: (d) the sophistication of buyers which is similar in principle to the fourth factor in the Frisch Test,<sup>274</sup> (e) good faith in using the mark which is similar to the intent in the first test, (f) bridging the gap which is like the chance of expansion in the Frisch Test,<sup>275</sup> (g) the proximity of the products which represents the relatedness of goods and the marketing channels in the Frisch Test, and finally (h) the quality of the respective goods which is a new criterion.<sup>276</sup>

In Lebanon, the court assesses the presence of an infringement by examining the infringing good's trademark from a consumer's point of view and its overall similarity rather than small differences with the real trademark.<sup>277</sup>

The defendant in return will use one of three defenses, all falling under the fair use doctrine, and similar to a certain extent to those of copyright.

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<sup>269</sup> How much care or consideration will the consumer put into it?

<sup>270</sup> Why did the defendant choose this mark? What was his intent? Did he choose it in bad faith to trick consumers or to leverage somebody else's brand?

<sup>271</sup> What's the possibility the plaintiff would get into a new product line in case the goods are different? What's the possibility of him expanding? And what's the possibility of a consumer being confused, now or in the future?

<sup>272</sup> If the goods are closely related or similar, the product line expansion criterion won't apply. However, the products' relatedness will be taken into consideration i.e. if the goods are very close, more trademark protection is needed.

<sup>273</sup> How different are the channels both parties are using i.e. one is using the Internet while the other is using supermarkets? Is one using wholesale channels and the other using retail channels?

(Clark 3, 2019-2020, Week Three, Lesson Four).

<sup>274</sup> Sophisticated buyers are likely to pay more attention and care more. For instance, a wholesale buyer is likely to be more sophisticated than a retail buyer.

<sup>275</sup> What's the possibility of the presence of the defendant's product in the plaintiff's market?

<sup>276</sup> Why would the plaintiff want to confuse a consumer that their good is inferior when it is the opposite? (Clark 3, 2019-2020, Week Three, Lesson Four).

<sup>277</sup> Art. 107; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.





a. Fair and Collateral Usage

This defense can be claimed when a person uses the trademark to comment on a product provided that such comment is fair or reasonable, such as stating that product X is better than Product Y. An example of an unfair comment is saying that "Google's product will make the consumer sick and will give him a heart attack." since Google has nothing to do with health. However, commenting the following: "Our browser is 10% faster than Google." is fair.<sup>278</sup>

Collateral usage is when someone refers to a trademarked item as part of a bigger project/product.<sup>279</sup> It occurs when one states for example that a certain computer works better with a particular software like "Intel". In such a case, the defendant isn't saying that his trademark is Intel, but he is advertising his computer with "Intel" as an inner component. In other words, collateral use is the incidental use of something related to the product without making a comparison. However, if the "Intel" logo is used clearly with a small "Inside" logo next to it, this might confuse consumers and lead them to think that the computer is made by Intel.<sup>280</sup>

b. Fair Use for Products' Comparison

The second defense possible to be claimed by the defendant is fair use to compare products. For example, if the defendant says "Our product resembles Lurpak, but is cheaper.", or "Microsoft Edge is safer or faster than Google Chrome.", a legal fair use comparison of products is achieved. This simply informs consumers about equivalent or substitute products without creating confusion.<sup>281</sup>

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<sup>278</sup> (Clark 3, 2019-2020, Week Three, Lesson Three).

<sup>279</sup> (Upounsel 6, 2020, What is a Trademark Infringement Defense?).

<sup>280</sup> (Clark 3, 2019-2020, Week Three, Lesson Three).

<sup>281</sup> (Clark 3, 2019-2020, Week Three, Lesson Three).



c. Parody

The third defense relates to parody, which is important when referring to a trademark in comparison to a copyright. A famous example of parody is the making fun of the Louis Vuitton brand by a dog toy manufacturer who named his manufactured toys “Chewy Vuitton”. This trademark made fun of Louis Vuitton by offering consumers a purse or a chew bone for dogs titled Chewy Vuitton.

Such parody was a success as a defense because (a) no confusion between Louis Vuitton handbags and those toys can take place, and (b) no dilution or harm happened to this trademark since Louis Vuitton does not sell dog purses.<sup>282</sup>

Nevertheless, parody or satire defense fails when its proportion is minimal in comparison to the defendant’s commercial success. In other words, if his commercial sales are vast and the criticism element of the parody is minor, this defense is not accepted.

Moreover, parody is a risky defense due to the judge’s discretion for what one judge might view as a funny parody, another might not consider it funny at all. For example, air pirates making fun of trademarked Disney characters failed as a parody since the judge didn’t classify it as funny but as “Gross”.<sup>283</sup>

After going briefly through one general defense type that encompasses three main trademark limitations, mentioning some court cases to clarify the theoretical parts stated above is a must (Section Three).

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<sup>282</sup> (Clark 3, 2019-2020, Week Three, Lesson Three).

<sup>283</sup> (Clark 3, 2019-2020, Week Three, Lesson Three).



## Section Three: Trademark Case Studies

To understand better what has been discussed in the previous sections, it is always worth referring to realistic case studies that show practically the main features of a trademark. For this reason, one of the well-known cases in the U.S.A. jurisdiction will be discussed first (I), then will follow a case in the Lebanese Jurisdiction (II); whereby each highlights specific legal issues related to trademarks.

### I. Ferrari v. Roberts

This is a case that highlights the use of the Frisch Test by the judge to decide whether Roberts committed a trademark infringement towards Ferrari. Roberts manufactured fiberglass kits whereby the exterior features of Ferrari's Daytona Spyder and Testarossa automobiles were replicated and bolted onto the undercarriage of another automobile. These kit cars were named Miami Spyder and the Miami Coupe, respectively.<sup>284</sup> In light of selling most of its kit cars, Ferrari brought an action against Roberts alleging trademark infringement, stipulating a violation of section 43(a) of the Lanham Act. Roberts declared that section 43(a) is not applicable since (a) the design of Ferrari's vehicles is protected only under design patent law and not the Lanham Act, and (b) there is no actionable likelihood of confusion between Ferrari's vehicles and Roberts' replicas at the point of sale.

Thus, the case discussed two main points: First which protection weapon is valid i.e. Trademark or Patent Protection, and second to what extent trademark infringement took place.

Regarding the validity of which type of protection: The court justified trademark protection for the external design of the Ferrari cars by stating that the protection against infringement insured by the said section extends, under certain circumstances, to unregistered

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<sup>284</sup> A kit car is a vehicle that is built for private use, not for resale, and is not constructed by a licensed manufacturer or remanufacturer. It involves a fiberglass or plastic body of an expensive car that is then bolted onto the frame of another car. (Clark 3, 2019-2020, Week Three, Lesson Five).



"trade dress" along "goods, services or commercial activities" protected by registered trademarks.<sup>285</sup>

Therefore, Ferrari's Lanham Act claim was a "trade dress" claim, whereby the district court found, that the distinctive external shape and design of the two Ferrari cars are protected trade dress and Roberts has infringed by copying them and marketing his replicas.

The exterior design of Ferrari cars acquired a second meaning which means that prospective consumers know surely the source of the product when the latter is presented to them, and hence Lanham Act protection is accessible to designs, possibly also covered by design patents, provided they have acquired secondary meaning.

Regarding the occurrence of a Trademark Infringement: The court found that infringement under section 43 (a) of the Lanham Act occurred after studying the likelihood of confusion under the Frisch Test factors.<sup>286</sup> The district court evaluated these eight factors and reasoned that the similarity of the exterior design of the Ferrari vehicles and the Roberts replicas was likely to confuse the public. Although there was no evidence of actual confusion, the likelihood of the product line expansion was irrelevant, and the marketing channels and likely degree of purchaser care favored Roberts, the four remaining factors "radically favored Ferrari".

Finally, Ferrari won for the court ruled in its favor a permanent injunction enjoining Roberts from producing the Miami Spyder and the Miami Coupe.<sup>287</sup>

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<sup>285</sup> Trade dress means the image and overall appearance of a product.

<sup>286</sup> Strength of the plaintiff's mark, the similarity of the marks; evidence of actual confusion; likely degree of purchaser care; the defendant's intent in selecting the mark; the likelihood of expansion of the product lines; the relatedness of the goods, and marketing channels

<sup>287</sup> [1991/944-1235] US Court of Appeals for the Sixth Circuit.



## II. Dadash Baradar Company (Aidin) v. Tos Overseas Prestige LLC.

In this case, on 15/5/2002, an Iranian Company (Dadash Baradar) signed a contract of exclusive commercial representation with a commercial institution to sell its products holding the trademark “Aidin” in Lebanon. However, on 24/5/2003, Tos Overseas Prestige LLC registered the same trademark in Lebanon, after a year of its use in commerce by the first company.

The first company sued the second for trademark infringement according to articles seventy-three and seventy-four of the Lebanese Industrial and Commercial Property Rights Regulation.<sup>288</sup> Dadash Baradar Company claimed that according to jurisprudence and doctrine, the registration of a trademark has a declaring effect, not a constructive one, for it does not create the ownership of the mark, but rather constitutes a simple presumption of its ownership. Hence, the trademark’s ownership belongs to whoever proves the precedence of its use.

The court concluded that the above-mentioned articles give the right of trademark ownership to whoever establishes the priority of its use, and the Lebanese jurisprudence and doctrine unanimously agree that first-to-use is the conventional principle in the Lebanese law in order to acquire ownership, on condition that the use is public, apparent, free of ambiguity, continuous, and with the intention of obtaining and owning the mark. As for the registration requirement, it does not result in the emergence of this right but simply acts as a reference of the valid date of the use of the mark by the applicant. As for article seventy-two, a simple presumption of ownership is constituted whereby the one who claims ownership can refute it through evidence of prior use.

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<sup>288</sup> Dadash Baradar Company is using its right to object, within five years from the date of registration, to a trademark’s registration based on it being the first to use it.

Art. 74; [1924/2385] Lebanese Industrial and Commercial Property Rights Regulation.



In summary, the court emphasized Dadash Baradar Company's ownership of Aidin's trademark due to evidence of prior, public, apparent, free of ambiguity, continuous, and with the intention of obtaining and owning the mark use. Therefore, it ordered the annulment of the registration of the mark by the defendant and prohibited its use by the latter.<sup>289</sup>

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<sup>289</sup> [2004/37] First Instance Court. Mount Lebanon.



## Conclusion

Brand equity is one of the principal sources of value in today's businesses. Large corporations comprise intangibles that are separate from their real estate and equipment. These intangibles include primarily three principal types of intangibles: patent, copyright, and brand or trademark.

Patents, copyrights, and trademarks are the swords through which a business fights any infringement on its intellectual property components i.e. industrial products, literary and artistic products, and commercial products. Through the above-detailed research, it has been evidenced that the difference in the shields of protection emerges from the necessity of treating the three categories differently.

To decide which is the best choice for business innovation protection, a distinction can be made between all three based on several main points:

Firstly, patents, copyrights, and trademarks are each crafted in a way that takes into consideration the specific features of their subject matter exempting a range of non-conformed products from protection. In other words, while a patent safeguards a manufactured product or process, a copyright protects artistic expression, and a trademark defends a word or symbol, or anything that is used to differentiate a product from another. It is important to note that sometimes these tools meet in their protection subject while clinging to detailed factors that make it easier to distinguish their roles.<sup>290</sup>

Secondly, the duration of protection insured through these intangible properties varies. While copyright, having the longest duration, is outranked by trademark once renewed infinitely, patent stands in between these two with a relatively short non-renewable duration.

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<sup>290</sup> Such as design patents, the copyright for design, and trademark as "trade dress".



Thirdly, the subjective conditions to be present in all three types of innovations vary in a lot of factors but may be considered to meet in requiring the product to be innovative. In general, the key requirements of a patent are novelty, utility, and non-obviousness; these of copyright are creativity, intellectual effort and can in some limited cases depend simply on the novelty of the artistic product; and these of a trademark are distinctiveness and use in commerce.

Fourthly, regarding the formal conditions, first, in all three cases, the concerned person can be Lebanese or a foreigner. Second, although a patent requires registration in all jurisdictions to safeguard the rights granted through it, copyright is an automatic and international protection weapon. A trademark stands in the middle necessitating registration in first-to-file countries, but demanding proof of actual use in commerce in first-to-use countries whilst clinging to registration to provide a more solid protection.

Fifthly, whenever registration is to be proceeded, similar steps are followed whether for patents or trademarks. In case of infringements, copyright and trademark include certain limitations that help in court cases defend using their subjects.

Finally, the major objective behind patents, copyrights, and trademarks is guaranteeing their owners the exclusive right to use and exploit them, along other detailed rights pertaining to each, while prohibiting others from doing so without the owners' authorization.

After this debriefing of the fundamental distinction factors, shielding the various business novelties can occur through three different yet alike weapons. What about safeguarding the innovations of corporations through strategy?





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