

**Access to Microfinance & Improved Implementation of Policy Reform
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**Administration of the Law on Trade Secrets
and Unfair Competition**

Final Report

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**Regulations Regarding the Enforcement
of
Unfair Competition and Trade Secrets Law**

1. These Regulations apply to the Unfair Competition and Trade Secrets Law, Law No. ____ of 1999 (hereinafter “the Law”). Each item below refers to the corresponding Article of the Law.

2. Generally. Article 2 is the codification of Jordan’s requirements under TRIPs to incorporate the provisions of Article 10bis of the Paris Convention into its laws. As such, it is recognized that an international consensus exists regarding traditional acts of passing off and related activities that tend to deceive or confuse consumers. The intent of Article 2 of this Law is to outlaw such activities, to provide civil remedies for such violations and thereby deter such conduct.
 2. A.1.
-Honest practices. Any person or entity that engages in any act of unfair competition, such as the adoption of the trade dress, trade name, commercial indication or trade mark or service mark of a competitor, false allegations in the course of trade of such a nature as to discredit the establishment, the goods or services, or the industrial or commercial activities, of a competitor; indications or allegations the use of which in the course of trade are liable to mislead the public as to the nature, the manufacturing process, characteristics, suitability for their purpose, or the quality of the goods or services will be considered to be engaged in unfair competition.

Example 1: Company A has used the trademark BLABLA on convenience stores for 10 years in Amman. It has never registered the mark. Company B, with knowledge of company A, opens a store it calls BLABLA where it sells quick

lunch meals. This would constitute unfair competition because consumers would believe that Company A sponsors or is associated with Company B when it is not.

Example 2: Company A is a hair dresser in Amman. It is aware that all hair dressers are closed on Mondays. Company A decides to be open on Mondays in order to take advantage of the lack of competition on Mondays. It posts signs which read “Unlike all other hair dressers, we are open on Mondays.” This does not constitute unfair competition because violating a mere custom is not unfair competition. It may be a dishonorable act, but this would not constitute unfair competition. All other stores, in order to compete, could just start opening on Mondays. No lone is mislead as to the source or origin of any good or service and Company A does not discredit any other hair dresser in this conduct.

-Industrial or Commercial matters: Term describes conduct of corporate entities or individuals where commercial transactions occur. The entities could be corporations or individuals and the conduct could be for profit, not for profit, or for profit but not currently creating an income stream for the defendant.

-Confusion. Term describes the state of mind of a consumer who believes that a certain good or service emanates from one company when it in fact is manufactured by, sold by, or distributed by a another company. Term also is used to describe the state of mind where consumers are lead to believe that one company sponsors, authorizes, or endorses the sale of some good or service when, in fact it does not.

-Establishment. Term refers to a corporation, individual, or other real or juridical person that claims to possess or own a right cognizable under this Law.

-**Competitor.** Term describes another corporate or individual entity which is engaged in the same or similar commercial endeavor.

-**Goods.** Any product of manufacture, design, or creation whatsoever that is sold or offered for sale in commerce in the Kingdom of Jordan.

2.A.2

-**False allegations.** Term refers broadly to a wide range of commercial activities primarily the advertising of a company's goods or services or references to another's goods or services. Misleading advertising and false advertising are prohibited by the Law.

Advertising means the making of any pronouncement in the course of a trade, business or profession for the purpose of promoting the supply of goods or services.

Misleading advertising means any advertising which is entirely or partially false or which, having regard to its total effect, including its presentation, mis-leads or is likely to mislead persons addressed or reached thereby, unless it could not reasonably be foreseen that these persons would be reached thereby.

Unfair advertising means any advertising which satisfies at least one of the following:

-Advertising that casts discredit on another person by improper reference to his nationality, origin, private life, or good name, or

-Advertising that injures or is likely to injure the commercial reputation of another person by false statements or defamatory comments concerning his firm goods or services, or

-Advertising that appeals to the sentiments of fear, or promotes social or religious discrimination, or

-Advertising which exploits the trust, credulity or lack of experience of a consumer, or influences or is likely to influence a consumer or the public in general in any other improper manner.

In determining whether advertising is misleading or unfair, the following should be considered:

-The characteristics of the goods or services, such as the nature, performance, composition, method and date of manufacture or provision, fitness for purpose, usability, quantity, quality, geographical or commercial origin, properties and the results to be expected from use;

-The condition of supply of the goods or services, such as the value and price, conditions of contract and of guarantee;

-The nature, attributes and rights of the advertiser, such as his identity, solvency, abilities, ownership of intellectual property rights or awards and distinctions.

Advertising shall in particular be regarded as misleading when it omits material information, and, by reason of that omission, gives a false impression or arouses, expectations which the advertiser cannot satisfy.

Comparative advertising shall be appropriate when it compares material and verifiable details and is neither misleading nor unfair.

2.A.3

-Indications or allegations. Terms refer to both use of trademarks, trade names or other designators of source or origin or advertising as defined in 2.A.2 above.

-Mislead the public. Term refers to the general consuming public of the Kingdom of Jordan. General consumers are the intended beneficiary of this law and therefore the public is intended as a broad term to include any or all people of the Kingdom of Jordan.

-Nature, manufacturing process, characteristics, suitability for purpose, quantity.

Terms refer, without limitation, to general processes of manufacture and are intended to be expansive.

2.A.4

This provision is intended to be a broad prohibition of conduct, using products, advertisement or other articles to mislead the public regarding the product's qualities or the reputation of the manufacturer. This includes, for example, claiming goods are 50% below inventory cost when, in fact, they are not.

2.B.

This provision is necessary to clarify that the use of unregistered trademarks to confuse consumers regarding the source or origin of those goods is actionable just like under the Trademark Law. This provision applies to "any trademark", as defined in the trademark law. Therefore, marks need not be famous for this provision to apply. The term "misleads public" refers to conduct which causes consumers to be confused as to the source or origin of some good.

2.C.

This provision makes all of Article 2 of this Law applicable to services as well as goods. Services are to be distinguished from "goods". This Law, therefore, applies to both goods and services. Services are defined as the operation or performance of some act where title to property is not transferred during the performance of that act.

Example: A bank provides the service of keeping and investing money. That same bank may also sell T-shirts as promotional advertising. The bank uses the same "mark" on or in connection with both its T-shirts and its savings accounts. Providing a safe location to deposit money is a service because the title to the money deposited therein does not change whereas using the mark on the T-shirts

constitutes trademark use on goods because title to the T-shirts is transferred to the purchaser.

3. A.

This provision narrows the range of individuals, juridical or real, who can sue under this Law. This provision requires plaintiffs to be “interested”. An interested party is one who holds rights to intellectual property cognizable under this Law or the other intellectual property laws of the Kingdom of Jordan. An interested party includes any entity that is likely to be financially harmed by the conduct of another. In most cases, this is a competitor or other business entity who is losing sales or may lose sales due to the conduct of another. Because the clause continues with a statement that such an interested party “may claim compensation for any damages”, the real application of this Law will be to corporate entities who suffer actual damage as a result of the conduct of another in violation of this Law. That is, an interested party is one who holds some intellectual property or other right cognizable under the laws of the Kingdom of Jordan and who is damaged by the conduct of another.

B.-F.

These provisions are intended to satisfy the requirements of Articles 41-49 of the TRIPs Agreement.

4.A. This Article brings the Kingdom of Jordan’s laws into compliance with Article 39(2) of TRIPs. In short, this article requires that any proprietary information which is secret and has commercial value be protected as a trade secret.

1. Secrecy. Under the Law, there are four requirements for secrecy as described below.

A. Objective secrecy. To be protected under this Article, trade secrets must be “not generally known.” This “secrecy” is the equivalent to the novelty

requirement under patent laws. Just as no patent may be issued for knowledge that is already part of the public domain, no confidential information is deserving of legal protection when it is already in the public domain. The public domain is defined as all information that is generally known or easily obtained.

B. *Relative secrecy.* To be protected under this Article, trade secrets must also have relative or subjective secrecy. That is, the information must also not be known by persons who normally deal with this type of information. The reason for this requirement is two fold:

- a) This requirement prevents plaintiffs from claiming information as their trade secret if it is not generally known, but individuals reasonably skilled in the art know it;
- b) It allows judges more flexibility to use their own knowledge of what is available information in specific spheres of which they have knowledge.

C. *Non-obviousness not required.* To be protected under patent laws, inventions must not only be novel (that is, not generally nor specifically known), they must also not be obvious to one reasonably skilled in the art. To be protected as a trade secret under this Law, information need not be non-obvious. That is, the constituent parts of a trade secret may be available to the public but assembled or configured in a way that is secret, even if it is obvious, renders them appropriate subject matter of trade secret protection. Without this understanding, customer lists, for example, would not be protected under this Law. That would be contrary to the intent of Article 39(2) of TRIPs and so this understanding is necessary.

D. *Reasonable Steps.* Finally, to be protected under this Article, the right holder must take reasonable steps to maintain the information's secrecy

and prevent misappropriation. Taking these precautions is the best evidence that the right holder considered the information proprietary and not simply making an argument to hinder free competition by a competitor. Reasonable steps will usually consist of warnings, video surveillance, restricted access to rooms containing the information or where it is put to use, security codes, safes, and black box agreements or other confidential agreements with contractors. In addition, propriety information should be clearly labeled as such to avoid inadvertent disclosure. A policy of secrecy with little or no enforcement, except for exceptional circumstances of willful and intentional trade secret theft, will not be sufficient.

4.B. This Article provides the judiciary with the opportunity to nullify trade secret protection of information that would be contrary to the public order or morality. The intent is that this provision be read narrowly. It primarily applies to issues of emergency national security, obscenity, or other conduct that is patently offensive to an appreciable portion of the society.

5.A. This provision defines the owner and therefore who a plaintiff would be under Articles 4, 6, and 7 of the Law. The term is meant to be inclusive. Any party who has taken steps pursuant to Article 4 of the Law to keep information secret is a “right holder” under the Law.

5B. This provision provides the basic standing for a person or corporation to sue pursuant to the Code of Civil Procedure. Article 7 of the Law provides for the specific rights granted to the right holder in addition to the Civil Code or the Code of Civil Procedure.

6.A.

This provision protects confidential information from unauthorized acquisition, use or disclosure. The provision is adopted to be in compliance with Article 10bis (2) of the Paris Convention. As such, it is recognized that international standards for the protection of trade secrets shall be recognized and that local standard practices in the Kingdom of Jordan inconsistent with this provision shall not be recognized as a defense.

6.B.

This provision contemplates three distinct ways of obtaining trade secret information that will be presumed to be in violation of the Law.

1. Breach of contract. This applies to employment agreements or non-disclosure agreements. This provision prohibits any use of information that is taken away from a trade secret right holder by electronic means or in hard copy.
2. Breach of confidence. This applies to formal, written contracts as well as formal, oral confidences where the breaching party knew or should have known that disclosing the information was improper. This provision also creates third party liability for inducing someone to share a confidence which is subject to trade secret protection. Specifically, any one who induces an employee, an agent or other auxiliary to disclose or to spy on technical or commercial trade secrets of the employer or principal violates this Law.
3. This provision makes actionable the mere acquisition of a trade secret regardless of whether or not it was subsequently disclosed to third parties.

6.C. Article 39(2) of the TRIPs Agreement is silent on the issue of reverse engineering. Therefore, the Law allows for reverse engineering. However, reverse engineering that is conducted through something other than honest commercial practices would still be actionable under the Law.

7.A.-C.

Self-explanatory. See discussion of Article 3 above.

8.

Protection of trade secrets and records maintained for the regulation of commercial enterprise.

Protection of trade secrets and records maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise.

(a) Identification of records.

(1) Any entity submitting records to the department which it wishes to have excluded from disclosure pursuant to the Law shall file with the relevant records access officer a written request that such records not be disclosed. Such request shall identify those records or portions of records which the submitter considers to be a trade secret.

(2) Any agency transferring official records, which are considered the trade secrets of the submitter shall so notify the archives and the submitter.

(b) Custody of records. Records for which trade secret status is claimed based on the Law will be under the custody of the director of the division of the department responsible for the maintenance of the records.

(c) Disclosure of records to department personnel. Records for which trade secret status is claimed pursuant to the Law are subject to inspection and study by the director of the division responsible for the maintenance of the records and by those designated by the director as eligible to inspect and review such records.

(d) Safeguarding against unauthorized access to records. Records for which trade secret status is claimed will be maintained in secure facilities to be determined by the director of the division responsible for the maintenance of the records. In making such

determination, the director will consider the nature of the records and the facilities available for their retention.

(e) Punishment for violation.

Whoever, being an officer or employee of the Kingdom of Jordan or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets of the submitter shall be fined not more than _____, or imprisoned not more than one year, or both; and shall be removed from office or employment.

9.A.

The purpose of this Article is to implement the provisions of Article 40 of TRIPs. Article 40 of TRIPs recognizes that the owner of intellectual property can abuse its competitive advantage through its licensing practices. Restraints in intellectual property licensing arrangements are evaluated under the rule of reason. The general approach in analyzing a licensing restraint under the rule of reason should be to inquire whether the restraint is likely to have anti-competitive effects and, if so, whether the restraint is reasonably necessary to achieve pro-competitive benefits that outweigh those anti-competitive effects. Specifically but not exhaustively, this Article prohibits the following conduct.

9.A.1. Exclusive Grant -Backs. Exclusive grant-backs are defined as those contractual practices requiring the acquiring party to transfer or grant back to the supplying party, or to any other enterprise designated by the supplying party, improvements arising from the acquired technology, on an exclusive basis, without offsetting consideration or reciprocal obligations from the supplying party, or when the practice will constitute an abuse of a dominant market position of the supplying party.

9.A.2. Challenges to validity. Challenges to validity are conditions requiring the acquiring party to refrain from challenging the validity of patents and other types of protection for inventions involved in the transfer or the validity of other such grants claimed or obtained by the supplying party, recognizing that any issues concerning the mutual rights and obligations of the parties following such a challenge will be determined by the appropriate applicable law and the terms of the agreement to the extent consistent with that law.

9.A.3. Coercive package-licensing. Coercive package-licensing are those restrictions imposing acceptance of additional technology, future inventions and improvements goods or services not wanted by the acquiring party or restricting sources of technology, goods or services, as a condition for obtaining the technology required when not required to maintain the quality of the product or service when the supplier's trade or service mark or other identifying item is used by the acquiring party, or to fulfill a specific performance obligation which has been guaranteed, provided further that adequate specification of the ingredients is not feasible or would involve the disclosure of additional technology not covered by the arrangement.

In addition to those types of provisions in licenses which are made per-se illegal under Article 9 of the Law, the following provisions will also be considered presumptively violative of Article 9:

- Restrictions on research;
- Restrictions on the use of personnel;
- Price-fixing;
- Restrictions on adaptations;
- Exclusive sales or representation agreements;
- Tying arrangements;
- Export restrictions;

-Restrictions on publicity;

-Payments and other obligations after expiration of industrial property rights;

-Restrictions after the expiration of licenses.

9.B. Self-explanatory.

10. No comment

11. No comment.

