

Newsletter

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Welcome to the seventeenth edition of our Newsletter. In this edition, we will look into the concept of unfair competition, its types and methods and the protective measures the Jordanian legislator has stipulated to minimize unfair competition practices in light of the Unfair Competition and Trade Secrets Law No. (15) of 2001 (hereinafter defined as the “**Law**”). We will address the most prominent provisions of this Law, as follows:

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“Competition as a legitimate act may transcend its natural limits and turn unlawful as some may resort to means that are incompatible with commercial customs, norms and honorable practices. Whereby illegitimate acts that the trader performs in order to retain the clients of others, is considered illicit and gives rise to the liability of the trader for restitution for the damages caused onto others. The unfair competition claim is the legal mechanism to hold the trader accountable for the restitution.”



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Introduction

Originally, competition is considered lawful and is protected by the law. It is defined as traders and manufacturers competing to promote as much of their products and services as possible by attracting clients on a large scale whereby this competition can be conducted honorably and scrupulously in accordance with the provisions of Law and commercial customs. However, if competition crosses the boundaries of its general framework, it shall be considered unlawful and will therefore entail liability.

We find that the legislator has put in place a general framework which ensures that competition remains within the sphere of legality and prevents any conduct that would result in competition entering into illegitimacy. At the same time, it has prevented competitive behavior itself in certain cases, where the mere exercise of competition is an unlawful act entailing legal liability.

First: What Is Unfair Competition

We find that the Jordanian legislator in the Law avoided specifically defining unfair competition, whereas such definition of the term would make it more rigid and inconsistent with the scientific and technological evolution of the commercial environment which in turn could lead traders to devise new methods of unfair competition that might be difficult to cover in the definition. If

defined, it would surely leave a loophole, therefore several methods would remain outside the legal framework that prohibits conducting unfair competition acts.

It can be said that the legislator has merely established a general rule prohibiting any act of unfair competition, sorted and listed some of these acts and named but a few of them. The general rule describes unfair competition as any act that conflicts with decent industrial and commercial practices. For example: acts that create confusion between competitors or their activities or their products, false allegations causing mistrust of a competitor's establishment or products or services, practices that undermine the product's fame or cause misperception amongst the consumer base and any illegitimate act regarding any trademark used in Jordan.

In jurisprudence, there have been many opinions regarding the definition of what constitutes unfair competition, whereby some scholars define it as: *"the traders' use of methods contrary to the laws,*



customs, or honorable practices.”¹. Others had a different opinion, whereby they defined unfair competition as: “any act in the field of commerce, industry, service and transactions...etc. that a person does to harm other competitors and gain at their expense through means prohibited by the law”².

Unfair competition may also be defined as: “any act contrary to the law, trade customs and norms and even to the codes of honor and trust, performed in the industrial and commercial field”.

Second: Types and Methods of Unfair Competition

There are several types and methods that comprise unfair competition. However, they are incalculable and cannot be deducted due to the fast developments that follow commerce which therefore lead to the creation of new patterns of unfair competition.

Since it is difficult to limit the acts of unfair competition, the Jordanian legislator addressed such a matter in the Law. Provisions were established to cover all of the types and methods of unfair competition. Article (2), paragraph (a) lists numerous types and methods that conflict

with fair acts regarding competition in the industrial and commercial field, as follows:

“A. It is considered an act of unfair competition every competition that is inconsistent with honorable practices in industrial or commercial affairs and in particular the following:

1. Actions that by their nature cause confusion with a competitor’s establishment, products or industrial or commercial activities.
2. Allegations that differ from the truth of the practiced trade, which may remove confidence in the competitor’s establishment, products or industrial or commercial activities.
3. Data or allegations whose use in trade may mislead the public regarding the nature of products, the method of their manufacture, their characteristics, their quantities or their ability to be used.
4. Any practice that may impair the reputation of the product, or cause confusion regarding its external appearance or method of display or may mislead the public when announcing the price of the product or its method of calculation.

B. If the unfair competition relates to a trademark used in the Kingdom, whether registered or not,

¹ Mustafa Kamal Taha’a, “Summary in the Explanation of Trade Law”. Alexandria, 1977, pg 548.

² Shammari, “Unfair Competition in Kuwaiti Legislation”, Legal Newsletter, Kuwait University, Kuwait, 1990, pg. 17.



and it leads to misleading the public, then the provisions of paragraph A of this article are applied.

C. The provisions mentioned in paragraphs (A) and (B) of this article shall apply to services as appropriate.”

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These types listed by the legislator came by way of example only and are not exhausted in those examples so that a judicial body can consider them in order to add further acts that are inconsistent with honorable practices in industrial and commercial affairs, and are thereby viewed as acts of unfair competition. Based on what was stated before, we shall discuss and elaborate on several types of unfair competition below.

Section (1): Actions That by Their Nature Cause Confusion With A Competitor's Establishment, Products, or Industrial or Commercial Activities

This is, in other words; duplication and counterfeiting. This is the case in which the original trademark looks similar to the duplicated trademark, leading to the customer getting confused between the true original product and its duplicate/s. Duplication and counterfeiting constitute an attack on a right and a violation as any act that causes confusion with a competitor or his/her establishment, products or services

signposts to unfair competition. Examples of which are but not limited to:

- 1) The use of a trade name that is already there in the market for the same commercial activity. The legislator in the Jordanian Trade Names Law stipulated that a trade name shall be new and innovative, neither used nor registered by a different person for an identical or nearly similar commercial activity otherwise it is considered misleading to the consumer base and is therefore considered an act of unfair competition³, or
- 2) The use of a trademark that is identical to one that is well-known and possesses the trust of the public and, as such, misleads the consumer base. It is not required that the trader's goal by misleading the public be to harm a competitor, as attracting the competitor's clients and consumers is enough to impose liability. Either way, such an act is deemed as unfair competition. The criterion of imposing liability is whether the acts undergone by the trader misleads and confuses the consumer base, thus causing him/her to make a mistake. The basis here being for a moderately cautious

³ Article (5) of Trade Names Law No. (9) of 2006.



and aware consumer and not a technical person⁴.

5 Section (2): Allegations That Differ From the Truth of Practiced Trade, Which May Remove Confidence in a Competitor's Establishment, Products or Industrial or Commercial Activities

The Jordanian legislator in the Law prohibits any act which could impair confidence in a competitor's establishment or facility leading to mistrust in the products of any competitor whereby the trader seeks to attract further clients and deprive competitors from such clients and is therefore competing unfairly. This is also known as the debasement and devaluing of competitors in order to attract their clients through misleading information or deception. Yet, the crucial difference between debasement and deception is that the false allegations are not about causing confusion with regard to the products as much as they intend to devalue and tarnish the competitor's fame, products or services. As such, false allegations are directed to the competitor's establishment or products in order to:

1) Remove the public's confidence in them⁵ or,

2) Describe the competitors' product as of poor quality or unhealthy and to compare his/her products to competitors' in the most constructive manner, demonstrating his/her product in terms of quality and devaluing the competitors' products by tarnishing their products' images.

3) Spread rumors for the purpose of tainting the competitor's reputation and deprive him/her from clients. For example: false allegations regarding a competitor going bankrupt to undermine not only the confidence of customers, but that of all traders in the market because of the competitor's weak financial credit.

All of those acts are deemed as a type of unfair competition which the legislator prohibits in order to preserve honorable practices in the commercial environment and in order to protect consumers from falling to fraud and deceit.

Section (3): Data or Allegations Whose Use in Trade May Mislead the Public Regarding the Nature of the Products, Their Method of Manufacture, Their Characteristics, Their Quantities or Their Ability to be Used

It can be said that this type or method of unfair competition bears two different meanings. On the one hand, the allegations or data meant by the

⁴ Mehrez, Trade Law, introductions of Commerce, responsibilities of a trader, commercial activities, industrial property, 1998, pg.222.

⁵ Al Mahboub, "Industrial Property and Unfair Competition Acts", 2016, pg. 141.



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legislator in this paragraph could be deemed as the information that the trader makes up regarding the products of competitors, showing them in the worst possible manner and spreading rumors about the products' specifications and quality, therefore misleading the public. Misleading can be defined as the deception and creation of false impressions concerning the competitors' products and/or services, which establishes a ground for unfair competition. Misleading can lead to disastrous consequences as its harm may extend beyond competitors to the consumers as they feel secure in the false information and data and become keen to demand unoriginal products resulting in considerable losses, and even worse, such acts could be detrimental to the national economy⁶.

On the other hand, allegations and data could mean those that the trader makes up regarding his/her products and services for the purpose of demonstrating them in a constructive manner in front of his/her clients, such as data on the product's quality and specifications, country of origin and even its capability of use. The trader might claim that his/her products manufactured within a personal commercial project are of foreign manufacturing such as European clothing

or Italian shoes. This information is essential and will surely discourage clients from attending other stores, giving preference to the trader whom is alleging false information⁷.

Herein, it should be noted that exaggerations in advertisement that do not include false allegations or the imitation of other traders do not constitute an unfair competition practice. For example, one might advertise his/her products as the best in the market, however, this it is not called unfair competition.

Section (4): Any Practice That May Impair the Reputation of the Product or Cause Confusion Regarding its External Appearance or Method of Display, or which May Mislead the Public When Announcing the Price of the Product or its Method of Calculation

The concept of "debilitating" is one of the classical types and methods of unfair competition and is defined as the gradual devaluing of a product's fame that has earned the confidence of the consumer base and has been engrained in the public's mind for so long. This concept finds its way through the usage of a similar trademark for different products and services. For example, one might use the packaging of a famous chocolate bar

⁶ Al Mahboub, "Industrial Property and Unfair Competition Acts", 2016, pg. 139.

⁷ Shammari, "Unfair Competition in Kuwaiti Legislation", Legal Newsletter, Kuwait University, Kuwait, 1990, pg. 34.



7 company to wrap his/her own products of chocolate that are of a lesser quality, resulting in the consumer base being misled in addition to devaluing the product. Moreover, such acts will ultimately lead to the original product becoming discredited, as well as the fact that such an act constitutes a violation of the Trademark Law, thus, entailing liability. Among the applications of the Jordanian Court of Cassation for this type of unfair competition is as follows:⁸

“Applying article (2) of the Unfair Competition and Trade Secrets Law No. (15) of 2000 on the following facts, and the acts done by the defendant, it appears that it fulfilled the criterion for unfair competition that the defendant performed in most of the forms listed in the law as examples of industrial and commercial activities. Wherein the defendant’s manufacturing of the same type of chocolate bar as the claimant, bars of coconut wrapped in chocolate, wrapped in the same colors, distribution and specifications as that of the claimant, naturally causes confusion with the claimant’s establishment, chocolate products

(“Mars”) and industrial and commercial activity. This is especially significant when we bear in mind that both the claimant and defendant work in the same field and sector. All of these acts mislead the consumer base as to the nature of the products and causes confusion as to its external appearance and method of display that resulted in removing confidence from the origin of the claimant. Paragraph (B) of article (2) of the Unfair Competition and Trade Secrets Law No. (15) of 2000...”.

In view of the above, it is no secret that the consumer’s human instinct gears toward good quality products with nominal charge, which leads to the trader turning to price reductions beyond reasonable limits in order to attract the competitor’s clients. However, once they approach his/her products, he/she drives the prices up. This act constitutes unfair competition since it triggers turbulence in the competitor’s project and the market as a whole as well as misleading the consumer base⁹. The trader might deceive the public through the mechanism by which prices are calculated. He/she will provide discounts but, in exchange, raise delivery fees,

⁸ Civils’ Court of Cassation decision No. (1916/2008).

⁹ Al Outair, “A Summary in Explaining the Jordanian Trade Law”, Commercial activities, traders, trade contracts, 1993, pg. 66.



hence, accounting for fake reductions. The trader might also offer different prices for his/her products on the shelves and when the consumer intends to purchase said product, the trader sells it at a higher price. It is noteworthy that article (2) paragraph (a) of the Law addresses unfair competition both in the context of industrial and commercial activities and it specifies four cases that it considers as unfair competition. It has also legally acknowledged a fifth case of unfair competition in paragraph (b) of article (2), in which unfair competition relates to trademarks, whereby the legislator sets out a requirement to the claim of unfair competition regarding trademarks; said requirement relates to the significance of having this trademark used in the Hashemite Kingdom of Jordan, regardless of it being registered or not, given that such competition leads to consumer confusion. This is stated by the Court of Cassation in its following judgement:

“Whereby the appellants argue that the trademark that the respondent claims ownership of and is called: “RIO mare”, that is a trademark that is not similar to the trademark used on their products (“RIO garden”) by way of words, names, letters, pronunciation, visual and audio impressions and source of the products and with a difference in the pictures and colors on the external wrappings of

the box. Whereby the Appeals Court, in its capacity as the competent court and with the authority granted to it under articles 33 and 34 of the Evidence Law, has decided by way of the technical expert provided on the existence of a similarity giving rise to deception and confusion amongst the consumer base between the products dealt with by the appellant and that of the respondent. Given the above and in light of article (2), paragraph (b) that prohibits any party from using a duplicated or fraudulent trademark and which otherwise it constitutes unfair competition, regardless of it being registered or not as long as this trademark has been used by a person for a long period of time and it became well known amongst people, which makes the use of the claimant’s exact trademark in the local market by the defendants lead to deceiving and misleading the consumer base. As long as the products were wrapped in similar packaging and bottling that are an exact match to the packaging and bottling of the claimant and as the trademark used by the appellants bears the exact data of the trademark of the respondent, then this act constitutes unfair competition under the meaning or article (2) of the Unfair



Competition and Trade Secrets Law No. (15) of 2000, which causes the claimant harm and therefore requires that the defendants halt their acts of unfair competition”.

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As a conclusive point to this section, it is worth pointing out that the Jordanian legislator has listed all different types and methods of unfair competition by way of example, naming only a few and set a flexible standard that considers any violation of commercial norms and customs counting as unfair competition. Given the above, the legislator enabled the judicial body to expand in applying the criterion to include any type and method, whatsoever, of unfair competition, taking into consideration the rapid development of such types and methods. All of that ensures a fair and honorable competitive environment amongst traders and protects the consumer from being deceived, misled or allured by the fraudulent acts of traders towards them.

Third: Protective Measures the Jordanian Legislator Has Stipulated to Minimize Unfair Competition Practices

In this section we shall address the protective measures the Jordanian legislator has granted through legal mechanisms for those who become

victims of unfair competition because of the serious damages sustained by the traders, consumers and equally, the national economy. Competition as a legitimate act may transcend its natural limits and turn unlawful as some may resort to means that are incompatible with commercial customs, norms and honorable practices. Whereby illegitimate acts that the trader performs in order to retain the clients of others, are considered illicit and give rise to the liability of the trader for restitution for the damages caused to others. The Jordanian Legislator committed to provide a legal mechanism for protection purposes concerning the protection of stores, traders, and the consumer base in addition to the national economy from unfair competition acts. The most notable of which is that under article (3) from the Law¹⁰ regarding the unfair competition claim.

The unfair competition claim is one of the most important tools granted by the legislator for all those harmed as a result of unfair competition. Therefore, the claim guarantees that those who are eligible under the law can resort to the court and take actions to secure their right¹¹.

In conclusion, it should be noted and commented upon, the fact that the legislator has listed all the different types and methods of unfair competition

¹⁰ Article (3), Paragraph (a) of Unfair Competition and Trade Secrets Law.

¹¹ Civils' Court of Cassation decision No. (1703/2009).



1) by way of example, naming only a few and has set a flexible standard that considers any violation of commercial norms and customs be deemed unfair competition. Such flexible standards leave the courts with a considerable degree of discretion when dealing with unfair competition practices especially since the types and methods of unfair competition are constantly and permanently evolving.



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Warm regards,

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ABOUT HAMMOURI & PARTNERS ATTORNEYS AT-LAW

Hammouri & Partners Attorneys at-Law, is a Jordanian multi-practice law firm, founded over two decades ago (established in 1994) by Professor Mohammad Hammouri (1940-2022). Professor Hammouri was a renowned Jordanian attorney and an arbitrator, a former Minister of Culture and National Heritage and a former Minister of Higher Education, who wrote a plethora of books, primarily on constitutional rights. Professor Mohammad Hammouri also founded the first School of Law in the Hashemite Kingdom of Jordan at The University of Jordan, in which he was its first dean. Today, the firm is managed by Dr. Tariq Hammouri, a distinguished academic and attorney and a former Minister of Industry, Trade and Supply. Dr. Tariq Hammouri is both an experienced attorney and an arbitrator, an expert in the Corporate sector, Commercial Transactions, Financial Markets, Banking Law and International Trade. He is an Associate Professor at the School of Law, University of Jordan and (formerly) the Dean of the School of Law. Dr. Hammouri is also an officially appointed member of the International Center for Settlement of Investment Disputes (ICSID) Panel of Arbitrators upon designation by the Government of the Hashemite Kingdom of Jordan, for the period of 2020 to 2026.

Hammouri & Partners team consists of 25 attorneys and a number of other professionals working in the firm's specialized departments, providing professional legal services at a local, regional and international level.

The firm's legal services cover numerous areas of practice, including the following: Corporate and Commercial Law (whether that is corporate set-up or drafting of all types of commercial agreements), Intellectual Property law, Banking and Finance Law (the Firm advises local and international banks regarding all Banking Transactions and Regulatory Compliance). Additionally, the Firm's Litigation and Arbitration department have the capabilities and competence to represent parties in the most complex and novel legal matters, as it encompasses expertise in several areas of law, whether it is before courts or arbitral tribunals. Hammouri & Partners Attorneys at-Law was one of the first firms in Jordan to establish a specialized International department to cater to the needs and requirements of international clients on an array of tasks with an international element, such as those regarding bilateral and international trade negotiations, projects, contracts and others.

In addition to what has previously been stated, Hammouri & Partners provides legal advice and consultation to various industries such as those of Construction & Infrastructure, Manufacturing, Engineering, Trade, Insurance and Energy, as some of its clients are major energy, healthcare, information technology and telecoms companies.

Hammouri & Partners Attorneys at-Law provides its broad services throughout Jordan as well as worldwide, through established collaborations with reputable law firms in the MENA region, Europe, the United Kingdom and the USA. Hammouri & Partners has earned regional and international acclaim by the most reputable legal directories. Chambers and Partners Global, International Financial Law Review (IFLR 1000) and the Legal 500 all highlight Hammouri & Partners as a leading law firm in the Jordanian legal services industry.



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