



## **Trade Mark Dilution in Jordan and its Effect on Technology Shatha Shannag, University of Leeds**

The theoretical basis for the concept of 'dilution' can be traced back to Schechter's seminal trade mark article 'The Rational Basis of Trademark Protection' in 1927.<sup>1</sup> Dilution protection made its way into the US legal system since 1947 when Massachusetts adopted the first dilution statute. Following Schechter's article the protection against dilution in the USA was recognized at the federal level in 1995 in the enactment of the Federal Trademark Dilution Act, which was replaced later by the Trademark Dilution Revision Act 2006.<sup>1</sup> For the first time the statute granted owners of famous marks protection against dilution. The wording of the Act is aimed at protecting famous marks against dilution.<sup>1</sup> Similarly at European level, the Trade Mark Directive 2008/95/EC<sup>1</sup> (TMD) provides protection against dilution in Article 5(2). Although the term 'dilution' itself is absent, the Court of Justice of the European Union (CJEU) referred to and confirmed the existence of dilution protection.<sup>1</sup> With regard to International Agreements, namely the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS) there seems to be no consensus among academics to whether or not the Agreement incorporates dilution protection in its provisions. However, if we accept that anti-dilution protection is part of the TRIPS Agreement, even though there is no consensus, and if dilution is part of TRIPS, ultimately dilution is an obligation of the World Trade Organization (WTO) Member States. Consequently, the Hashemite Kingdom of Jordan (hereinafter Jordan), as a signatory of the WTO, is obliged to apply dilution protection. Therefore, the question arises to whether there is dilution protection in Jordan under the Jordanian Trade Mark law? If so, how does the implication of the dilution protection affects the technology in Jordan?

In order to answer the proposed question, a brief introduction to the basics of trade marks will be mentioned first. Secondly, the paper will explore the concept of the doctrine of dilution. Thirdly, a critical analysis will be undertaken with regard to Article 16 of the TRIPS Agreement. Fourthly, the provisions of the Jordanian trade mark law will be examined, particularly the statutory protection for well-known marks. Finally, the effect of trade mark dilution protection on technology and whether dilution protection is hindering or facilitate technology will be addressed.

Scholars' arguments often focus on the trade mark protection against dilution within the USA and UK or Europe. Less emphasis is directed towards developing countries and how countries such as Jordan incorporate dilution within legislation and accordingly the consequences of the implication of dilution protection. For this reason, a contribution is made to benefit Jordanian intellectual property practitioners, namely practitioners in the filed of trade marks, by overcoming the vagueness about the implication of the doctrine of dilution in Jordan and by raising awareness to the effects of dilution on technology.