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## Registration of Non-Traditional Trademarks in Saudi Law Audio Branding as a Model

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### ***Abstract***

*With the growing and accelerating development of the digital economy sector, companies should pay more attention to the Internet instead of the entirely traditional methods, and new types of non-traditional brands, especially audio brands, can attract the attention of consumers more than conventional brands, such as symbols, drawings, pictures, and seals. However, the situation differs in different countries and international organizations. This paper concentrates on the Kingdom of Saudi Arabia and the Gulf Cooperation Council countries (GCC), to determine the extent to which an audio trademark can be registered in Saudi law, as the researchers note that there is an apparent discrepancy in the position between the Saudi trademark law, which requires the registration of a trademark to be perceptible by sight, and the trademark law of the Gulf Cooperation Council countries, that Saudi Arabia is part of, and which allows the registration of non-traditional trademarks, such as sound and smell. On the other hand, this paper addresses the requirements needed to register an audio trademark, although the Gulf Cooperation Council Trademark Law legislator does not stipulate those requirements.*

**Keywords:** Intellectual Property, Trademark, Non-traditional Trademark, audio trademarks, Famous Trademark.

### **1. Introduction**

Nowadays, the world is witnessing scientific breakthroughs and unprecedented innovations in all aspects of life and at all levels. The information revolution and the technical and technological progress that the world has witnessed recently have had a fundamental role and a significant impact on all sectors: industrial, commercial, agricultural, financial, and service. This technological development has had a clear and positive impact on the intellectual property sector, which has witnessed dramatic developments in registering and protecting these rights and preventing their abuse.

The Trademark is considered one of the most prominent industrial and commercial property rights ever due to its prominent role in domestic and international trade. In reality, the Trademark represents all parties to the commercial equation, as it, on the one hand, represents the merchant who produces the commodity or the service provider who considers the Trademark as the ideal tool for promoting his goods and services. It also guarantees his protection from unfair competition from other merchants. On the other hand, it is the best way to protect consumers from falling victim to fake or low-quality products, goods, and

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services, as the Trademark has a real and positive impact on consumer behavior (Nufer, Gerd, 2018).

Trademarks are one of the essential components of any store, and if the brand becomes famous, high value and profits do not come from the product itself. Therefore, it is very crucial to protect the added value of trademarks.

A non-traditional trademark is considered a new type of Trademark that does not belong to a traditional category of existing trademarks. However, it may fulfill the traditional Trademark's function, which is to identify the source of products and services and identify the identity of the merchant or service provider. Non-traditional trademarks depend primarily on sound, smell, and taste. Moreover, non-traditional trademarks are defined as trademarks that carry particular connotations but are not perceptible by sight, such as the audio mark, the smell mark, the taste mark, and the texture mark (Audrey Yayon-Dauvet, 2011).

According to a study conducted on consumers from England, the USA, and Japan, the opinions of more than two thousand people were polled about the role of sensory brands, such as sound, taste, and smell, in creating a sensory association between consumers and products, the results showed that products are more convincing to consumers if the manufacturers relied on appealing to one of the consumers' senses (Jerome Gilson & Anne Gilson Lalonde, 2005).

Recording audio trademarks has become an international trend. Many legislations in European countries and the USA have permitted this notion, to some extent, while requiring the availability of some requirements to register audio brands as trademarks, as audio designs must meet the requirements before obtaining trademark protection.

As a relatively new concept, audio branding has been widely used in practice. Audio branding has become a tangible and lived reality. Some sound designs have already become well-known brands, for example, "the lion's roar of Metro-Goldwyn-Mayer" and "the Nokia ringtone."

## **2. The Problem with the Study**

There is a conflict between the legal texts and provisions of the Saudi trademark law and the trademark law of the Gulf Cooperation Council countries, as the Saudi trademark law requires that the Trademark be discernible to accept the registration of the mark in the Trademark Registry. In contrast, the trademark law of the Gulf Cooperation Council countries permits the registration of audio marks, as well as the registration of smell as a trademark, even if they are not visually perceptible marks. On the other hand, the Saudi trademark law did not identify the requirements for registering audio marks, unlike some GCC countries, as their laws stipulated the requirements for registering audio marks.

## **3. Significance of the Study**

One of the essential aspects of the Kingdom's Vision 2030 is protecting intellectual property rights, developing the trade sector, and creating a suitable environment for trade in the Kingdom. The only way to do this is by updating the laws and regulations that will protect merchants and consumers and developing the trade sector in a way that contributes to accommodating the global trading system. by removing any legal obstacles that hinder the progress of the trade and economic sector, as it is one of the most important reaches of the country's national economy.

#### **4. Questions of the Study**

This study aims to answer the following questions:

What are non-traditional trademarks? What are audio marks?

Does the Saudi legislature permit the registration of a non-traditional trademark? According to the provisions of Saudi law, is it possible to register an audio as a trademark?

What are the laws that permit audio registration as a trademark?

What requirements should be met to register audio as a trademark?

#### **5. Objectives**

This study seeks to achieve three main objectives:

Identify what non-traditional trademarks, audio marks, and smell marks mean.

Determine the ability to register non-traditional marks in Saudi law and the extent to which audio can be precisely registered as a trademark.

Determine the requirements that should be met to register the audio mark as a trademark.

#### **6. Discussion: The Ability to Register the Audio Mark**

Many people believe that registering "sound" as a trademark is still impossible, from technical or practical aspects at least, in that some people think that it is impossible to register sound or other non-traditional signs, such as smell and taste, with the duplicate records in which traditional "visible" signs are registered, and that the administrative Authority is still unable to deal with such non-traditional marks due to their unique nature. The registration requirements for these marks still need to be clarified, which would cause confusion in the administration's work in dealing with registration applications, and raise many legal problems (Stavroula Karapapa. 2010).

For the sake of analytical accuracy, this study avoids investigating the extent to which a sound can be registered as a trademark from a technical aspect. Through this study, we investigate the extent to which it is possible to accept the registration of sounds as a trademark only from a legal aspect.

##### **6.1. The Possibility of Registering the Audio Trademark in the International Agreements and Regional Laws**

The audio Trademarks are considered as symbols or audible invisible signals that are used to distinguish products, commodities and services, although they are contradicting the traditional rule that requires the necessity of visual recognition of the signals or symbols (Obaidat. 2018).

The GATT Agreement of 1947 permitted the registration of non-traditional trademarks, such as audio marks, smells, and tastes, as it did not require that the mark be recognized by sight. Concurrently, the agreement did not oblige member states to take the same position but instead left member states with complete freedom to accept the registration of non-traditional marks or marks that are not recognizable by sight (Abdel Aziz. 2021).

The TRIPS Agreement, which emerged from the GATT Agreement, allows member states to stipulate a condition of "visual perceptibility" for registering a trademark (TRIPS Agreement,

Article 15-1). Hence, member states may refuse to register the sound mark as a trademark (Makhlouf. 2020).

This indicates that the agreement takes an opposing position regarding the possibility of registering non-traditional trademarks, such as the sound mark, when it allowed member states to require "perception by sight" to register the mark. On the contrary, the agreement does not prevent registering sound, smell, or taste as a trademark, and it implies that the agreement allows member states to register non-traditional marks in their national laws (Abdo, 2018).

Following Article (15-1) of the TRIPS Agreement, some countries' laws allow the registration of sound as trademarks as long as the sound or smell gives the relevant goods or services unique characteristics (Stavroula Karapapa, 2010). In its decision issued on November 27, 2003, the European Court of Justice confirmed that sounds can be used as a trademark and that they can perform the trademark function of distinguishing goods and services (Abdel Aziz. 2021).

Regarding the opinion of the European Union on registering the sound, we note that the European Trademark Regulation, No. (207/2009) did not explicitly refer to the possibility of registering the sound as a trademark, as the legislator did not mention "sound" among the things that can be registered as a trademark when he defined the Trademark. Therefore, the possibility of registering sound as a trademark in EU countries remained ambiguous (Lure Marino 2015). However, with the promulgation of the European Regulation of the Amended Trademark of December 16, 2015, we note that the legislator, when defining the Trademark, mentioned "sound" beyond doubt among the things that the brand can constitute, as the Article reads as follows:

"Signs of which an EU trademark may consist An EU trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colors, the shape of goods or the packaging of goods, or sounds" (REGULATION (EU) 2015/2424. Art 4).

## **6.2. The Possibility of Registering the Audio Trademark in the National Laws**

Countries worldwide have different opinions regarding the possibility of registering non-traditional marks, such as the sound mark. The USA is considered one of the countries that permits sound registration as a trademark. The American legislator, by the Federal Trademark Registration Act of 1946, known as the Lanham Act and amended on November 16, 1989, defined the Trademark as: "The term "trademark" includes any word, name, symbol, or device, or any combination thereof" (LANHAM ACT, 1946. Act 1127). Based on this definition, the American Trademark Association interpreted the terms "Symbol" and "Device" as an indication of the legislator's desire to expand the concept of Trademark and that it grows assumptively to register non-traditional marks, such as the sound mark, as long as goods and services can be distinguished using these marks (James E. Hawes. 1989).

The United States Patent and Trademark Office (USPTO) recognizes sounds as trademarks if the sounds "serve as indicators of source" and "create in the mind of the listener an association of the sound with a good or service" (TTAB. 1990). Therefore, if the sound makes people think of a product or service offered by a company, it is eligible for trademark registration in the United States.

The first sound registration in the United States was issued in 1947 for the National Broadcasting Company (NBC) for the notes G, E, and C played on the bells of radio broadcast services. Subsequently, NBC obtained a registration of the three familiar chime tones for broadcast services in 1971. The Bureau, on the other hand, authorized the registration of the

scent mark BLUMEIRIA as a trademark for thread used in sewing, spinning, and embroidery (TTAB. 1990).

The English legislator was influenced by the American (LANHAM) law when it allowed the registration of non-traditional marks under the United Kingdom Trademarks Act 1994, such as the sound and smell mark (Helen Burton. 1995), where Senta Aromatic Marketing's company succeeded in registering the smell of cut grass as a trademark to distinguish tennis balls (Al-Saghir, 2004).

In addition, the French legislator, by the provisions of the Intellectual Property Law, explicitly permits the registration of sound as trademarks:

«La marque de fabrique, de commerce ou de service est un signe susceptible de représentation graphique servant à distinguer les produits ou services d'une personne physique ou morale. Peutvent notamment constituer un tel signe: a- ...b- Les signes sonores tels que: sons, phrases musicales».( France Intellectual Property Code, 1992, Art: 1-L711).

### **6.3. The Possibility of Registering the Audio Trademark in Saudi Law and the Gulf Cooperation Council Countries:**

Saudi legislators permit any distinctive form of words, letters, symbols, signatures, colors, or other documents to register a trademark in the Trademark Register. However, according to Article (1) of the Trademark Law, the brand must be "cognizable by sight," which is an essential condition for registering a trademark (Saudi Trademark Law, 2002).

The basic notion in Article (1) is that the criterion of "cognizable by sight," stipulated by the legislator, depends primarily on the consumer and not on the administrative body responsible for registering trademarks. In other words, trademark registration depends on the consumer's ability to distinguish the mark from other brands using their sense of sight. As a result, the Saudi legislature excludes the registration of the sound, smell, and taste marks due to the impossibility of the consumer knowing these marks through the sense of sight.

A side of jurisprudence believes that the Saudi legislature prevents the registration of "non-traditional" sensory signs such as sound, taste, and smell because these senses are different and differ from one person to another. It is difficult to define a specific smell incontestably for all people (Makhlouf. 2020).

Nevertheless, the decision to reject the registration of sound as a trademark could change entirely if we rely on the provisions of the Trademarks Law of the Gulf Cooperation Council States, which Saudia Arabia is considered part of; this law allows the registration of non-traditional marks or sensory marks, such as sound, smell, and taste, as trademarks. This law stipulates that: "Trademark: anything that takes a distinctive form, such as names, words, signatures, letters, symbols, numbers, addresses, seals, drawings, pictures, patterns, packaging, graphic elements, shapes, color, color combinations, or a combination thereof, or any sign or group of signs if they are used or intended to be used to distinguish the goods or services of one establishment from the goods or services of other establishments or to indicate the performance of a service or to conduct monitoring or examination of goods or services. A mark specific to sound or smell may be considered a trademark" (the GCC Trademarks Law, 2012, Article 2).

As a result, on August 23, 2020, the Saudi Authority for Intellectual Property issued the first audio trademark certificate when the Saudi Telecom Company (KSA-STC), which is the first

and largest operator of telecommunications services in the Kingdom of Saudi Arabia, was able to register its audio Trademark to distinguish the communication services it provides to consumers, it bases its right to register the sound mark on Article (2) of the (GCC) Law, which permits the registration of sound as a trademark. According to the Saudi legal system, priority in application in the case of the contrariety of judgment between the provisions of national law and the provisions stipulated in regional and international laws and agreements approved by the Kingdom is given to the legal provisions stipulated in regional laws and international agreements (Basic Law of Governance, 1992, Article 81).

Following this incident, we have observed a shift in the Saudi Authority for Intellectual Property's stance, whereby the Authority used to reject the registration of a trademark that is not visually perceptible. Recently, it allowed individuals and establishments to register audio marks by submitting an electronic application through its website, by the text of Article Second of the Code (GCC) (<https://www.saip.gov.sa/services/963/>).

As for the legal position in the UAE, which is considered one of the countries of the Gulf Cooperation Council, the legislator has permitted the registration of a sound mark as a trademark, provided that the sound is part of a traditional trademark. However, the sound should be accompanied by a trademark that can be perceived by sight (Federal Law, 2002, Article 2).

The legislator in the Sultanate of Oman also permits, under the Industrial Property Rights Law, the registration of sound, smell, and taste as trademarks, as it explicitly stipulates that: "A trademark may be sounds, smell, or taste." However, it was stipulated that the mark could be photographed graphically (Royal Decree, 2008, Article 1).

## **7. Results: Audio Trademark Registration Requirements**

The concept of a sound mark refers to one or more audio signals that together constitute an audio mark that has gained trademark protection. Thus, the audio Trademark refers to the tones or sounds humans can hear, regardless of their source or characteristics. This study avoids referring to the audio mark as a trademark before successful registration or widespread acceptance as a trademark for analytical accuracy.

This study Primarily focuses on audio Audio Trademarks in a purely legal sense, and it applies a much narrower approach to audio branding than business or marketing professionals might. From a marketing perspective, Audio Marks can be used in different ways. Audio Marks can take the form of jingles or audio slogans and, in most cases, are unlikely to be protected by trademarks but may be subject to copyright protection.

### **7.1. Audio Trademark Registration Requirements in International Agreements and Regional Laws**

One side of jurisprudence believes that the distinctiveness of audio should not be evaluated differently from any other type of mark. Even a voice with limited discrimination should be eligible for protection. It would be contrary to trademark law to put a higher or different standard for protecting audio marks. In particular, sounds should not be required to be original or fictional (SIMON GEIREGAT, 2022).

The World Intellectual Property Organization (WIPO) applies a very permissive approach to registering audio marks compared to domestic legislation. The TRIPS Agreement also provides

a simplified definition of a trademark, which leaves it optional for member states to require a graphical representation of a trademark to accept the registration (Idir et al., 2016).

Paris Agreement for the Protection of Industrial Property is considered the oldest international treaty related to intellectual property protection. However, this agreement does not specify trademark registration requirements, leaving it to the member states. (Paris Agreement, as amended on September 28, 1979, Article 6).

Paris Agreement is also complemented by two important international treaties dealing with the international registration of trademarks, namely the Madrid Agreement (MA) and the Protocol relating to the Madrid Agreement concerning the international registration of marks, known as the Madrid Protocol (MP). Both treaties facilitate the international registration of trademarks (Idir Laurent Khiair, 2016). moreover, MA and MP need to define the concept of a trademark. However, the requirements for international trademark registration are based on the Trademark's definition of the country of origin, i.e., where the primary registration took place (Art. 1 para. 2 and art. 5 para. 1 of AM).

As for the Council of the European Union, we observed that the European Trademark Regulation No. (207/2009) required that the mark be capable of being represented graphically to register a trademark, as it stipulated the following:

" A [Community] trademark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings"(REGULATION (EU) no 207- 2009).

Accordingly, the position of the European Court of Justice regarding sound registration as a trademark was described as strict, as the court required many strict conditions that should be met for a sound recording to be accepted as a trademark, and among those conditions is that the sound be able to be visually represented clearly and accurately. The sound that can be registered as a trademark is the one that can be represented by a musical note, whose distances and dimensions are precisely defined (Abdel Aziz. 2021).

This notion was later supported in many judicial decisions, which require the acceptance of the registration of a sound mark to be drawn or written as musical notes or in the form of a graphical representation, such as registering a mark composed of three musical notes for several musical pieces combined as one mark, without leading to any confusion in the mind of the consumer (J. CANLORBE. No. 69).

In another judicial decision related to the ability to register the olfactory mark (smell) in the case known as "Sieckmann" (Ralf Sieckmann, 2002) after the German Trademark Office rejected Mr. Sieckmann's request to register "the smell of fruit mixed with cinnamon" as a trademark for some of the products he offers. The European Court of Justice referred to three conditions necessary for a mark to perform a trademark function: 1. The mark should be able to serve as evidence of origin. 2. The mark should be able to distinguish the goods and services of one company from those of another. 3. As a mark, it should be represented graphically (Ruiz-Jarabo Colomer. 2002).

The court based Mr. Sieckmann's lawsuit on the interpretation of Article (2) of the European Directive regarding the unification of the laws of member states concerning trademarks, which had regulated the European Community trademark until that time (First Council Directive 89/104/EEC. 1988) which required the mark to be graphically representable. Accordingly,

most European Union countries tended to limit the possibility of registering sound as a trademark to marks that could be converted into graphics easily (Abdo, 2018).

However, this notion later led to some confusion in the European Union related to the way they can deal with well-known audio trademarks in the EU, such as "Tarzan Yell" or "MGM's Roar of a Lion," which were already registered as a commercial audio trademark in the USA. On the other hand, requiring graphics as a condition for registering a sound mark has raised many questions about what constitutes a graphic representation. Can simple onomatopoeias or phonetic diagrams be considered a graphical representation of audio marks? (Idir Laurent Khia, 2016). For instance, in the Mr. Sieckmann case, the court dismissed the registration applicant's use of a sample of the smell to be registered along with an equation describing the chemical composition of the smell to represent the mark graphically. However, the court determined that more was needed to graphically represent the mark (Ralf Sieckmann, 2002), raising concerns about the criteria applied to determine when representation is deemed adequate to register a mark and when it is not.

Correspondingly, to make the process of registering non-traditional marks, like the sound mark, more accessible, the European Parliament's stance on this matter has drastically changed. Many of the changes to the European Trademark Regulation No. (207/2009) proposed by the European Commission were approved by the European Parliament and Council. The most notable change was the removal of the phrase "capable of being represented graphically" from the definition of Trademark, which made it possible to register non-traditional marks like the sound mark (Lure Marino, 2015) under the amended European Trademark Regulation, which went into effect on December 16, 2015, so it became as follows:

"Signs of which an EU trademark may consist An EU trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colors, the shape of goods or the packaging of goods, or sounds" (REGULATION (EU) no. 2424-2015. Art 4).

Currently, the position of the European Union has changed regarding the requirements that should be met to register an audio trademark, as the mark to be registered as an audio trademark must be able to achieve two things:

" (a) distinguishing the goods or services of one undertaking from those of other undertakings; and (b) being represented on the Register of European Union trademarks, ("the Register"), in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor" (REGULATION (EU) no. 2424-2015. Art 4).

As a result, everyday animal noises or the roar of engines devoid of a specific characteristic are not recognized as legitimate trademarks, according to a decision made by the European Court of Justice concerning the registration of a sound mark (J. CANLORBE. n° 72, 73).

It is essential to emphasize the significance of the registration and protection system in compliance with EU law. First, the EU is one of the largest economies in the world, with 500 million consumers and a trademark application can be filed once to be used in any of the 27 EU member states. The cost is much lower than if they applied separately in each Member State; thus, businesses that operate in multiple EU member states rather than one will find it much more straightforward. Second, Trademark use in any Member State shall be deemed used for all Member States for the grounds for cancellation. There is, therefore, no risk of cancellation even if a trademark is only used in one Member State because it is not used in any

other State. Third, by the right of priority, a registered trademark may be used to register a mark in any Madrid Union member country within six months of its publication in one of the EU member states (FU Shuju, 2022).

## **7.2. Audio Trademark Registration Requirements in National Law**

The process of registering these audio trademarks represents one of the challenges in light of the legislative differences in this regard. Although the TRIPS Agreement allows the registration of valid trademarks, some legislators prohibit such registration, while others adopt a more moderate stance (Obaidat, 2018).

The "LANHAM" law provides the legal framework for registering trademarks in the USA. It is important to note that this law does not require a mark to be represented graphically for it to be registered in the trademark registry. According to the law, a trademark may only be registered if it can legally distinguish the applicant's products from those of others and cannot only be a descriptive mark or a false description (LANHAM. Art 1053-2).

A portion of American jurisprudence has supported the notion of exempting the applicant from fulfilling this requirement since the "graphic representation" or "diagram" requirement for registering non-traditional marks constitutes a real obstacle to registering sound as a trademark (James E. Hawes, 1989). This is because physicists and musicians have different perspectives on sound; sound is one of the invisible signs that is challenging to depict accurately and consistently (Lure Marino, 2015). We observe that the US Trademark Office waives the need for "graphical representation" for applicants registering a mark and instead requires only a thorough written description of the audio mark and this is clear in the US Trademark Examination Guide which states:

"Drawing of Sound, Scent, or Non-Visual Mark: Sound, scent, and non-visual marks. Applicants are not required to submit a drawing if the mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed description of the mark" (Trademark Manual of Examining Procedure, art. §807.09).

Part of the jurisprudence thinks that the purpose of the legislator's requirement to provide a written description accompanied by the request to register an audio mark is the legislator's intention to make sure that others are aware of the nature of the mark and its salient features, as not everyone can understand musical notes or sound recordings. Additionally, the written description's primary features facilitate researchers' search for registered marks (Hawes & Dwight, 2004). Apart from the description requirements, audio recording is also required, particularly in cases where the sound is too vague to explain (Xinyu Zhang, 2021).

It is important to remember that the "functionality" of trademarks was first established in the USA to end the adverse effects of unfair competition. Since this principle requires us to distinguish between sounds, the administration in charge of trademark registration must confirm that the sound in question is not one of the functional components of the product or service for which it is intended to be registered as a trademark to distinguish it. This is because it is not acceptable to register sounds as trademarks if their design is essential for the intended category of products or services, as doing so will prevent other parties from creating similar products or rendering similar services that use the same sound, which constitutes a violation of the principle of fair competition. A trademark will not be registered if it includes functional designs, no matter how distinctive. As a requirement for trademark registration, the function principle has been adopted by almost all jurisdictions (Xinyu Zhang, 2021).

Regarding the French legislator's position, we observe that the legislator considered that "graphic representation" was a prerequisite for trademark registration, which includes the audio mark. This is evident through the following text:

«La marque de fabrique, de commerce ou de service est un signe susceptible de représentation graphique servant à distinguer les produits ou services d'une personne physique ou morale».) France Intellectual Property Code, 1992, Art: 1-L711).

The previous Article makes it apparent that the French legislator mandates that, to register a sound as a trademark, the mark must be presented graphically, be distinct and unambiguous, and make the connection between the sound and the mark clear to consumers (Joseph Ajaca, 2021). (N. BINCTIN, n° 46). As a result, part of jurisprudence believes that, according to the requirements suggested by the French legislator for trademark registration, it is often difficult to accept a sound registration as a trademark due to the difficulty of representing the sound graphically accurately and clearly (Nicolas Bouche, 2006).

Based on this, some people think that the legislator demands a graphical representation of the sound when it is inadequate to describe it using words. Instead, they argue that the graphical representation of the audio recording is preferable to the representation of the musical score because it displays more nuances, specifically sound characteristics (Xinyu Zhang, 2021).

In addition to the advantages related to the registration in the Union we mentioned earlier, we believe that after many reforms were introduced to the European Regulations, it became possible for any French company that wants to register Sound as a trademark to avoid the strict conditions required by the law in France and to resort to registering the Trademark with the Trademark Office of the Council of the European Union, and this simplified the audio trademarks registration process. This can be done by applying to register an audio trademark once for use in all EU member states, including France, as a member of the Union (FU Shuju, 2022).

### **7.3. Audio Trademark Registration Requirements in Saudi and the GCC Countries' Law**

As we previously mentioned, the Saudi legislators prohibited the registration of audio marks under the Trademark Law because it necessitated the availability of the "perception by sight" condition. Considering that Saudi Arabia is one of the member states that has ratified the GCC Law, which allows the registration of sound as a trademark, it is possible to register a sound mark in the Kingdom of Saudi Arabia in compliance with its provisions, as stated in Article (2) of the law.

Consequently, we observe that non-traditional marks are typically excluded from registration requirements under trademark law. Regarding the (GCC) legislation, the ability of a trademark to distinguish the products or services of one company from those of other companies is sufficient for trademark registration (GCC, Art 2). Concerning the audio mark, the legislator established a streamlined procedure for trademark registration, requiring the audio mark to be presented by a written description or a musical note (GCC, Art 4-6).

We note through this Article that the legislator in the (GCC) law did not stipulate what is known as the "graphic representation" condition to facilitate the process of registering audio marks. Thus, the applicant for sound mark registration can submit a detailed written statement in which he describes the nature of the product or service. The audio mark is to be registered to distinguish it and its source, along with the musical note to be registered being attached to the application (Abdo, 2018).

It should be noted that the Saudi Authority for Intellectual Property currently permits the registration of audio marks via its website, provided that all musical elements must be mentioned and accurately written for the audio mark to be registered (melody, rhythm, speed, harmony). To register an audio mark, the following items are required (musical instruments, etc.): 1. A musical note audio clip should be attached. 2. Provide a written description of the musical score (<https://www.saip.gov.sa/services/963/>).

Regarding the industrial property rights law of the Sultanate of Oman, a member state of the Gulf Cooperation Council, the legislator specified that to register a trademark, the products or services produced by one establishment must be distinguishable from those produced by other establishments; smell, taste, or other characteristics are not taken into account (Royal Decree No. 67/2008, Article 36-2-A). As for the audio mark, we note that the legislator did not stipulate the "graphical representation" condition but was content with attaching a detailed and clear statement of the invisible mark to be registered as a trademark (Royal Decree No. 67/2008, Article 37-1-B).

In the executive regulations of the Omani Industrial Property Rights Law, the legislator has clarified how to register invisible marks. Regarding audio marks, an application for their registration is submitted by duplicating an appropriate recording. As for taste and smell marks, they are registered by submitting a reproduction of them, including their chemical equations or any detailed and accurate description of the basic components of the mark. The legislator also indicated that in some cases, the administrative Authority may request the applicant to provide material support for the application, such as a sample of the mark (Implementing Regulations, No. 105/2008, Article 46-5).

It should be stated that the trademark law of the State of Kuwait did not mention the way to register an audio trademark, as the legislator did not specify the requirements or conditions that should be met to register sound as a trademark, even though Kuwait is one of the Gulf Cooperation Council countries whose trademark law permits the registration of sound as a trademark. (Kuwait Trademark Law, No. 68-1980, Article 61).

Part of the jurisprudence has gone to explain this different situation between the countries of the Gulf Cooperation Council about the registration of audio trademarks. However, this difference is due to technical reasons, not legal ones since the countries that decline to register audio trademarks do so because they perceive that it is currently challenging to register such trademarks from a technical and practical perspective, relying on the traditional trademark registry. Hence, these countries do not reject the registration of these marks altogether. However, instead, they delay the issue until technical tools that can accurately examine audio marks and distinguish them from other audio marks in a purely technological manner are developed (Abdo, 2018).

## 8. Conclusion

This study found that it is possible to register the sound as a trademark by relevant international agreements, such as the TRIPS Agreement and the Paris Agreement, as well as the Madrid Agreement and Protocol, in addition to the permissibility of registering an audio trademark under the European Trademark Registration Regulations at the level of the European Union countries. Moreover, many national laws, such as American and French, allow registering sound as a trademark. This requires the Saudi legislator to keep up with legal developments in international agreements and national laws by deleting the requirement of "permeability by

sight" from the text of Article (1) of the Trademark Law and adding "sound" to the acceptable marks for registering a trademark in the same Article since the GCC law allows this.

This study demonstrated the practical difficulty faced by the countries of the Council of the European Union regarding the registration of audio trademarks when they required the availability of the "graphical representation" condition, or what is known as the "diagram" condition, to accept the registration of the mark, before retreating from this position. This is something that Saudi legislators must pay attention to when setting the requirements for registering audio trademarks, taking into account the specific nature of sound as it is considered an invisible sign compared to other signs that can be perceived by sight.

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