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The Effectiveness of the Legal Protection of Geographical Indications in Jordanian Legislation

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Abstract

This study aimed to know the scope of the unique legal protection enjoyed by geographical indications in the Jordanian legislation. The descriptive approach was used to describe the scope of this protection, and the results showed that geographical indications can acquire a high characteristic and be commercial assets of value, which exposes them to abuse, imitation or forgery in a way that requires the Jordanian legislature to provide protection for them. It was also found that this protection was contained in several laws that work to stop the attack on the geographical indication and to compensate for the damage caused.

Keywords: *geographical indication, Jordanian legislation, trademark, unfair competition, harmful act.*

1. Introduction

The legal protection of geographical indications plays an important role in economic and commercial life. It is also considered one of the most recent branches of intellectual property rights that aim to protect the national natural, industrial or craft wealth. Significantly, geographical indications help in identifying the geographical origin of products and commodities, as they are printed on commodities to indicate the relationship between the geographical origin of commodities or products and their quality, as well as other characteristics that they possess, given that the quality and advantages of commodities and products are attributed to their region.

This distinguishes it from other similar products and commodities, especially handmade products that have unique and distinctive qualities such as pottery, carvings, silk and other handicrafts.

In this regard, countries apply geographical indications to their natural, agricultural and handicraft products, as they contribute to protecting the reputation and quality of these products. In addition, the fame and distinction enjoyed by some products makes it a temptation for the evil-minded to exploit and imitate them, whether inside or outside the country, especially if those products are not protected by law. The protection of geographical indications is part of the protection of the culture and traditions of society. This means that the geographical indication that is placed on a specific product shows that it originates from a specific region and is characterized by certain characteristics, and its reputation is linked to the place of its geographical origin and affects its promotion. In this context, geographical indications in Jordanian law enjoy multilateral protection. This protection is represented in the

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geographical indications law, trademark law, unfair competition law, and trade secrets, in addition to the provisions of tort liability in civil law.

This topic raises several questions, which are the focus of the study. The most important of these questions are: What is the content of legal protection for geographical indications under Jordanian legislation? What are the civil penalties for assaulting geographical indications? Is the protection decided by the Jordanian legislator effective and sufficient to protect geographical indications? What are the deficiencies and ambiguities in the Jordanian law? These and other questions are the focus of the current study. However, the study is limited to the issue of the effectiveness of legal protection for geographical indications in Jordanian legislation, comparative law and international agreements related to intellectual property rights will not be addressed except to the extent necessary for this study.

2. Research Methodology

The descriptive analytical approach was used to describe and analyze the relevant legal texts in the Jordanian law in order to know their contents and purposes. This includes relevant judicial rulings. The opinions of the commentators are analyzed and criticized. This study was divided into two parts. The first part is devoted to stating the conditions for the protection of geographical indications, while the second part deals with the scope of protection of geographical indications.

3. Terms of Protection of Geographical Indications

In order for a geographical indication to enjoy legal protection, it must be registered with the competent authorities. This registration requires a set of objective and formal conditions to be completed, as follows:

Objective Conditions

1- Excellence

Referring to the Jordanian legislator's definition of geographical indications in Article (2) of the Geographical Indications Law of 2000, which states that a geographical indication is "any indication that identifies the origin of a product in a specific country, region, or location in its territory, if the product's quality, reputation, or other characteristics are traceable to essential to that origin," it becomes clear that the legislator stipulated in the geographical indication that it is closely related to the product in an authentic way. Therefore, the quality of the product or its other features are mainly attributed to its geographical origin. In this context, each region has specific characteristics that distinguish it geographically from other regions. It is usual for commodities and products to derive their characteristics from their place of production, especially agricultural products that are affected by certain local factors such as climate and soil.

The geographical indication is not limited to agricultural products, but goes beyond that to highlight certain characteristics in other commodities specific to the place in which they originated, such as industrial and traditional crafts. Its origin may be a country, region, or city, or it may be attributed mainly to the geographical environment in which it was produced. We mention, for example, 'BaniHamida carpets', which embodies the Jordanian identity in the carpet industry.

The main objective of the geographical indications is to indicate their impact on the consumer and his attraction to the goods and products. Therefore, the geographical indications carried by the commodities must refer to the geographical environment, its geographical origin, the characteristics and the high quality that it acquired from that environment, and which has an impact on the consumer (Al-Roumi, 2018, p. 226).

2- Legality

Article (3) of the same law stipulates: a. It is prohibited for any person to do the following:

1. Using any means to name or display any product in a way that suggests that its geographical origin is different from its true origin, which leads to misleading the public regarding this origin.
2. Using any means in naming wines in a way that suggests that their geographical origin is different from their true origin, including the use of a translated geographical indication or accompanied by words such as (kind) or (imitation) or any such word.
3. Using a geographical indication in a way that deceives the public that the origin of the product is different from its true origin, even if this indication is correct in its literalness
4. Any use of a geographical indication that constitutes unfair competition that conflicts with honest practices in industrial or commercial activities.

B. Carrying out any of the actions or acts stipulated in Paragraph (a) of this Article is considered an infringement of the geographical indication and is subject to legal liability.

Significantly, due to the importance that the geographical indication plays in attracting the public and spreading goods, the Jordanian legislator stipulated the legality and legitimacy of the geographical indication. This happened when it was stipulated for registering the index that its name or the way it is displayed does not suggest that its geographical origin differs from its true origin in a way that leads to misleading or deceiving the consumers, given that the consumer is the weak and last party in the commercial and economic circle, and that the indication has an impact on the consumer and works to attract him to the commodities it carries (Al-Qalyubi, 2016, pg. 671).

Article (7) of the same law stipulates that the following is not considered a violation of the provisions of this law:

1. Owning a trademark that is identical or similar to a geographical indication by using it in good faith before the provisions of this law came into force or before the geographical indication was granted protection in the country of origin.
 2. Submitting an application to register a trademark in the Kingdom that is identical or similar to a geographical indication, or to register it in good faith.
- B. Using a geographical indication in any way that indicates another country if it is identical to the familiar convention in the Arabic language for a common name for any product or service in the Kingdom.
- C. Any person using his name or the name of his predecessor in his commercial activity in a way that does not mislead the public.
- D. Using a geographical indication that does not enjoy protection or whose protection has expired in its country of origin, or it is no longer used in that country.

At the international level, the European Court of Justice confirmed in one of its decisions that “a trademark that contains a protected geographical indication must be rejected or invalidated,

as its use leads to any of the cases referred to in Article (16) of European Union Regulation No. 110/2008, These are the cases in which the use of the geographical indication misleads others and thus loses its legitimacy (Gonzalez, 2021,p22).

Formal Requirements

Despite the passage of twenty-three years since the issuance of the law, we find that the Jordanian legislator did not establish a special system for geographical indications, in which it shows all the details related to the registration of the geographical indication. Yet it did not include the procedures, periods, and forms used, nor did it deal with the registration of the trademark independently. In this regard, the legislator indicated in the text of Article (4/d) of the Geographical Indications Law that the Registrar of Trademarks has the right to refuse to register any trademark if it consists of a geographical indication or contains it and is related to a product of origin other than what is indicated by the use of that geographical indication and in a manner leads to misleading the public.

Therefore, the Jordanian legislator permitted the existence of a trademark under which a geographical indication falls, and the matter was referred to in the provisions of the Trademarks Law (Jordanian Trademarks Law No. (33) of 1952, amended in 2021), with regard to the registration of the geographical indication. It is inescapable to say that the authority concerned with registering a geographical indication is the Trademarks Register, which is organized in the Ministry of Industry and Trade under the supervision of the Trademarks Registrar, in which all trademarks, the names and addresses of their owners, and the changes that occurred to these marks are recorded (Article (3) of the Jordanian Trademarks Law). In this context, the cases excluded from the registration of the geographical indication are taken into account and the application for registration is submitted in writing to the Registrar of Trademarks (Article (3) of the Geographical Indications Law). It is also permissible for the producers of the commodity, individuals or groups, to submit the application, while ensuring that they fulfill some of the conditions that are agreed upon in order for the product to remain at a specific degree of quality. The application includes the same content as the application for trademark registration in general or a trademark that includes a geographical indication.

The Registrar of Trademarks, taking into account the provisions of the Trademarks and Geographical Indications Law, has the right to reject the application, accept it without modification, or accept it subject to certain conditions or modifications, and appeal the rejection decision to the Administrative Court (Article (11) of the Trademarks Law, Jordanian Administrative Judiciary Law No. (27) of 2014).

The Geographical Indications Law in Article (4/2) allowed objection to the Registrar of Trademarks to the registration of the trademarks described within three months from the date of publication of the application submission announcement. It is permissible to request its deletion from the register, and the Registrar's decision to return the objection is appealed to the Administrative Court, which decides either to allow the registration or to reject the registration (Article (14) of the Trademarks Law).

The geographical indication is recorded on the date of the request. In this respect, the date is considered the date of registration, as the Registrar of Trademarks issues a certificate of registration of the indicator according to the prescribed form (The text of Article (15) of the Trademarks Law), and submits an appeal against the decision to refuse registration or reject the objection to the Administrative Court within sixty days from the date of its notification. However, we believe that geographical indications have a specificity that makes the application

of trademark law to them unacceptable and involves a lot of complexity and ambiguity, whether objectively or formally.

Despite the poor registration of geographical indications in Jordan, it is worth mentioning that some Jordanian products have recently obtained geographical indications through the "Geographical Indications" project sponsored by the French Agency and the US Agency for International Development. These products include KarakJameed, Balkawi Ghee, Jarashiyalabneh, Zaraqí figs, Kafarat olive oil, Awasi sheep meat, in addition to Jordanian Medjool dates and Jdita pomegranate.

4. Scope of Protection of Geographical Indications

In light of international efforts in the field of protecting geographical indications, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other international treaties related to geographical indications oblige member states to provide the necessary legal means to protect geographical indications. However, this happened without specifying a specific method. Rather, it left the absolute freedom of each country to choose the appropriate method for it according to its legal system and its economic and historical conditions (Kireeva & O' Connor, 2010, p.267). This ultimately led to the multiplicity and varying forms of legal protection for geographical indications, as they were represented in independent laws governing geographical indications in general or rules included in other laws.

At the national level, geographical indications enjoy strong and unique protection as they are protected in Jordanian legislation under four laws: the geographical indications law, the trademark law, the unfair competition law, in addition to the general provisions of tort liability in the Jordanian civil law. This will be shown below:

1- Legal Protection under the Geographical Indications Law

The legal protection of geographical indications in Jordan began with the approval of the Geographical Indications Law No. (8) of 2000. This protection consists in preventing any person from misleading the public by using any means in naming any product or displaying it in a way that suggests that its origin is different from its true origin. Therefore, the right to a geographical indication is a property right that gives its owner the power to prevent others from encroaching on it.

Referring to the text of Article (2), we can deduce from the Jordanian legislator's definition of the geographical indication that the scope of this legal protection includes every indication that identifies the origin of a product in a specific country, region, or location in its territory if the product's quality, reputation, or other characteristics are mainly attributed to that origin.

In this regard, Article (7) of the same law indicated that the geographical indications covered by legal protection, which are not considered in violation of the provisions of the law, include the trademark that is identical or similar to a geographical indication by using it in good faith before the provisions of this law came into force or before the geographical indication was granted protection in the country of origin.

Furthermore, the trademark that is identical or similar to a geographical indication, which was registered in good faith, and the use of the geographical indication in any way whatsoever in the form that indicates another country if it is identical with the familiar convention in the Arabic language for a common name for any product or service in the Kingdom. This also

includes the use of his name or the name of his predecessor in his commercial activity in a manner that does not mislead the public and the use of a geographical indication that does not enjoy protection or whose protection has expired in the country of its origin or is no longer in use in that country.

Article (3) of the same law also prohibited any person from using any means in naming a product or displaying it in a way that suggests that its geographical origin is different from its true origin, or using any means in naming wine to suggest that its geographical origin is different from its true origin, including the use of a geographical indication translated or accompanied by words such as (kind) or (imitation) or any such word. The Jordanian legislator has provided legal protection for all geographical indications with similar names related to wine. All producers are treated fairly if more than one person in the same region undertakes its production, provided that the consumers of these products are not misled, and that the practical basis for distinguishing between geographical indications with similar names is determined according to instructions issued by the Minister of Industry and Trade and published in the Official Gazette (Article 6 of the Geographical Indications Law).

The legislator also prohibited people from using the geographical indication in a manner that constitutes unfair competition and conflicts with honest practices in industrial or commercial activities.

Carrying out any of these acts or actions is considered an infringement on the geographical indication and is subject to liability. The stakeholder has the right to take two types of legal measures to protect his geographical indication from infringement. These measures range from precautionary measures, which the owner of the geographical indication can take before filing a lawsuit, to procedures he can take when filing a lawsuit or during its consideration.

With regard to precautionary measures, the interested party, before filing his lawsuit in accordance with the provisions of Article (8), may submit a request to the court, accompanied by a bank or cash guarantee (Article (102) of the Code of Civil Procedure No. (2) of 2001, Article (16) of Unfair Competition Law No. (33) of 2004), which it accepts, to take any of the procedures stipulated in the law without notifying the defendant. The court may answer his request if he proves that the infringement occurred on the geographical indication or that it is about to occur and that irreparable damage may be caused to him. This is also applicable when the interested party fears that the evidence of the infringement will disappear or be destroyed. However, he must file the lawsuit within eight days from the date the court responds to his request. If he does not submit his claim within this period, all measures taken by the court shall be deemed null and void.

On the other hand, the defendant has the right to appeal the court's decision to take precautionary measures against him to the Court of Appeal within eight days from the date of his understanding or notification thereof, and the court's decision in this regard is final. He is also entitled to claim compensation for the damage he sustained if he succeeds in proving that the plaintiff (who has an interest) is not right in his request to take precautionary measures, or that he did not submit his claim within the prescribed period (eight days from the date of the court's response to his request).

In this regard, the procedures that the interested party can take when filing a lawsuit or during its consideration is to submit an application to the competent court (Al-Zoubi, 2002, p. 272), accompanied by a bank or cash guarantee accepted by the court, to stop the infringement or precautionary seizure of the infringed products wherever they are (Wali, 1975, p.256). This

means putting the money in the hands of the judiciary to prevent its owner from doing any physical or legal action that would remove the money or its benefits from the guarantee of the creditor withholding, in addition to preserving the evidence related to the infringement. This procedure is determined in terms of its content for each case separately. The goal is to preserve evidence such as conducting a status quo test or hearing a witness who is afraid to travel. An urgent request must be submitted to preserve the evidence if it is subject to change or disappearance and alteration (Al-Zoubi, 1995, p. 812).

In all cases, the court may resort to the opinions of experts and specialists. It may also decide to confiscate the products that have been infringed, and the materials and tools used mainly in the infringement of the geographical indication that these products bear. Besides, it may decide to destroy these products, materials, and tools or dispose of them for any non-commercial purpose (Article (8) of the Geographical Indications Law).

2- Legal Protection in Accordance with the General Rules of Civil Law

Civil liability is divided into contractual liability and tort liability. Contractual liability arises upon breach of a contractual obligation, while tort liability arises upon breach of the legal duty imposed on all not to harm others (Al-Sanhouri, p. 314).

As for the geographical indications, there is no way to say that there is a contractual liability, because the geographical indication is by its nature related to products and commodities produced by a group of producers in a specific geographical area and has characteristics and advantages that belong to the geographical area. Therefore, in principle, the geographical indication is not limited to a specific person, but to a group of producers in the same geographical area. Significantly, it is not conceivable that there will be a contract between these persons and third parties that includes their assignment to him of the index or a license to use it. Thus, the most likely possibility in the field of liability is tort liability, which is established in accordance with the provisions of Article (256) of the Jordanian Civil Code (Obeidat, 2011, p. 301).

For example, if a person markets his products under a label that is protected by law and is not from the same geographical area, the damage in this case is represented in the loss that will be incurred by the holders of the geographical indication as a result of selling products similar to their product despite its production in another region. The affected party is charged with proving the damage, and he may prove it by all methods of proof (Al-Atair, 2020, p. 177). According to the general rules in the Jordanian civil law, this damage must be real, such as the loss incurred by producers as a result of customers purchasing products that were attributed to an unreal geographical indication. This compensation is usually estimated by seeking the assistance of experts specialized in this field. It is worth noting that there is no compensation for possible damages.

In order to be entitled to compensation, the causal link between the harmful act and the damage is required. Therefore, if the causal link is absent, the responsibility is denied (Sultan, 2018, p.333). But if there are many reasons that contributed to the occurrence of damage, then the theories of causation are referred to, including the theory of equivalence of causes, according to which the causes that contributed to the occurrence of damage are considered, and the theory of the productive cause, which differentiates between accidental and productive causes (Sultan, 2018, p.336)

3- Legal Protection under Trademark Law (Trademarks Law No. (33) of 1952)

There is a relationship between trademarks and geographical indications that gives partial legal protection to geographical indications through trademark law.

This protection includes cases in which geographical indications are used as a trademark, when the trademark refers to the geographical origin of the goods or products related to it, and then the geographical indication cannot be used as a trademark. This is because in this case it is considered a descriptive mark and not distinctive, and therefore it may not be registered. Besides, if it refers to a geographical indication that contradicts the real origin of the goods and products (it relates to a product of origin other than what the use of the geographical indication suggests). And then it is a false or misleading trademark. The Jordanian legislator has authorized the Trademarks Registrar to refuse to register any trademark if it consists of a geographical indication or contains it and is related to a product of origin other than what is indicated by the use of that geographical indication and in a way that leads to the public.

The legislator also permitted objection to the Trademarks Registrar against the registration of such a mark, and it is permissible to request its deletion from the register without adhering to the period prescribed in the Trademarks Law (Article (4) of the Jordanian Geographical Indications Law). The decision of the Trademarks Registrar may be appealed to the Administrative Court within sixty days (Administrative Judiciary Law No. (27) of 2014).

We note that with the concept of violation, it is permissible to register geographical indications that do not mislead the public or suggest an origin other than what is indicated by the use of that geographical indication. Therefore, the principle is that descriptive, false, or misleading signs may not be registered, just as the Jordanian legislator permitted the possession of a trademark that is identical or similar to a geographical indication if it was used in good faith before the provisions of the Geographical Indications Law came into force or before the geographical indication was granted protection in the country of origin.

It is worth noting that Articles (7/8) of the Trademarks Law prevented the registration of marks that contain words that usually indicate a geographical meaning or nicknames, unless they appear in a special form. Besides, according to the text of Article (4/1/a) of the Geographical Indications Law, the legislator permitted the trademark to consist of or contain a geographical indication agreement to establish a free trade zone between the Hashemite Kingdom of Jordan and the United States of America for the year 2001.

4- Legal Protection under the Unfair Competition Law

It is also possible to provide protection for geographical indications through an unfair competition lawsuit, given that all acts of unfair competition constitute an attack on the geographical indication. The Jordanian legislator defined unfair competition as: "One of the acts of unfair competition is any competition that conflicts with honest competition in industrial or commercial affairs." Thus, the legislator agrees with the definition contained in the Paris Convention for the Protection of Industrial Property of Unfair Competition.

The legislator in the Geographical Indications Law prohibited the use of any geographical indication that constitutes unfair competition that conflicts with honest practices in industrial or commercial activities. Although the legislator did not define it in the Competition Law, he referred in paragraph (a) of Article Two of the same law to some examples of unfair competition acts, the most widespread of which includes all acts that, by their nature, cause confusion with the establishment, products, or industrial or commercial activity of a competitor, allegations that are untrue in the practice of trade, and that cause distrust of a competitor's establishment, products, or industrial or commercial activity, as well as evidence or allegations that their use in commerce may be misleading to the public, With regard to the nature of the products, the way they are manufactured, their characteristics, quantities,

suitability for use, and any other practice that may undermine the reputation of the product or cause confusion with regard to its external appearance or method of presentation. And it may mislead the public when announcing the price of the product or the method of calculating it, and any competition related to a trademark used in the Kingdom, whether it is registered or not. Since it misleads the public, it is considered an act of unfair competition as well. It is noted that this census was mentioned as an example, but not limited to, which gives the court discretion to consider any other acts similar to it and inconsistent with honest competition in commercial and industrial affairs, 0such as acts of unfair competition.

An unfair competition lawsuit is filed when there is an attack on the geographical indication (that is, there is unfair competition). It is equal in that to be filed by the owner of the infringed right, or the one authorized to use it, or one of the consumers, with the necessity of providing the elements of liability in accordance with the general rules of civil law, which are the harmful act, the damage, and the causal relationship. These elements constitute the main pillar in this lawsuit, as the unfair competition lawsuit is a tort lawsuit with special circumstances (Al-Asmar, 1986, p. 386), the aim of which is reparation and repair of damage in addition to deterrence and reprimand. The plaintiff must prove that the work is an act of unfair competition which, if proven, requires liability for compensation.

The claim for compensation shall be established in accordance with the provisions of Articles (2) and (3) of the Unfair Competition Law, which are consistent with what is stated in Article (8) of the Geographical Indications Law. The jurisdiction in this case rests with the Amman Court of First Instance (Jordanian Court of Cassation Decision No. (7) of 2017). This case is considered an urgent case, and the court has a discretionary power to issue decisions to stop or prevent any action until the final judgment is issued.

5- Penal Protection

The protection approved by the Jordanian legislator for geographical indications was limited to civil rather than criminal protection, as it did not stipulate in the geographical indications law any criminal penalty for infringing a geographical indication.

This constitutes a clear legislative shortcoming due to the seriousness of unfair competition activities affecting the geographical indication. However, in the absence of a text, it is possible to apply to geographical indications the provisions of Article (37) of the Trademarks Law, which includes trademarks that consist of or contain a geographical indication. Despite this, however, we believe that geographical indications are no less important than trademarks, and we hope that the Jordanian legislator will approve a penal penalty and include it in the provisions of the Geographical Indications Law, comparative legislations (Article (114) of the Egyptian Intellectual Property Law No. 82 of 2002).

5. Conclusion

At the end of the current study, which dealt with the effectiveness of the legal protection of geographical indications in Jordanian legislation, a number of findings and recommendations as follow

5.1. Findings

- 1- The Jordanian legislator provided strong and unique legal protection for geographical indications under four laws, which are the geographical indications law, the trademark law, the unfair competition law, and the provisions of tort liability contained in the civil law.

- 2- The Jordanian legislator did not establish a special system for geographical indications that includes details related to the registration mechanism, procedures, periods, and other formal matters, but rather referred the matter to the Trademarks Law.
- 3- No instructions have yet been issued to determine the practical basis for differentiating between indicators with similar names, which are stipulated in Article (6) of the Geographical Indications Law, despite the fact that twenty-three years have passed since the law was passed.
- 4- The protection decided by the Jordanian legislator for geographical indications was limited to civil protection only and did not include penal protection.

5.2. Recommendations

- 1- We recommend to the Jordanian legislator the need to review the provisions of the Geographical Indications Law No. (8) of 2000 and work to amend it and re-study it in an extensive and careful study, both formally and substantively. It is clear that it was approved quickly and that it was copied from international agreements and foreign laws, as it is tainted by ambiguity and repetition, in addition to unnecessary overfilling. It also did not achieve the desired benefit due to the inaction of the concerned authorities, and it still stipulates the jurisdiction of the Supreme Court of Justice in appeals, knowing that the name was changed to the Administrative Court according to Administrative Judiciary Law No. (27) of 2014.
- 2- We recommend that the Jordanian legislator develop a legal text that includes a criminal penalty for assaulting a geographical indication and include it in the provisions of the geographical indications law so that the affected person can file a criminal case in which he takes the character of claiming a personal right

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