

Nadiya Farah

Harmful Trademarks

Towards a New Understanding of Moral Bars
in GCC Registration



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Abstract

This thesis examines how Arab Gulf states that have Islamic law as the main source of legislation and large expatriate communities, apply moral bars to trademark registration. It considers whether the particular social and moral norms in these Islamic countries lead to stricter standards being applied at the trademark offices and courts. The main research questions this thesis seeks to explore are: i) to what extent are immoral trademarks proceeding to registration in conservative Islamic countries that apply trademark law in conformity with Sharia, compared with Western jurisdictions, ii) what reasoning and principles are being employed to shape decisions, and iii) can a concept of ‘harm’ improve our understanding of the latent power of trademarks to normalise behaviour and therefore our understanding of the moral bar thresholds that states set. The thesis is in five parts. Chapter I discusses the main problems with efforts to prohibit trademarks that are contrary to morality or public order. Chapter II presents the theoretical and legal foundations of trademark law. Chapter III explores the foundations of the GCC trademark system and the role of the Shari’a (Islamic religious law). Chapter IV investigates the main reasons why countries apply moral bars to trademark registration and seeks to identify differences in the reasoning between the Gulf and Western jurisdictions. Chapter V illustrates a selection of cases of trademark rejections and interprets them in order to derive insights.

The thesis shows that moral bars operate differently and that trademark law is imbued with cultural norms; this implicitly supports the territoriality principle in intellectual property law.¹ The thesis also shows that a harm-based model offers a useful lens through which to consider the influence of trademarks on society. Further research is needed.

1 The principle of territoriality provides that IP rights are territorially limited, such that the scope of protection for right owners is the territory of the state granting the right. In considering the granting of the right and its scope, the national granting authority resorts to its own domestic requirements for protection, which are respected as a function of state sovereignty. Accordingly, members of the Madrid system in trademark law can still reject an International Registration under the particularities of their domestic law, such as on morality grounds.

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Acronyms and Abbreviations

CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUIPO	European Union Intellectual Property Office
GCC	Gulf Cooperation Council
IP	Intellectual Property
MA	Madrid Agreement
MENA	Middle East and North Africa
MP	Madrid Protocol
OHIM	Office for Harmonization in the Internal Market
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
UKIPO	United Kingdom IP Office
U.S.	United States
USPTO	United States Patent and Trademark Office
WIPO	World Intellectual Property Organisation

