

The position of GCC States on Comparative Advertising and Trademark Infringement.

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Abstract

Comparative advertising is one of the important topics discussed in various studies. From a legal perspective, the topic is of particular importance concerning trademarks. As a result, the lawfulness of comparative advertising has been excessively examined in the West. On the other hand, one can rarely find studies concerning the legality of comparative advertising in Arab states and in the States of the Gulf Cooperation Council (GCC). As Western advertising techniques and methods are gaining a more substantial presence in Eastern culture, including the concept of comparative advertising, the limited presence of comparative advertising in this region is not expected to remain the case for long. In fact, this assumption is supported by the recent changes in advertisement culture in the area. Therefore, this paper examines the legal system in GCC states to determine the legality of comparative advertising and the use of trademarks. Because of the absence of specific legislation addressing the issue, the paper attempts to search for the answer in scattered yet relevant legislation.

Keywords: Comparative advertising, trademarks, Intellectual property, Kingdom of Bahrain, GCC

موقف تشريعات دول مجلس التعاون الخليجي من الإعلانات التجارية المقارنة وانتهاك العلامات التجارية

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الملاخص

تعد الإعلانات التجارية المقارنة من الموضوعات الهامة التي كانت محلًا لعدد من الدراسات المختلفة. وقد أدرك الباحثون في الشأن القانوني - في العالم الغربي - خصوصية علاقة الإعلانات التجارية المقارنة بالعلامات التجارية، فسلطوا الضوء عليها في دراساتهم وأبحاثهم، وزخرت المكتبة القانونية الأجنبية بالمقالات العلمية التي تناولت هذا الموضوع بالدراسة والتحليل من جوانبه القانونية المختلفة. إلا أن الباحث في التشريعات العربية بصورة عامة وتشريعات دول مجلس التعاون الخليجي بصورة خاصة لا يجد دراسات قانونية كافية حول موضوع الإعلانات التجارية المقارنة والعلامات التجارية. ونتيجة التطور الإعلامي الهائل الذي يشهده العالم اليوم، تأثرت المجتمعات الخليجية بأساليب الإعلان التجاري الغربي بما في ذلك الإعلان التجاري المقارن، الأمر الذي يدركه كل مشاهد للإعلانات التجارية في المنطقة، وهو ما يثير التساؤل حول مشروعية الإعلان التجاري المقارن وعلاقته بالعلامة التجارية، فهل تجيز قوانين دول مجلس التعاون الخليجي الإعلانات التجارية المقارنة؟ وما حكم استخدام العلامات التجارية في هذا النوع من الإعلانات؟ وعليه، فقد حاولنا من خلال هذه الورقة البحثية الإجابة عن التساؤلات السابقة. إلا أن عدم وجود تشريع قانوني خاص بالإعلانات التجارية المقارنة في دول مجلس التعاون الخليجي دفعنا للبحث عن الإجابة في عدد من التشريعات التي وإن كانت متفرقة إلا أنها ذات صلة، فعمدنا إلى تحليل نصوصها بغية توضيح موقف تشريعات دول مجلس التعاون الخليجي من هذه التساؤلات.

الكلمات المفتاحية: الإعلانات التجارية المقارنة، العلامات التجارية، الملكية الفكرية، مملكة البحرين، دول مجلس التعاون الخليجي.

1. Introduction

Companies today are facing serious challenges. The global economy crisis imposed significant pressure on national and international companies and uncertainty about the future. This means that companies need to intensify their efforts in creating brand loyalty and to build trust with the public. To achieve this, companies reach out to the public using Public Relations (PR) and advertising⁽¹⁾.

Advertising as means of communication is an important and complicated method. It aims at providing people with information about the advertised product and to convince them that the advertised message is true⁽²⁾. In words of Leo Burnett "Good advertising does not just circulate information. It penetrates the public mind with desires and belief"⁽³⁾. However, the increasing number of competing products in the market means that it is not enough for the public to believe that the advertised message is true, but that the advertised product is better than a similar one supplied by another competitor. As a result, companies referred to what we identify today as 'comparative advertising'. It is a company's way of promoting and enhancing sales of its products and services by comparing them with those of its competitor's⁽⁴⁾.

Nevertheless, examination of this topic allows one to easily recognize the "rare" presence of comparative advertising in the Arab world including States of Gulf Cooperation Council (GCC)⁽⁵⁾.

(1)Tripathi, Sangeeta. (2021). Advertising prospects in GCC Countries: A study with Salalah, Oman advertising market. International Journal of Management and Applied Science, V7, Issue 1, p. 5.

(2)Sanad, Marina Nabil. (2020). Advertising methods used in smart phones advertising: comparative analytical study. College of Arts Journal. Available at: https://sjam.journals.ekb.eg/article_135424_25e89dfa12064359f8b6b3796f7b93f9.pdf Accessed 6 June 2022. [In Arabic], p. 3642.

(3)Cited in: Singh, Meghna. (2014), p. 54.

(4)Singh, Meghna. (2014), p. 54.

(5) GCC is a cooperation council for the Arab states of the Gulf which was announced in 1981. Members of GCC are: The Kingdom of Saudi Arabia, The State of Kuwait, The United Arab Emirates, The State of Qatar, The Kingdom of Bahrain, The Sultanate of Oman. The official website of Secretariat General of GCC provides valuable information, <http://www.gcc-sg.org/en-us/Pages/default.aspx>, accessed 8 March 2022

As shall be discussed further, the difference between Eastern and Western cultures plays a significant role in justifying the rare presence of comparative advertising in the Arab world. Nevertheless, this position is changing. Recently in Bahrain, two of the biggest telecommunication companies in the market started using comparative advertising. The comparison was indirect, yet the method was unprecedented. Other examples of comparative advertising are found in Saudi. This leads one to wonder whether this is the beginning of a new era in comparative advertising in Bahrain and the other neighboring countries.

One needs to understand that the importance and impact of comparative advertising is not limited to how this method is perceived and used by companies in the market. However, comparative advertising triggers legal questions in relation to freedom of competition, consumers' rights to information, and trademark infringement.

Thus, this paper intends to examine the position of comparative advertising and trademarks in Bahrain and the other GCC States. It attempts to clarify the position of GCC laws with respect to comparative advertising and tries to determine whether the use of trademarks in comparative advertising amounts to trademark infringement under the currently applicable laws.

To achieve this goal, the paper begins with an overview of comparative advertising, its definition, importance, and types. The second part of the paper will discuss comparative advertising and the potential infringement of trademarks from a comparative view, followed by an examination of the position of comparative advertising in Bahrain and the other GCC States.

2. Overview of Comparative Advertising

2.1. Definition and importance

The Federal Trade Commission (FTC)⁽¹⁾ defines comparative advertising in Article 14.15 of its policy statement⁽²⁾ as "advertising that compares alternative brands on objectively measurable attributes or price, and identifies the alternative brand by name, illustration or other distinctive information."⁽³⁾

Another definition is found in Article 2(c) of the Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 Concerning Misleading and Comparative Advertising, where comparative advertising is defined as "any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor."

Big brands have always used comparative advertising as one of their marketing tactics. Every year, brands like Pepsi and Coco Cola compete to deliver the best comparative advertising or "attack" ads of the year. This fact leads one to logically assume that comparative advertising is beneficial in marketing or else companies would not invest in it. However, from a scientific perspective, researchers seem to be divided in the debate when comparative advertising comes with higher benefits to companies

Those who believe that comparative advertising is beneficial argue that:

(1) The Federal Trade Commission was created on September 26, 1914, when President Woodrow Wilson signed the Federal Trade Commission Act into law. The FTC describes its mission as "...protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without unduly burdening legitimate business activity". For more details visit the official homepage of FTC at: <https://www.ftc.gov/>

(2) Statement of Policy Regarding Comparative Advertising, Federal Trade Commission, Washington, D.C, August 13, 1979.

(3) For further discussion see Grigoriadis, Lazaros G. (2014). Comparing the trademark protection in comparative and keyword advertising in the United States and European Union. California Western International Law Journal, V44, Issue 2, pp. 149-150.

- this advertising technique provides companies with immediate advantage as it directs the attention of potential buyers towards their brands⁽¹⁾.
- the memory recall of comparative advertising is higher than that of noncomparative advertising, Moreover, customers find comparative advertising to be more exciting⁽²⁾. Hence, consumers recall more information about the advertisement and associate it more to their needs⁽³⁾.

On the other hand, some identify potential negative effects for comparative advertising for the following reasons:

- when the sponsoring brand is misidentified, it could result in confusion and increase in the sales of the competing brand without improving sales or awareness of the sponsoring brand⁽⁴⁾. Moreover, it seems that consumers associate low level of credibility with comparative brands as the likelihood of 'manipulative intent' in this type of advertising is higher⁽⁵⁾.
- There is no conclusive study to date proving that perception of a brand is enhanced because of comparative advertising. Moreover, it is not clear whether comparative advertising reduces the differences consumers see between a new product and the market leader⁽⁶⁾.

On the other hand, from a legal perspective, a couple of potential legal challenges are clearly associated with comparative advertising. The first is concerning the legality of using another brand's trademark when undertaking

(1) Singh, Meghnna. (2014), p.54.

(2) Eyada, Bassant & Milla, Asli. (2020). Comparative advertising: Proposed guidelines for Middle Marketers. INTERNATIONAL JOURNAL OF MARKETING STUDIES, V12, Issue 2, p. 33.

(3) Williams, Kaylene and Jr, Robert Page. (2013). Comparative Advertising as a Competitive Tool. Journal of Marketing Development and Competitiveness, V7, Issue 4, pp. 50-51.

(4) Ejaz, Muneeb. (2018). Comparative Advertising: Effect of Medium Change on Ad Format Effectiveness. Master Degree Thesis, The University of Guelph, Canada, p.1.

(5) Barigozzi, Francesca and Peitz, Martin. (2004). Comparative Advertising and Competition Policy. International University in Germany Working Paper No. 19/2004. Available at SSRN: <https://ssrn.com/abstract=699583> . Accessed 6 June 2022, p. 4.

(6) Williams, Kaylene and Jr, Robert Page. (2013), pp. 50-51.

the comparison, whereas the second is the potential misleading of consumers which may occur through the practice of persuasive advertising⁽¹⁾. This form of advertisement is designed to highlight the advantages of the goods offered by the sponsoring or advertising company as to compared to its competitors⁽²⁾. Misleading consumers could also occur when consumers are confused into believing that the advertiser is selling the branded product; that the sponsoring brand or the advertiser is endorsed or is affiliated with or connected to the competitor⁽³⁾.

As a result, until recently, several continental European countries banned any form of comparative advertising⁽⁴⁾. However, in the US, since 1970s the (FTC) has encouraged the use of comparative advertising where the bases of comparison are clearly identified⁽⁵⁾.

Today, it is believed that if comparative advertising is not misleading, it can increase consumers' information about products and services, positively affecting competition⁽⁶⁾, assist consumers in making

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- (1) "In the case of comparative advertising it may do so in two ways, it may increase the willingness-to-pay for the sponsoring brand and it may reduce the willingness-to-pay for the compared brand. Comparative advertising may also be seen as a complement if consumers derive benefits from consuming the advertising together with the product of the sponsoring brand. Also, when the comparative advertising is consumed together with the negatively compared good, it may decrease the utility that consumers of the competitor's product get from such a product. As shown in the case of non-comparative advertising, it is a matter of interpretation whether advertising is to be seen as persuasive or as a complement because market outcomes are the same. However, welfare results may differ", see: Barigozzi, Francesca and Peitz, Martin. (2004), p. ١٤.
 - (2) Sharma, Apoorva. (2011). Comparative advertisement and infringement of trademarks: A perspective from consumers. Available at SSRN: <https://ssrn.com/abstract=1896367>. Accessed 1 May 2022, p. 3.
 - (3) Dornis, Tim W. & Wein, Thomas. (2013). Trademarks, Comparative Advertising, and Product Imitations: An Untold Story of Law and Economics. PENN STATE LAW REVIEW, V121, Issue 2, p. 428.
 - (4) "...The explicit identification of competitors had been banned in Belgium, Italy and Luxemburg. It was generally prohibited as unfair competition in Germany and France, unless advance notification was given to the competitor. Limited comparative advertising was permitted in Spain and the Netherlands..." see: Barigozzi, Francesca and Peitz, Martin. (2004), p.9.
 - (5) Sharma, Apoorva. (2011), p. 7.
 - (6) Barigozzi, Francesca and Peitz, Martin. (2004), p.2; also see on the same point, Grigoriadis, Lazaros G. (2014), pp.149-١٥٠.

purchase decisions, lead to lower prices in the market⁽¹⁾, and stimulate competition between suppliers which works in the consumer's advantage⁽²⁾.

2.2. Types of comparative advertising and the “cultural” factor involved

Comparative advertising can take the form of direct or indirect comparison:

- Comparative advertising is direct, when the competitor's name is explicitly used, or when it can be precisely identified; for example, by using the competitor's photo or trademark. This type of comparison is also known as “attack ads” and is commonly used in the US⁽³⁾. Classic examples of direct comparative advertising go far back in history. One of the most famous “attack ads” include Avis advertisement in the US in 1962 is “we try harder”. Also, MasterCard campaign in 1991 used funny short commercials, showing its competitor American Express Card holders running around trying to find ATM that accepts their card⁽⁴⁾. Other examples of “attack ads” include Pepsi vs Coca Cola (vending machine ad)⁽⁵⁾, the famous Burger King vs McDonald's 2016 ad (only 253 KM to go before you Whopper)⁽⁶⁾ and 2020 (Valentin's Day ad – Lonely No more)⁽⁷⁾.
- Indirect comparative advertising does not state the name of the competitor. It uses abstract reference points, such as comparison against (leading brand) or against (brand X), or makes it appear in the advertisement in a blurred vision without naming it⁽⁸⁾. This is a

(1) Sharma, Apoorva. (2011), p.7.

(2) ibid 8.

(3) Williams, Kaylene and Jr, Robert Page. (2013), p. 48.

(4) Discussed in: Barigozzi, Francesca and Peitz, Martin. (2004), p.3.

(5) The advertisement was released in the US in 2002, to watch the ad on YouTube: <https://www.youtube.com/watch?v=GyY15Jkkg2A> accessed 20 June 2022.

(6) To watch the ad on YouTube: <https://www.youtube.com/watch?v=qvh8uT68hFQ&t=3s> accessed 20 June 2022.

(7) To watch the ad on YouTube: <https://www.youtube.com/watch?v=8cwq6xe2XUk> accessed 20 June 2022.

(8) Ejaz, Muneeb. (2018), p. 32. Also see: Eyada, Bassant & Milla, Asli. (2020), p.23.

subtle comparison⁽¹⁾. This type of comparative advertising plays a huge role in the advertising strategies established for the Middle East⁽²⁾ including states of GCC. Well-known brands of hair shampoos, laundry and dishwasher detergent use indirect comparative advertising by comparing their brands to a blurred version of another brand, or by simply using the word (other brands). Nevertheless, indirect comparative advertising is also used by big brands, such as Samsung Galaxy II ad in 2011 (The Next big thing)⁽³⁾ showing people standing in long lines for hours to get the new iPhone yet there was no explicit use or mention of Apple or iPhone, nor any use of its trademark. However, the setup and conversations between the actors leave no room for any doubt that the competitor in this scenario is iPhone.

One should keep in mind that it is possible when exposed to indirect comparative advertising, that some customers will think about specific competitors, however, it is also possible that some may think about different competitors⁽⁴⁾.

Advertising is influenced by several factors, including religion, socio-economic conditions, media infrastructure, government control and cultural orientation⁽⁵⁾. In fact, culture is a detrimental factor when deciding what is better suited for a certain market. As a result, the same advertisement might come in different versions depending on the market as advertising messages are better perceived when consumers are able to relate the message to their culture⁽⁶⁾. Moreover,

(1)Williams, Kaylene and Jr, Robert Page. (2013), p. 47.

(2)Eyada, Bassant & Milla, Asli. (2020), p. 24.

(3) To watch the ad on YouTube:

<https://www.youtube.com/watch?v=GWnunavN4bQ> accessed 20 June 2022

(4)Ejaz, Muneeb. (2018), p. 32.

(5)Luqmani, Mushtaq and Quraeshi, Zahir. (1989). Advertising in Saudi Arabia: Content and Regulation. *International Marketing Review*, V6, Issue 1, p. 61.

(6)Abdellatif, Tamer, et al. (2020). Comparative advertising from a legal/cultural perspective A comparative study between the countries of the Middle East and the United States of America. *Heritage and Design Magazine*, V2, Issue 8, p.322.

studies have found that anti-culture advertisements have “significant negative impact on loyalty to advertisers”⁽¹⁾.

As mentioned earlier, indirect comparative advertising plays a huge role in the advertising strategies in the Middle East including GCC States. "Attack ads" as a marketing strategy used in the US for example, finds no application – to date- in the GCC market. This can mainly be attributed to the cultural difference between the two regions.

GCC States, and the Arab world in general, are strongly influenced by Shari'a (Islamic Law)⁽²⁾ to the extent that it is difficult to draw a clear distinction between cultural and religious practices in the Arab world⁽³⁾. Shari'a provides instructions and guidelines for Muslims in different areas of their lives including commerce. It promotes values such as truth, justice, collective responsibility and discourages competition at the price of harming others. As a result, some might argue that comparative advertising could be perceived as immoral if it is to cause harm to others⁽⁴⁾.

In general, companies in the GCC might hesitate to engage in comparative advertising as Arabic customers are not accustomed to

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- (1) Bajaber, Abdullah Mohammed. (2020). The Impact Of Cultural Values In Advertising On Saudi Consumers' Loyalty. PhD Thesis, University of North Dakota, USA, p. 36.
 - (2) in fact, (Islamic Shari'a) is one of the official sources of law in most Arab countries, for example in Bahrain, Article (2) of The Constitution of the Kingdom of Bahrain (2002) identifies Islamic Shari'a as a principle source for legislation; whereas Article (1) of the Legislative Decree No. (19) of 2001 with respect to promulgation of the Civil Code reads: "In the absence of a provision of a law that is applicable, the Judge will decide according to custom and in the absence of custom in accordance with the principles of Islamic Shariaa that suit the conditions and circumstances of the country...". On the other hand, Article (2) of the Egyptian Constitution (2014) identifies principles of Islamic Shari'a as *the* principle source of legislation. As for the Omani legislator, one can say that the influence of Islamic Shari'a is even stronger as Article (2) of Sultani Decree No. 29 of 2013 promulgating the Civil Transactions Code states that in the absence of special legislative provisions, the judge shall decide according to Islamic jurisprudence, and in the absence of the latter, the judge shall decide according to general principles of Islamic Shariaa.
 - (3) Kalliny, Morris and Gentry, Lance. (2007). Cultural Values Reflected in Arab and American Television Advertising. Journal of Current Issues and Research in Advertising, V29, Issue 1, p. 17.
 - (4) Abdellatif, Tamer, et al. (2020), p.324.

seeing comparative advertising; thus, the tactic might lead to confusion instead of benefiting the advertiser⁽¹⁾. Nevertheless, national boundaries are diminishing, and Western influence is changing the Arab culture. Since advertising is the richest and most faithful daily reflections' of the culture,⁽²⁾ one is expecting to see this influence reflected on advertising methods and tactics in the region.

Thus, the gradual shift concerning the presence of comparative advertising in the region requires reviewing the legal position of this advertising method in GCC states. Examination of the relevant legislations is needed to determine whether the inclusion of the competitor's trademark leads to potential infringement of trademark.

3. Comparative advertising and the potential infringement of trademark: comparative view

The question of comparative advertising and trademark infringement has been the subject of several studies. Researchers in the US, UK and EU have tried to answer the question of whether the use of competitor's registered trademark in comparative advertising amounts to trademark infringement.

The answer to this question is not very clear, as the 'use' of a competitor's trademark in comparative advertising could be for different reasons. For instance, a competitor's trademark could be used for descriptive purposes or for marketing purposes to increase sales of the advertiser.

Therefore, courts will have to decide on a case-by-case basis and shall try to weigh and balance the different interests and rights involved i.e., the private interest of a trademark owner, the right of competitors to freely compete in the market, the right of free speech, and customers rights in information. Note that the balance is not easily achieved as trademark protection is no longer a sub-category of unfair competition law. The two fields are perceived as separate; trademark law protects individuals' exclusive rights, whereas unfair competition safeguards the commercial conduct in the marketplace⁽³⁾.

(1)Kalliny, Morris and Gentry, Lance. (2007), p. 30.

(2) ibid 16.

(3)Dornis, Tim W. & Wein, Thomas. (2013), p. 431.

Courts in the UK, US and EU have tried to resolve disputes involving comparative advertising. Since the introduction of Trademarks Act 1994⁽¹⁾, courts in the UK have permitted comparative advertising provided that it did not amount to unfair trade practice. It is left for the court of law to decide what constitutes fair or unfair trade practice and the exact distinction between the two is subject to the court's discretion⁽²⁾. The principle was established in *Barclays Bank Plc v RBS Advanta*⁽³⁾, where the court stated that 'honest practice' had to be judged by what can be reasonably expected by the relevant public exposed to the advertisements. Therefore, the use of trademark in comparative advertising, by third party, is permitted if it is not "significantly misleading".⁽⁴⁾

In the EU, the Court of Justice of the EU (CJEU), held in the controversial *O2 Holdings* case⁽⁵⁾, the use by a third party in a comparative advertisement of a sign similar to that mark in relation to goods or services identical with, or similar to those for which that mark is registered is permitted provided that such use does not give rise to a likelihood of confusion on the part of the public⁽⁶⁾.

However, likelihood of confusion is not the only restriction on permissibility of comparative advertising. Article 4(g) of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative

(1) Note that S. 10 (4)(e) was inserted by the Trade Marks Regulations 2018 and reads: "uses the sign in comparative advertising in a manner that is contrary to the Business Protection from Misleading Marketing Regulations 2008"

(2) Fernandes, Semila. (2014). A case study approach – an analysis of the infringement of trademark by comparative advertising. *PROCEDIA - SOCIAL AND BEHAVIORAL SCIENCES*, V133, P. 354.

(3) *Barclays Bank Plc v RBS Advanta* [1996] RPC 307. The general principles established in *Barclays Bank* were reinserted in the subsequent case of *Vodafone Group plc v Orange Personal Communications Services Ltd* [1997] FSR 34.

(4) Barigozzi, Francesca and Peitz, Martin. (2004), pp. 23-24.

(5) Case C-533/06 Judgment of the Court (First Chamber) of 12 June 2008.

(6) Suleman, Saadiya. (2011). Comparative Advertising, disparagement and trademark infringement: An Interface. *VIDHIGYA The Journal of Legal Awareness*. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1958894. Accessed 1 July 2022, p. 27.

advertising provides that comparative advertising is not to be permitted if the goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name⁽¹⁾. The position in the EU is further clarified by Art 10(3)(f) of the Trademark Directive⁽²⁾ which entitles the owner of a trademark to prohibit “using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC”.

Moreover, use of trademark in comparative advertising is not permitted if it was used with the intention of “riding on the coat-tails” of the trademark reputation⁽³⁾. The CJEU has reached this conclusion in the famous case of *L’Oreal v Bellure*⁽⁴⁾ where the proprietor of the internationally known trademark was protected as the use of their trademark was not for purely descriptive purposes but rather for purpose of advertising⁽⁵⁾. In another case in 2017, the court found that it is misleading advertising and an act of unfair competition if the

(1) The provision was inserted into the directive after forceful interference in the European lawmaking process by the French luxury perfume industry-hence, the name “perfume clause.” See: Dornis, Tim W. & Wein, Thomas. (2013), pp.432-433

(2) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to Trademarks.

(3) On the same point, some scholars argue that a comparative advertising is classified as (positive comparative advertising) when the advertiser aims to benefit from the positive reputation of his competitor by stating that the quality of his products is as good as the quality of the products of his competitor. Whereas (negative comparative advertising) is achieved when the advertiser focuses on the differences between his products and that of his competitor and shows the products of the latter to be of less quality or of higher prices than his own. See: Labib, Ahmed Alsayed. (2013). Comparative Advertising between the right to advertise and the doctrine of unfair competition. Journal of Legal and Economic Studies. Issue 54, pp. 255-256. [In Arabic].

(4) Case C-487/07 Judgment of the Court (First Chamber) of 18 June 2009. For an Electronic copy of the decision, visit: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0487>

(5) Grigoriadis, Lazaros G. (2014), p. 173.

advertiser does not inform the customer that the compared prices are charged by shops of different sizes (hypermarkets and supermarkets)⁽¹⁾.

In the US, comparative advertising is permitted if it is not found to be confusing or deceptive; hence, phrases such as “Smells like Chanel No. 5” or “If you like J’Adore, you will love Jamais” are common in U.S. advertising. It does not amount to trademark infringement nor is seen as unfair competition⁽²⁾.

For example, in *Tommy Hilfiger Licensing Inc. vs. Nature Labs LLC*⁽³⁾, the defendant was a shop dealing with pet perfumery and has registered its name as ‘Timmy Holedigger’. It also used the slogan ‘If you like Tommy Hilfiger, your pet will love Timmy Holedigger’ in its commercial advertisements. Tommy Hilfiger filed a suit against Nature Labs claiming infringement of their trademark, and trademark dilution and commercial fraud. The court held that the similarity doesn’t amount to infringement of Tommy Hilfiger’s trademark as the use of the latter by the defendant, Nature Labs, was a means of entertainment. It made consumers laugh and was categorized as fair parody under the concept of freedom-of-speech. As a result, the court ruled in favor of the defendant⁽⁴⁾.

In the CHANEL perfume case,⁽⁵⁾ the Ninth Circuit Court held that a perfume seller, had the right to use the CHANEL trademark to inform the public that his perfume smells like CHANEL No.5 which was unpatented formula. However, it was emphasized that there should be no misrepresentations or likelihood of confusion on the part of the public as to the source, identity of the advertiser’s product⁽⁶⁾.

The Eighth Circuit emphasized customers’ interest in finding the lowest prices and allowed the use of the trademark “obsession” by the

(1) Case C-562/15 – Judgment of the Court, Second Chamber, 8 February 2017. For an Electronic copy of the decision, visit: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CA0562>

(2) Dornis, Tim W. & Wein, Thomas. (2013), pp. 432-433.

(3) *Tommy Hilfiger Licensing v. Nature Labs, LLC*, 221 F. Supp. 2d 410 (S.D.N.Y. 2002)

(4) Fernandes, Semila. (2014), p. 350.

(5) *Smith v. Chanel, Inc.* - 402 F.2d 562 (9th Cir. 1968)

(6) Suleman, Saadiya. (2011), p. 26.

defendant when advertising for their perfume as "our version of obsession"⁽¹⁾.

In conclusion, it seems that courts in the U.S. places greater emphasis on consumer's right to information. It permits the use of registered trademark, by third party, in comparative advertising to describe another product that lawfully imitates the well-known one, provided that such use is nondeceptive and not confusing. However, the position in the EU seems less flexible as freedom of comparative advertising could be restricted to safeguard the interests of trademark proprietors⁽²⁾.

4. The position of comparative advertising in GCC States

In the second half of 2021, the principal telecommunication company in the Kingdom of Bahrain (Batelco) made a fifty second advertisement promoting its services and focusing on its optical fiber router⁽³⁾. The ad was titled (not like....) the blank was left empty to be filled out by customers after watching the ad which tried to deliver a clear message that Batelco is (not like...) when it comes to providing its customers with the strongest network coverage in addition to real services with no hidden costs. At the end of the video, the lead character tries to call his friend to advise him not to fall in the "trap". However, he fails to get hold of his friend as the latter does not seem to have network coverage. There was no direct mention or use of competitor's name or brand in the ad. Nevertheless, viewers were able to identify the competitor as (Stc)⁽⁴⁾, for these two companies are the largest internet providers in the Bahraini market.

This assumption was later proved accurate when the competitor company namely (Stc) replied to Batelco's ad by making (1.18m) ad under the same title (not like...). It used the very similar setup to what was used in Batelco's ad except that it defended its position as the best

(1) Calvin Klein Cosmetics Corp. v. Lenox Labs., Inc., 815 F.2d 500, 500 (8th Cir. 1987). For a historical study on comparative advertising in the US, see: Beard, Fred K. (2013). A history of comparative advertising in the United States. Journalism & Communication Monographs, V15, Issue 3, p.114.

(2) Grigoriadis, Lazaros G. (2014), pp. 166-167.

(3) To watch the ad on YouTube <https://www.youtube.com/watch?v=dqy2-mrRb4E> accessed 20 May 2022

(4) Owned by Saudi Telecom Company, and started operating in Bahrain in 2010.

internet provider in the market whilst refuting that (Stc) is (not like) where customers eventually face hidden costs and surprises in their contracts. Again, no explicit mention or use of Batelco's name or trademark⁽¹⁾. There was no further reply on this strategy from Batelco.

Although this was certainly a form of indirect advertising, it was not the pattern of indirect advertising the market is used to. It felt more like indirect "attack ad". Hence, the legality of comparative advertisements needs to be examined as this could mark the beginning of new era in the region where direct comparisons may, in the very near future, become the norm.

Other similar examples are found in Egypt, where 'indirect' comparative advertising is more direct. In the past, reference to other competitors was achieved by using phrases such as (other brands), or by total blurring of the competitor's trademark in a way that did not allow customers to precisely identify the competitor. However, in 2015, (Persil) created an ad claiming that it is the best detergent in Egypt. An image of the competing brand (Ariel) was included although it was blurred. However, the blurring technique used this time was different as it allowed everyone to easily identify (Ariel)⁽²⁾.

In 2018, Twitter was used as a wrestling platform between Careem⁽³⁾ and Uber. Careem KSA tweeted -in Arabic – in the Holly month of Ramadan "What is the feeling of the competitor when he congratulates you on the name of our company and says Ramadan Kareem?" Then, Uber responded with a smart tweet: "Ramadn mUBERk" by putting the name Uber in English inside the word Mubarak⁽⁴⁾.

(1) To watch the ad on YouTube

<https://www.youtube.com/watch?v=Ot08tZMMRHw> accessed 20 May 2022

(2) Watch the ad on YouTube: <https://www.youtube.com/watch?v=Y2jCYhFj11Q> accessed 25 June 2022.

(3) An app that is operating in more than 12 countries in the Middle East, Africa and South Asia regions, providing rides services and food delivery. It was acquired by Uber in 2020. For more details visit Careem official website (our story): <https://www.careem.com/en-ae/our-story/>

(4) To see an image of this tweet, visit: <https://medium.com/@Mohamed.Salama/https-medium-com-mohamed-salama-uber-vs-careem-choosing-obsession-over-value-proposition->

It is observed the advertising market suggests that comparative advertising is becoming more common in the region. Hence, studying the legal position of comparative advertising in Bahrain and the neighboring countries is needed. This shall be achieved by examining comparative advertising from the following perspectives: GCC Trademarks Law, Laws of commerce and unfair competition, and Laws on advertising and marketing.

4.1. GCC Trademarks Law (Regulation)⁽¹⁾

Today, a unified trademarks law is applicable in the GCC states. It has come into force in all GCC states, except the UAE⁽²⁾.

Article (17/2) of GCC Trademarks Law reads: “The owner of the registered trademark shall have an exclusive right to use the mark and to prevent other parties from using it or using any identical or similar sign if the other parties did not get the approval from him - including any geographical indication - in the context of trade to distinguish goods or services related to such goods or services for which the trademark was registered if this use would cause confusion to the public. This confusion is supposed to occur in case of the use of the same mark or a similar mark to distinguish goods or services similar to those for which the mark was registered.”

As for the UAE, this provision, using the exact wording is found in Article (17/2) of the new Federal Trademarks Law No. (36) of 2021, which came into effect on 2 January 2022.

Therefore, as a general rule, a registered trademark can only be used by its lawful owner. The Law provides no special definition of the

81952c32f098 accessed 20 June 2022. Also mentioned in: Abdellatif, Tamer, et al. (2020), p.330.

(1) Law No (6) of 2014 With Approval of Trademarks Law (Regulation) of the Cooperation Council of the Arab States of the Gulf. Official English translation of the law is available on Bahrain Economic Development Board website: <https://bahrainbusinesslaws.com/laws/Trademarks-Law>

(2) As stated in Article (1) of GCC Trademark Law, this law will be effective after six months from the date of issuance of its Executive Regulation in member states as set forth in Article (52). No Executive Regulation has been issued in the UAE until the time of writing this paper. Therefore, the applicable law in the UAE in relation to trademarks is (UAE Federal Law No. 36 for the year 2021 on Trademarks Law).

term (use); yet the meaning is clearly understood from the context of articles (2) and article (17/2). Accordingly, a trademark is *used* when it is attached or associated with goods or services so that consumers are able to distinguish between the goods and services of the trademark owner from that of others.

Infringement therefore occurs when someone uses identical trademark or similar one, in relation to the same or similar goods and services for which the trademark was registered, provided that such use would *cause confusion* to the public. Needless to say, likelihood of confusion is presumed when the third party uses the same or similar mark in relation to the same or similar goods or services for which the mark was registered.

Although the Law clearly states when it is unlawful to use a registered trademark, it is silent when it comes to the use of a registered trademark in comparative advertising. Nevertheless, in the absence of any special provision, the general rule applies. Therefore, if the conditions of (unlawful use) are met, the use of trademark shall be prohibited even if it is in the context of comparative advertising.

In other words, in comparative advertising, an advertiser compares his goods and services to one or more competitors. Goods and services are either identical or very similar and the use of the trademark is certainly in the context of trade. However, if the use of the trademark is not deceptive, it does not cause 'confusion' to the public and it is not intended to free ride on the reputation of the registered trademark. Therefore, it shall not amount to trademark infringement.

It is worth noting that the Egyptian Intellectual Property Code⁽¹⁾ is also silent on the use of registered trademarks in comparative advertising. This is surprising because Egypt is known to be the hub of advertising in the Middle East⁽²⁾, and one would think that such issue would be somehow addressed or regulated by the legislator.

To sum up, there is no explicit answer in GCC Trademarks Law for one to clearly decide if it is permitted to use registered trademark by third party in comparative advertising. It is therefore left to be determined on a case-by-case basis. Nevertheless, other legislations

(1) Law No. (82) of 2002 with respect to protection of Intellectual Property

(2)Eyada, Bassant & Milla, Asli. (2020), p. 35.

might be of particular interest and relevance to this topic, in particular laws of commerce and laws on advertising and marketing.

4.2. Laws of Commerce and unfair competition

In Bahrain, the law applicable to commercial transactions is Legislative Decree No. (7) of 1987 promulgating the Law of Commerce (as amended)⁽¹⁾.

Section three of Bahrain Law of Commerce deals with (Unfair competition). The law explains the acts that constitute unfair competition, but it does not define it. Articles (59-62) of the law stipulates that a trade name or a trademark shall not be used by a person other than its owner and the use of the latter shall be in a manner that does not contradict with this Law.

Moreover, acts that are explicitly prohibited during trade are fraud, cheating in the course of marketing of goods, and dissemination of false statements that would have a detrimental effect on the competitor. Furthermore, merchants are prohibited from using false statements about the origin, description, importance of their goods, or any other misleading methods to attract customers of a competitor⁽²⁾. Therefore, unfair competition can be defined as “any act of competition contrary to honest practices in industrial or commercial matters”⁽³⁾.

The Law of Commerce aims at providing adequate protection for merchants against unfair competition. Although prohibited acts were explicitly mentioned, the list is not an exhaustive one as the legislator

(1) To read the official English translation of this law:

<https://bahrainbusinesslaws.com/laws/Law-of-Commerce>

(2) On this note, The Court of Cassation in Bahrain held that the defendant used the plaintiff's trademark at the entrance of its shop, with the intention to deceiving customers and leading them to believe that the two parties are associated or connected, amounts to unfair competition according to articles 59 and 61 of the Law of Commerce (Court of Cassation, Appeal No. (5) of 1999 – Court Hearing Session dated 13 June 1999). Available -in Arabic- at the Supreme Judicial Council Database: <http://app-elb-2120911998.me-south-1.elb.amazonaws.com/> accessed 29 May 2022.

(3) This is the definition given by Article 10bis of Paris Convention for the Protection of Industrial Property (1883). Note however that there is no reference to unfair competition under TRIPs Agreement (1994).

states (...or any other misleading method) leaving room for court's discretion to decide matters on a case-by-case basis.

The Law of commerce is clear when it comes to advertising. Any merchant is not permitted to disseminate false information about his products. Hence, misleading advertising of any kind that would deceive and attract consumers of a competitor is prohibited and shall constitute unfair competition.

On the other hand, Article (3) of Law No. (31) of 2018 with respect to the Promotion and Protection of Competition titled (prohibition against anti-competitive practices) states that practices or arrangements with the objective to hinder competition in the Kingdom are prohibited, in particular "... (4) knowingly spread false information about products and prices". Thus, false advertising might fall under this provision if it contained false information about products and prices of the advertiser or his competitors.

This position is not different in the other GCC states. Examination of the applicable laws to commercial transactions in the other GCC states shows that the relevant provisions are almost identical:

UAE:

In the UAE, Federal Law No. (8) of 1993 Issuing the Commercial Transactions Law, regulates unfair competition in Articles 64-69⁽¹⁾. The provisions are almost identical to those found in Bahrain Law of Commerce hence leading to the same conclusion and results.

KSA:

In Saudi, the relevant legislations to our discussions are The Commercial Regime⁽²⁾ and the Competition Regime⁽³⁾.

Articles (5) and (142) of the Commercial Regime prohibits merchants from conducting business in deceitful or fraudulent manner or

(1) For summarized analysis on the position of comparative advertising in the UAE see: Steyn, Waldo. Comparative Advertising and medical products. Al Tamimi & Co. legal articles, March (2013). Available at: <https://www.tamimi.com/law-update-articles/comparative-advertising-and-medical-products/> accessed 6 June 2022. Also, Eyada, Bassant & Milla, Asli. (2020), p.35.

(2) Saudi Arabia Commercial Regime issued by Royal Decree No. (M/2) dated 15/1/1390H.

(3) Saudi Arabia Competition Regime of 2019 (Issued by Royal Decree No. (M/75) dated 29/6/1440H

carrying out any practice that is contrary in any way or manner to honor and religion. Such acts include spreading false information to gain interest.

Article (5) of the Competition Regime states that “practices, agreements or contracts among current or potential competing firms, whether the contracts are written or verbal, expressed or implied are prohibited, if the objective of such practices, agreements or contracts or their effect is the restriction of commerce or the violation of competition between firms”.

The Saudi legislator shows clear intention in protecting fair competition and good commercial practices in the market. The provisions are broad; hence, they can accommodate different practices including advertising if it was used in the prohibited manners⁽¹⁾.

Oman

In Oman, unfair competition is regulated under Articles (47-51) of the Commercial Law Issued by Royal Decree 55/90 and Articles (60-65) of the Industrial Property Law Issued by Royal Decree 67/2008. The wording and content of the Commercial Law provisions are very similar to the provisions dealing with unfair competition under Law of Commerce in Bahrain and UAE.

Prohibited acts include fraud, cheating while marketing of goods, and dissemination of false statements that would have a detrimental effect on the competitor. Merchants are also prohibited from using false statements about the origin, description, importance of their goods, or any other misleading methods to attract customers of a competitor.

On the other hand, the wording of the related articles under Industrial Property Law are more detailed. For example, Article (61) of Royal Decree 67/2008 reads: “1- Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in

(1) For a detailed study on the legal position of consumers and misleading advertisements in Arabic see: Aljarbooa, Abdullah & Okli, Asma. (2017). Protecting consumers from misleading advertisements in UAE and KSA legal systems. AJSRP, V1, Issue 10, 1-17. [In Arabic].

particular, the products or services offered by such enterprise, shall constitute an act of unfair competition...”. Article (63/1) reads: “Any act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition...”.

Nevertheless, the detailed wording of these articles does provide clear answer to our question, and there is still no explicit reference to comparative advertising.

Kuwait

The Kuwaiti legislator also deals with unfair competition in Articles (55-60) of Legislative Decree No. (68) of 1980 promulgating Law of Commerce. The wording and effect of provisions were similar to what was prescribed by the other legislator in Bahrain, UAE, KSA and Oman.

Moreover, the wording of Article (4) of Law No. (10) of 2007 on the Protection of Competition is almost identical to that of Article (5) of the Saudi Competition Regime.

Qatar

The position in Qatar is not different. Wording of Articles (68-73) of Law No. (27) of 2006 promulgating Law of Commerce are also identical to the respective provisions of commercial laws in the other GCC states. Hence, this leads up to the same results.

To sum-up, based on our examination of the related provisions in the applicable commercial laws in GCC states, we can conclude the following:

1. An advertiser is subject to claims for damages if his advertisement contains false information either about his own products or about a competitor's products as it will amount to a form of unfair competition⁽¹⁾.

(1) Steyn, Waldo. Comparative Advertising and medical products. Al Tamimi & Co. legal articles, March (2013). Available at: <https://www.tamimi.com/law-update-articles/comparative-advertising-and-medical-products/>. accessed 6 June 2022. p. 1.

2. If the use of the competitor's trademark is in a manner that does not fall within the scope of unlawful uses specified by the relevant laws of commerce and competition, meaning it is not misleading or pose detrimental effect, then it does not constitute unfair competition.
3. If a well-known trademark is used with the intention of taking advantage of the trademark's reputation, then trademark infringement is likely to occur⁽¹⁾ and such practice will certainly amount to unfair competition.

4.3 Laws on advertising and marketing

Laws on advertising and marketing are relevant to our discussion as the use of trademarks is needed in the course of marketing and advertising. Examination of these laws should therefore reveal whether GCC laws permit the use of a competitor's trademark or not.

Bahrain

The applicable law to advertising in Bahrain is Legislative Decree No. (14) of 1973 on Regulation of Advertisements, and Order No. (2) of 1977 issuing the Implementing Regulation of Law No. (14) of 1973 on Regulation of Advertisements⁽²⁾.

The Law and its implementing regulation explain how to apply and obtain advertisement permits and specifies the conditions, examinations, issuance, and renewal cost, in addition to penalties in the event of violation.

The Law merely states that the competent authority shall decide whether the subject matter of the advertisement is permitted or not. There is no further reference to any matter in relation to trademarks or comparative advertising.

(1) Grigoriadis, Lazaros G. (2014), pp. 166-167.

(2) Note that, since 2017 The House of Parliament in Bahrain has been discussing the need to introduce new draft to this law in order to address the new developments in the area of marketing and advertising, however, until the time of writing this paper, no actual steps has been taken.

KSA

The position in KSA is different. Article (11) of the Saudi E-Commerce Regulation⁽¹⁾ states that: “Electronic advertisements must not include any of the following: a. presentation or statement or false claim or claim that is worded in a manner that would directly or indirectly mislead or deceive the consumer. b. logo or trademark if the service provider has no right to use it, or a copied mark.”

The wording of Article (11) states that a trademark cannot be used by a third party, in the context of electronic advertisement, if the mark was copied, or if the service provider has no legal grounds for such use.

It is viewed that this provision only confirms what has already been provided for in the GCC Trademarks Law (Regulation) i.e., trademarks are the exclusive right of their right-holder. Nevertheless, we do not read Article (11) as a restriction on the use of a trademark in comparative advertising for the following reasons:

- The aim of the regulation is to safeguard the interests of consumers and protect them against false advertisement and any act that is deceptive or misleading. Obviously, a copied trademark is a deceptive act that intends to mislead consumers, not to mention the harm suffered by the trademark proprietor.
- Article (11) prohibits the use of logos or trademarks if the service provider has no right to use it. It does not state that a service provider (advertiser) must be licensed to use the logo or trademark of the competitor. It simply requires having a “legal ground” to use it.

Therefore, the question is how can a third party have legal basis or ground to use a trademark during advertisement? Obtaining a license certainly legalizes such use, however, are there any other grounds or exceptions? In the light of the current legal provisions and the absence of the doctrine of (fair dealing) in GCC Trademarks Law, the answer might not be very clear. This leaves room for courts to interpret the wording of these legal provisions. A narrow interpretation leads to

(1) Issued by Royal Decree No. (M/ 126) on 17/11/1440H (corresponding to July 20 2019). The scope of the Regulation applies to- as the name suggests- any advertisement that is conducting electronically. Hence, non-electronic advertisements are not subject to this Regulation.

prohibition of using competitor's trademark in any form, whereas a wider and more flexible interpretation will lead to the opposite result.

As explained earlier, a trademark owner may rightfully object to the use of his trademark if it was misleading or confusing consumers, or if it was used in any manner that amounts to unfair competition in the marketplace. Thus, it is unlikely that E-Commerce Regulation comes with restrictions that were not provided for in the GCC Trademarks Law (Regulation). In other words, Article (11) should not be read as a blanket prohibition. The mere use of one's trademark in E-advertising should not amount to breach of Article (11) if the use was not misleading. Hence, a third party shall have (the right and legal ground to) use a competitor's trademark in advertising if the use was not misleading, confusing, deceptive, or falls within the scope of unfair competition.

Qatar

In Qatar, Law No. (1) of 2012 on the Regulating and Control of the Placement of Advertising states that no advertisement may be placed or set without first obtaining the relevant license from the competent municipality and paying the prescribed fee and financial guarantee. Article (5) of the Law states that "The following conditions shall be met for licensing an advertisement: "9. trademarks, names and data contained in an advertisement shall not contravene laws, facts or official data".

No reference to comparative advertisement is found in Law No. (1) of 2012. However, Qatar's Code on Advertising, Marketing and Branding issued by the Communications Regulatory Authority on 24th Sep 2014 regulates comparative advertising.

Articles (36-37) of the Code encourages comparative advertising to promote fair competition. Advertisers are required by the Code to highlight real benefits, and innovations, genuine distinguishing factors. Advertisers are prohibited from unfairly criticizing, discrediting, or denigrating a competitor or its service. Any act that is intended to reduce public confidence in the product or services offered by the other service provider is prohibited. As explicitly stated by Article (37) "comparisons shall not create an unfair advantage for the Advertiser nor mislead the Consumer". Furthermore, the only

permissible judgments and opinions about the Competitor or its products or services are those that are objective and are based on facts. Therefore, the legislator in Qatar has clearly stated its position allowing comparative advertising, provided that comparison is objective and in compliance with the conditions stated in the Code. Although there is no mention of the use of competitor's trademark, there is no explicit prohibition either.

However, one should keep in mind that the scope of this law is in relation to acts that are subject to telecommunication law. Thus, comparative advertising taking place in other markets and industries will not be subject to this provision and will therefore be decided according to the provisions found in the other relevant laws.

Kuwait

The new Advertisement Regulation in Kuwait No. (172/2006) is very similar to the law regulating advertisements in Bahrain as it explains the different types of advertisements, how to apply and obtain advertisement permits and specifies the conditions and penalties in the event of violation.

Article (8) states that advertisements that include false information are not allowed and the advertiser is liable before the competent authority for the content of these advertisements. However, unlike the position in KSA and Qatar, there is no reference to the use of someone's trademark in advertising or to comparative advertising.

Oman

There is no specific legislation in Oman that regulates advertisements. However, when looking for the related provisions, the Royal Decree 66/2014 issuing Consumer Protection Law is of certain relevance. Article (20) states that every advertiser and service provider must follow honest practices and refrain from false advertising and marketing or misleading acts with respect to the products or services they provide for consumers.

The question of whether use of competitor's trademark is permitted or not is not explicitly addressed in the consumer protection law. Yet, one could probably argue that in comparative advertising, the use of competitor's trademark should be permissible if it is not misleading, or it does not contain false information.

In fact, it is worth pointing out that the same provision is found in consumer protection laws in the other GCC states⁽¹⁾. However, there was no need to refer to these provisions in the light of more specific provisions.

5. Conclusion and final remarks

Based on our examination of the related provisions in the applicable laws to trademarks, commercial transactions, and advertising and marketing in GCC states, the following can be concluded:

1. One does not find an explicit mention or reference to comparative advertising in these laws with the exception of Qatar Code on Advertising and Marketing issued by the Communications Regulatory Authority (2014) which clearly addresses comparative advertising and regulates its conditions. However, one needs to bear in mind that such provision is with respect to acts that are subjects of the telecommunication law in Qatar.
2. The Saudi legislator does not regulate comparative advertising, yet E-Commerce Regulation prevents the inclusion of someone else's trademark or logo in electronic advertisements without permission. This provision does not change the *status-quo* as the GCC Trademarks Law (Regulation) already prevents the use of someone else's trademark without permission.
3. The position with respect to comparative advertising remains ambiguous in GCC states. Only general rules are found in legislations that could be of some relevance to this discussion.
4. Legal issues and questions with respect to comparative advertising in GCC states will remain unanswered at the moment, as there are no judicial decisions to help us understand how courts in the GCC interpret the relevant laws.

In the light of the current situation and based on the findings of this study, it is strongly encouraged that legislators in GCC states include clear provisions regulating the use of trademarks in comparative advertising. The goal is to strike a balance between the private interest of trademark owners and the interest of consumers and their right to information in the marketplace. Although achieving such balance is

(1) At the GCC level, a final approved version of the Unified Consumer Protection Law and its Implementing Regulation is expected to be issued soon.

not expected to be an easy task, yet it is what courts have always been doing in every legal dispute.

Finally, one should keep in mind that:

- Despite the obvious private interest the legislator aims to safeguard in trademarks law, one cannot overlook the legislative recognition of freedom of trade in the marketplace. This is supported by provisions of the GCC Trademark Law (Regulation) as it always associates infringement of trademark with confusion or misleading consumers. In fact, even if a trademark was not registered, the interests of the right holder can still be protected if the conditions of unfair competition are met.
- Comparative advertising is a marketing method for brand owners, and it is seen as providing customers with needed information about the comparable products. Hence, it should be clearly regulated by legislators in GCC States in a manner that protects the interests of trademark owners and allows consumers to benefit from the fair competition between brand owners in marketing and advertising.

The wording of the relevant legal provisions allows for broader interpretation by courts in a manner that should not add restrictions to the marketplace. The absence of explicit prohibition to use trademarks in comparative advertising should be seen as an opportunity to employ a broader and more flexible approach that should further the interests of consumers in free and fair marketplace. To courts in GCC States, the case is very much of, ‘the ball is in your court!’.

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