

# The Mechanism of Trademark Registration: A Comparative Study in Light of Iraqi and Iranian Law

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## **Abstract**

The aim of this study to examines the mechanism of trademark registration in light of Iraqi and Iranian laws, with emphasis on the legal procedures and comparison between these two systems to ensure protection of owners' rights and promote fair competition in the market. Through focuses on registration procedures, beginning with the filing of the application and documents, passing through technical examination, publication of the application and the opportunity to file oppositions, and ending with the granting of the certificate of registration, also explains the similarities and differences between these two systems with respect to registration requirements, duration of protection, mechanisms of opposition, and renewal. Registration grants the owner an exclusive right to use the trademark and represents a commercial asset of economic value, also strengthens protection of intellectual property rights, while requiring attention to differences between national systems when dealing with international markets.

## **First: Importance of Study**

This study importance lies in highlighting the mechanism of trademark registration in light of Iraqi and Iranian laws, and the resulting legal protection of intellectual property and enhancement of fair competition in the market. The importance of a trademark constitutes an economic and investment instrument that reflects the value of the commercial enterprise and preserves the rights of its owner against imitation and infringement. Also, clarifying the legal procedures relating to registration, including submission of the application, technical examination, publication, opposition, and granting of the certificate, while identifying the similarities and differences between the two legal systems.

## **Second: Objective of the Study**

The aims of this study is to clarify the concept of a trademark and its various forms, also, analyze the legal procedures for its registration under Iraqi and Iranian laws, including the filing of " the application, technical examination, publication, and granting of the certificate". It focuses on ensuring protection of the legal rights of owners and preventing infringement of intellectual property. Furthermore, to present a comparative study between these two systems for best legal practices, enhance the efficiency of registration, and protect fair competition in the market.

## **The First Section**

### **What Is a Trademark?**

Its considered as the one fundamental pillars of intellectual property, as it distinguishes the products and services of enterprises and protects them from imitation and infringement, also represents an important economic and legal tool for promoting fair competition in the market. This section addresses the concept of the trademark from linguistic and terminological perspectives, while explaining the legal definitions in the Iraqi and Iranian systems, before moving to its various forms, including letters and numbers, symbols and images, colors, and distinctive names, with emphasis on the legal conditions that make such marks eligible for legal protection and market distinction.

### **The First Subsection: The Concept of Trademark**

### **First: The Linguistic Meaning of Trademark**

In language, the word “mark” denotes a sign or indication; it is something erected as a guide, and the term “al-isharah” is also used. The word “al-‘allahah” denotes a sign set up on land to guide people and to serve as a boundary between two lands.<sup>12</sup>

The word has also been said to mean a trace, a beacon, a tall mountain, or a banner.<sup>3</sup> Others defined the mark and the sign as something erected in deserts by which those who are lost may be guided.<sup>4</sup> Almighty God says: “And His are the ships raised high in the sea like landmarks.”<sup>5</sup>

As for “commercial” in language, commerce means that which is traded and the turnover of money for the purpose of profit. A merchant is one who is skilled in the matter; the Arabs used to call the seller of wine a merchant, and “tjirah” is the feminine form of merchant. It is said: “a trading commodity,” and its plural is “tawajir.” It is also said: “tajara, yatjuru, tijarah,” meaning that he sold and bought.<sup>6</sup>

### **Second: The Technical Meaning of Trademark**

In terminology, the trademark has been defined in several ways. One definition states that “the mark consists of signs intended to identify and distinguish the products of an establishment; more precisely, it is a term, sign, symbol, or any arrangement of these elements, used mainly to identify the goods and services of a seller or group of sellers and to distinguish them from the goods of competitors.”<sup>7</sup>

The trademark has also been defined as “the emblem adopted by a manufacturer or trader for his products or goods in order to distinguish them from their counterparts.”<sup>8</sup>

It has further been defined as “everything that distinguishes a product, whether a good or service, from others, and includes in particular names adopted in a distinctive form, signatures, words, letters, numbers, drawings, symbols, shop addresses, stamps, seals, images, and relief inscriptions.”<sup>9</sup>

The trademark has also been defined as “the distinctive emblem adopted by a trader, manufacturer, or farmer for his products, goods, or services with the intention of distinguishing them from the goods or services of others.”<sup>10</sup>

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1 Ahmad Mukhtar Umar, *Al-Munjid fi al-Lughah wa al-A‘lam* [Al-Munjid in Language and Information], edited by Ahmad Mukhtar Umar and Dahi Abdul Baqi, ‘Alam al-Kutub, Cairo, 2nd ed., n.d., p. 523.

2 A group of linguists at the Academy of the Arabic Language in Cairo, *Al-Mu‘jam al-Wasit* [The Intermediate Dictionary], 2nd ed., Dar al-Fikr, Beirut, 1972, 2/624.

3 *Al-Munjid fi al-Lughah wa al-A‘lam*, pp. 451–452.

4 Muhammad ibn Mukarram ibn Ali, Abu al-Fadl, Jamal al-Din Ibn Manzur al-Ansari al-Ruwayfi‘i al-Ifriqi (d. 711 AH), *Lisan al-‘Arab* [The Tongue of the Arabs], Dar Sadir, Beirut, 1414 AH, 1/264.

5 Surat al-Rahman, verse 24.

6 *Lisan al-‘Arab*, 1/420.

7 Mi‘raj Hawari, Mustafa Sahi, and Ahmad Majdal, *Al-‘Alamah al-Tijariyyah: al-Mahiyyah wa al-Ahammiyyah* [The Trademark: Nature and Importance], Dar Kunuz al-Ma‘rifah al-‘Ilmiyyah for Publishing and Distribution, Amman, 2013, p. 12.

8 Antoine Al-Nashif, *Al-I‘lanat wa al-‘Alamat al-Tijariyyah bayn al-Qanun wa al-Ijtima‘* [Advertisements and Trademarks between Law and Society], Al-Halabi Legal Publications, Beirut, 1999, p. 3.

9 Muhammad ibn Barrak Al-Fawzan, *Al-Nizam al-Qanuni lil-Ism al-Tijari wa al-‘Alamah al-Tijariyyah fi al-Qawanin al-‘Arabiyyah* [The Legal System of the Trade Name and Trademark in Arab Laws], Library of Law and Economics, Riyadh, 2012, p. 165.

The trademark has been described as a title that indicates the reputation of the trader, through which he identifies and becomes known. This title may be the family name of the trader himself or a stylized name, such as the blue bird in commercial companies, where the trade name coincides with the company name.<sup>11</sup> Article (1) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957 defines a trademark as “any sign or combination of signs capable of constituting a trademark through which the goods of one enterprise may be distinguished from the goods of other enterprises, such as signs, especially words including personal names, letters, numbers, symbolic shapes, colors, and any mixture of such signs, which may be registered as a trademark. If the signs are not capable by themselves of distinguishing goods or services, registrability depends on the distinctive character acquired through use. Visual perception of the sign is not required for it to be eligible for protection as a trademark.”<sup>12</sup>

As for Iranian law, Article (35/a) of the Iranian Law on Patents, Industrial Designs and Trademarks of 1386 provides that a trademark is “any visible sign that distinguishes the goods or services of natural or legal persons. Accordingly, a trademark is a sign used to distinguish the goods and services of companies and natural or legal persons from other companies and competitors.”<sup>13</sup>

### **The Second Subsection: Forms of Trademarks**

A trademark is every sign or indication adopted by a trader or manufacturer to distinguish his products or services from those offered by others, however, the trader’s freedom to choose the mark he desires is not absolute; rather, it is subject to a set of legal restrictions designed to prevent deception and protect legitimate competition. Legislation has established special conditions for registrable marks: they must consist of letters, drawings, symbols, or a combination of these elements, and must possess a distinguishing character that sets them apart from others, based on “Article (1) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957”, these forms of trademarks are as follows:

#### **First: Letters and Numbers**

Letters and numbers are among the most prominent forms that a trademark may take. Many traders and manufacturers resort to selecting a set of letters or numbers, or a combination of both, as a means of distinguishing their products or services from those belonging to others. These forms are characterized by simplicity and ease of recall, which makes them more capable of establishing a mental impression among consumers. Letters may be used to indicate the name of the company or as an abbreviation of a phrase associated with the nature of the product, while numbers may be used to indicate a particular model or a specific category of products. Such marks must possess a distinctive character sufficient to distinguish them from other marks, so that they are not merely common letters or numbers lacking the ability to suggest or distinguish. Therefore, letters and numbers are not considered trademarks eligible for protection unless they possess distinctiveness or originality that gives them a distinctive identity in the market.

#### **Second: Symbols and Images**

Symbols first refer to visible graphic designs, such as the image of a star, a human face, an animal, a tree, or the like. It should be noted here that many symbols have corresponding names. A trader may use the shape of a dove as a trademark, while another may adopt the word “dove” as a trademark. Some scholars argue that ownership of the symbol entails ownership of the denomination indicating it: if the image of a star is

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<sup>10</sup> Wael Muhammad Rif<sup>at</sup>, *Al-Tasjil al-Duwali lil-‘Alamat al-Tijariyyah* [International Registration of Trademarks], Library of Law and Economics, Riyadh, 1st ed., 2015, p. 41.

<sup>11</sup> Ja<sup>’fari</sup> Langarudi, Muhammad Ja<sup>’far</sup>; *Mabsut dar Terminoloji-ye Hoquq* [Expanded Work on Legal Terminology], vol. 5, Tehran, Ganj-e Danesh, 1387 AH, p. 138.

<sup>12</sup> Article (1) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

<sup>13</sup> Article (35/a) of the Iranian Law on Patents, Industrial Designs and Trademarks of 1386.

adopted as a trademark, a competitor is prevented from using the word “star” to distinguish his products, and conversely, ownership of the denomination includes ownership of the corresponding symbol.<sup>14</sup>

As for the image, the photographic image of a person is one form of trademark. An individual may use his personal image as a trademark or use the image of another person provided that prior permission is obtained from that person. This method is considered one of the most common forms in marketing, as the image contributes to the creation of mental and emotional impressions among consumers, forming added value for the trademark. This value consists of a mixture of real and perceived values, including innate acquisitions of ideas and subjective or objective feelings, whether voluntary or involuntary, which enhances the mark’s distinctiveness and exclusivity in the market.<sup>15</sup>

### **Third: Colors**

Colors are among the most prominent forms of trademark. One or more colors may be adopted to distinguish the products or services of the trademark owner from others. The registration office or the court gives special importance to color when assessing the distinctive character of the mark, because it is an essential element of its identity and distinction in the market. Legal protection extends to all colors if no specific color is designated. Color also plays a central role in attracting attention and stimulating impressions among the target public; it works as a medium for conveying design visions and aesthetic ideas of the mark and helps shape the consumer’s perception and facilitate understanding of the mark’s concept and value. This enhances the mark’s distinctiveness and exclusivity and makes it an effective tool in marketing and in differentiating between competing products or services.<sup>16</sup>

### **Fourth: Names Adopted in a Distinctive Form**

Names adopted in a distinctive form are among the most prominent forms of a trademark. A trader or manufacturer may register a unique or innovative name to serve as an indication of his products or services and to distinguish them from the products or services of others. Such names must possess a distinctive character and the ability to distinguish, in a manner that ensures the absence of confusion between the mark and the marks of others and provides legal protection for its owner.<sup>17</sup>

## **The Second Section**

### **The Mechanism of Trademark Registration: A Comparative Study**

The trademark constitutes a fundamental tool for protecting intellectual property and distinguishing products and services. This comparative study addresses the mechanism of trademark registration in the Iraqi and Iranian systems, beginning with the filing of the application and technical examination, passing through publication and the opportunity for opposition, and ending with the granting of the certificate of registration, with emphasis on the similarities and differences in order to ensure protection of rights and fair competition in the market.

### **The First Subsection: Trademark Registration Procedures**

Trademark registration procedures constitute the principal foundation for protecting the rights of the trademark owner and ensuring the owner’s exclusivity in the market. The process begins with the filing of

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14 Salah Zayn al-Din, *Sharh al-Tashri‘at al-Sina‘iyyah wa al-Tijariyyah* [Explanation of Industrial and Commercial Legislation], Dar al-Thaqafah Library, Amman, 2003, p. 121.

15 Hajar Hamyoud, “The Mental Image of the Trademark and Consumer Behavior,” *Afaq Journal for Sciences*, no. 7, 2017, p. 276.

16 Atiyat Al-Jabri, Nevine Izzat, and Nancy, “Color and Its Relationship to Trademark Perception through the Subjective Experience of the Target Audience,” *Journal of Heritage and Design*, vol. 3, no. 17, 2023, pp. 208–209.

17 Muhammad Ahmad Abdul Hamid Mubarak, *The Trademark and Methods of Its Protection*, Master’s thesis, An-Najah National University, Faculty of Graduate Studies, 2006, p. 14.

the application and the attached documents, passes through the stage of technical examination to assess whether the application conforms to legal requirements and to ensure that it is not similar to existing marks, and ends with the stage of publication of the application and the opportunity for the public and concerned parties to file oppositions.

These procedures ensure a combination of legal protection, transparency, and fair competition. They also provide mechanisms for grievance and appeal against administrative decisions, thereby ensuring a balance between the interests of the trademark applicant and the rights of others, limiting future disputes, and strengthening the stability of legal rights associated with trademarks.<sup>18</sup>

**First: Filing the Application and the Documents Attached Thereto**

The stage of filing the application for trademark registration is one of the most important registration procedures, because it represents the starting point for protecting the trademark owner against any infringement or imitation. The application is submitted by the interested person or his legal representative to the competent authority using the prescribed official form and includes one or more classes of goods or services. After acceptance, the trademark owner is granted an independent certificate of registration, thereby confirming the individual nature of each mark and the legal rights attached to it.<sup>19</sup>

The filing stage requires the attachment of a set of essential documents that ensure the validity of the procedures and the soundness of the subsequent examination. Foremost among these documents are four identical reproductions of the mark as it appears on the official form, in order to ensure its clarity and prevent any confusion with other marks. The license of the company or the entity providing the product or service must also be submitted, for the purpose of verifying the legal capacity of the applicant and ensuring that the mark is registered for a genuine commercial activity, thereby safeguarding the material and moral rights of the owner.<sup>20</sup>

The submission of the application is subject to conditions. Article (6) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957 provides that “the application for registration of the trademark shall be submitted to the Registrar in the form and under the conditions specified in the regulation issued pursuant to this Law.”<sup>21</sup>

The Iraqi legislator also allowed the owner of a previously registered mark to request additions or amendments through Article (13) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957, which provides that “the owner of a previously registered mark may at any time submit an application to the Registrar to introduce any additions or amendments to his mark, provided that they do not materially affect its identity. The Registrar’s decision to accept such additions or amendments in principle shall be issued in accordance with the conditions established for decisions relating to original registration applications, and this decision must be notified and shall be subject to opposition in accordance with the foregoing.”<sup>22</sup>

Article (33) of the Iranian Law on Patents, Industrial Designs and Trademarks of 1386 provides that “the application for registration of the mark shall be submitted with a copy of the mark and a list of the goods or

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<sup>18</sup> Ziyad Ahmad Hamid Al-Qurashi, Trademark Registration Procedures in the Kingdom of Saudi Arabia, King Abdulaziz University, Saudi Arabia, 1430 AH, p. 5.

<sup>19</sup> Ahmad Abdul Karim, “Analysis of Trademark Registration Procedures,” Journal of Legal Sciences, vol. 2, no. 10, 2023, p. 25.

<sup>20</sup> Suhad Kamil Al-Jubouri, Legal Protection of Trademarks in Iraqi Legislation and International Agreements, PhD dissertation, University of Baghdad, College of Law, 2022, pp. 85–90.

<sup>21</sup> Article (6) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

<sup>22</sup> Article (13) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

services for which registration is sought, according to the applicable classification or the international classification, to the Industrial Property Office, and the registration fees shall be borne by the applicant.”<sup>23</sup>

### **Second: Technical Examination**

The technical examination stage represents the second step in the procedures for trademark registration. It is the decisive stage that separates mere submission of the application from the acquisition of legal protection. This examination is entrusted to a specialized committee at the Ministry of Trade or the General Directorate of Trademarks, which verifies that the application satisfies legal and procedural requirements. The examination process includes assessing the form and nature of the mark and the extent of its connection with the requested products or services, in addition to comparing the mark with registered trademarks in order to avoid any similarity that may confuse the public or prejudice the rights of others. The examination also includes ensuring that the mark is free from anything contrary to public order or public morals.<sup>24</sup>

In issuing its decisions, the committee relies on clear legal standards. It may accept the registration of the mark if the required conditions are satisfied, reject the application if similarity with other marks is established or if it violates legal rules, or accept the application subject to certain conditions, such as amending part of the name or design to ensure its distinctiveness. The decision issued by the committee is an official and reasoned decision that explains the grounds for acceptance, rejection, or the imposed condition, thereby achieving the principle of transparency and enabling the applicant to understand the bases on which the decision was made and, where appropriate, seek its review.<sup>25</sup>

If the application is rejected or the committee requires amendment of the mark, Article (11/3) of the Iraqi law provides that “the Registrar shall notify the applicant for registration of a copy of the opposition, and the applicant shall submit to the Registrar, within thirty days, a written reply to such opposition. If the reply is not received within the said period, the applicant shall be deemed to have abandoned his application.”<sup>26</sup> This provides a legal guarantee enabling him to reconsider his application or to submit his objection supported by legal and technical evidence during the said period. This right enables him to amend the mark or change its name in accordance with the applicable controls. Thus, the system achieves a balance between protecting the rights of the potential trademark owner and safeguarding the rights of others in the market, while strengthening the right of defense and providing a genuine opportunity to correct or justify the application before the final decision is taken.<sup>27</sup>

If the registration of the mark is approved without conditions, the administration publishes it in the newspapers concerned with trademarks, designs, and industrial models in order to enable the public to examine it and to give any interested party the opportunity to object if he believes that the mark prejudices his rights or resembles another mark. Such publication is an important part of the examination process, as it promotes transparency, supports fair competition, and allows owners and investors to verify the soundness

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<sup>23</sup> Article (33) of the Law on Registration of Patents, Industrial Designs and Trademarks No. (27) of 1386.

<sup>24</sup> Ahmad Abdul Halim Al-Zarqani, “Opposition to Trademark Registration in Accordance with Law No. 82 of 2002 and International Agreements,” *Scientific Journal of Intellectual Property and Innovation Management*, vol. 1, no. 1, 2018, p. 557.

<sup>25</sup> Samiha Al-Qalyubi, *Al-Milkiyyah al-Sina‘iyyah [Industrial Property]*, Dar al-Nahdah al-‘Arabiyyah, Egypt, 2009, p. 502.

<sup>26</sup> Article (11/3) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

<sup>27</sup> Abdul Razzaq Al-Sanhuri, *Al-Wasit fi al-Qanun al-Madani [The Intermediate Commentary on Civil Law]*, Dar al-Nahdah al-‘Arabiyyah, Cairo, 1952, vol. 4, p. 64.

of the legal status of the mark before the completion of final registration and the issuance of the certificate of protection.<sup>28</sup>

**Third: Stage of Publication of the Application and Opposition Thereto**

The stage of publishing the trademark registration application and considering oppositions is one of the most important stages of the registration procedures, because it transfers the process from the scope of internal administrative examination to the participation of the public and interested parties, thereby enhancing transparency and ensuring protection of rights. After the administration approves the application, it publishes the data of the mark in the Trademarks, Designs and Industrial Models Gazette. This publication constitutes an official announcement of the proposed mark, allowing owners of prior marks, investors, government authorities, and others to review the mark and ensure that there is no conflict or similarity that may affect their rights or cause confusion in the market.<sup>29</sup>

To protect intellectual property and prevent infringement of prior marks, this procedure allows any interested party to object to the registration of the mark within one day from the date of publication. This mechanism achieves a balance between the right of the potential owner and the protection of existing rights, thereby preventing similarity that may confuse consumers and preserving fair competition in the market.<sup>30</sup>

If an opposition is filed, the administration studies it and examines its validity in terms of similarity with registered marks or violation of legal requirements, then issues a decision accepting or rejecting the opposition with reasons.<sup>31</sup>

The opponent has the right to appeal the rejection decision before the Administrative Court within the legal period, in accordance with Article (10) of the Trademarks and Commercial Indications Law No. (21) of 1957, which provides that “the decisions issued by the Registrar, except those provided for in paragraph (3) of Article 24 of this Law, “subject to opposition before the court within thirty days from the date of notification thereof.”<sup>32</sup> This provides an additional guarantee for the protection of his rights and confirms the binding nature of administrative decisions.

The stage of publication and opposition acquires great importance because of its preventive role. It allows the public and competent authorities to detect early any similarity or violation before the mark is officially registered, also provides applicants and competitors with an opportunity to verify new registrations, thereby enhancing transparency and enabling correction of the legal course before the final certificate is issued.<sup>33</sup> Publication of the mark in the official gazette also constitutes a reference document that may be relied upon in future disputes relating to ownership or imitation, this enables the judiciary to evaluate the registration of the mark and the procedures followed, reflecting the importance of publication as part of legal

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28 Ahmad Al-Khudari, “Grievance Procedures in the Legal System of Trademarks,” *Journal of Law*, vol. 4, no. 8, 2005, p. 48.

29 Mustafa Ismail Abdul Jawad, *Al-Shurut al-Lazimah [The Necessary Conditions]*, previously cited source, 2018, pp. 390–391.

30 Abdullah Kazim Al-Ghariri, *Al-Himayah al-Qanuniyyah lil-‘Alamat al-Tijariyyah bayn al-Munafasah wa al-Ihtikar [Legal Protection of Trademarks between Competition and Monopoly]*, Dar al-Kutub al-Qanuniyyah, Baghdad, 2022, p. 95.

31 Ali Mohsen Al-Hashimi, “Transparency Guarantees in Trademark Opposition Procedures,” *Journal of Commercial Law*, no. 3, 2022, p. 78.

32 Article (10) of the Trademarks and Commercial Indications Law No. (21) of 1957.

33 Ahmad Abdul Karim Al-Saadi, “The Preventive Effectiveness of the Publication and Opposition System in Protecting Trademarks,” *Journal of Law*, vol. 48, no. 2, 2022, p. 112.

documentation and allowing the monitoring of all transactions relating to the mark, including oppositions, appeals, and judicial proceedings.<sup>34</sup>

The stage of publication and opposition reflects the participatory character of the trademark protection system, involves the parties concerned in evaluating the legality of the mark and ensures that registration takes place within an organized legal, social, and economic framework. Furthermore, represents a link between the technical examination and the stage of granting the certificate, as the legal procedure is completed after the expiry of the opposition period and the resolution of any oppositions, thereby ensuring the stability of rights and reducing future disputes.<sup>35</sup>

#### **The Second Subsection: Granting the Trademark Certificate**

The certificate of trademark registration is the final stage in the procedures for protecting the mark. It grants the trademark owner the exclusive right to use it and to prevent others from using it without authorization, and it enables him to defend his rights before the courts.<sup>36</sup>

Under Iraqi law, this matter is regulated by the amended Trademarks Law No. (21) of 1957, "the trademark is granted legal protection upon submission of the application, and the effect of registration begins from the date of submission of the application, not from the date of issuance of the certificate", this ensures protection of the applicant's rights even if the procedures take a long time.

Likewise, the Trademarks Directorate is required to publish the final decision in the official gazette for trademarks in order to give others the opportunity to object within the legally prescribed periods. If the opposition is rejected, the Directorate grants the official certificate after payment of the prescribed fees, whereupon the mark becomes legally protected and constitutes a fixed title of ownership for the owner.<sup>37</sup>

Article (12) of the Iraqi Trademarks Law provides that "upon completion of the registration of the mark, the owner of the mark shall be granted a certificate containing the data stated in the gazette, and registration of the trademark shall be considered prima facie evidence of the legality and right of ownership of the trademark in all legal proceedings."<sup>38</sup> This provision confirms the strong legal nature of the certificate of registration and its role in protecting rights. Article (20/1) provides that "the period of protection of the mark shall be ten years, renewable for the same period by an application submitted during the final year and in accordance with the applicable regulations, after payment of the imposed fees."<sup>39</sup> Article (21/1), meanwhile, grants "every interested person the right to request from the court the cancellation of registration of the mark within five years from the date of its registration, provided that he specifies the facts on which he relies."<sup>40</sup>

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<sup>34</sup> Muhammad Al-Khayun, "The Role of Official Documents in Settling Trademark Disputes," *Journal of Legal Sciences*, vol. 5, no. 23, 2022, p. 993.

<sup>35</sup> Amer Abdullah Al-Samarrai, *Al-'Alamat al-Tijariyyah bayn al-Nazariyyah wa al-Tatbiq* [Trademarks between Theory and Practice], Dar al-Thaqafah al-Qanuniyyah, Baghdad, 2023, p. 38.

<sup>36</sup> Muhammad Amin Al-Rumi, *Al-Milkiyyah al-Fikriyyah: Dirasah Muqaranah* [Intellectual Property: A Comparative Study], Dar al-Fikr al-Jami'i, Beirut, 2018, pp. 245–246; Khalid Mamdouh Ibrahim, *Legal Protection of Trademarks*, previously cited source, 2019, p. 140.

<sup>37</sup> Amer Abdullah Al-Samarrai, *Legal Protection of Trademarks in Iraqi Legislation: A Comparative Study*, Dar al-Thaqafah wa al-Nashr al-Qanuni, Baghdad, 2022, p. 145.

<sup>38</sup> Article (12) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

<sup>39</sup> Article (20/1) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

<sup>40</sup> Article (21/1) of the Iraqi Trademarks and Commercial Indications Law No. (21) of 1957.

Iraqi law grants the effect of registration from the date of submission of the application, whereas in the European system the effect generally begins from the date of final registration. The European system also allows opposition before issuance of the certificate and provides advanced administrative procedures for settlement, whereas Iraqi law focuses on the judicial aspect after the issuance of the final administrative decision. The European system also facilitates protection of rights at the international level through the Madrid Agreement, whereas under the Iraqi system trademark protection remains confined to the territory of the state, which requires any person wishing to protect his mark internationally to obtain separate registration in each country.<sup>41</sup>

After completion of the procedures and granting of the certificate, the mark becomes legally protected, and its owner may use it on his products or services and prevent others from infringing it. He may also bring civil and criminal actions against violators. The certificate of registration enables the owner to benefit commercially from the mark, whether by sale, licensing, or pledge, since the mark becomes a commercial asset of economic value. This legal and commercial protection reflects a legislative philosophy aimed at achieving a balance between the rights of the owner and the rights of the consumer, and ensuring transparency and fair competition in the market, whether under Iraqi law or the European system.<sup>42</sup>

It should be noted that granting the trademark certificate does not mean that protection is absolute or perpetual. Rather, it is protection conditioned upon actual use and renewal of registration within the specified deadlines. This ensures a balance between protecting the private rights of the trademark owner and the public interest in preventing monopoly over unused marks. The certificate also does not grant automatic protection at the international level, because protection remains territorial by nature and does not extend except within the state in which registration took place, unless international registration systems such as the Madrid Agreement concerning the international registration of marks are used.<sup>43</sup>

Accordingly, granting the trademark certificate is not merely an administrative procedure, but an integrated legal process that includes the registration of rights, their publication, the granting of the official certificate, and ensuring the continuity of legal protection for a renewable ten-year period, with the possibility of challenging registration by cancellation according to specific legal controls. It also highlights the economic and legal role of the trademark, as it is at the same time an instrument of legal protection and a commercial asset, while requiring attention to legal differences between local and international systems when dealing with multiple markets.<sup>44</sup>

As for Iranian law, trademark protection is regulated under the Iranian Law on Patents, Industrial Designs and Trademarks of 1386. The trademark is granted legal protection after issuance of the final decision of acceptance by the Trademark Registration Office, and the legal effect of the mark begins from the date of issuance of the decision, not from the date of submission of the application. Iranian law also requires submission of the necessary official documents, including the company incorporation certificate or commercial license, together with a clear copy of the mark to be registered. The trademark owner is granted the right to object to any conflicting registration within a specified period after publication of the decision in the official gazette. Article (37) of the Iranian law provides that “every interested person has the right to file

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41 Muhammad Ridha Al-Kazimi, Protection of Trademarks in the Electronic Environment under Iraqi and Comparative Law, Master’s thesis, Al-Nahrain University, College of Law, 2023, p. 98.

42 Rami Majdi Fahmi Al-Sharbini, “Procedural Protection of the Trademark in the Digital Environment,” *Scientific Journal of Intellectual Property and Innovation Management*, no. 5, 2022, p. 373.

43 Smith, J. & Müller, A. *EU Trademark Law: Comparative Analysis with National Systems*. Oxford University Press, 2023, pp. 85–95.

44 Iman Al-Janabi and Basim Al-Haidari, “Effectiveness of Opposition Procedures in the Iraqi Trademark Registration System,” *Al-Qada Journal*, vol. 2, no. 67, 2023, p. 78.

an opposition within 30 days from the date of publication of the announcement on the ground that the mark does not comply with Articles 30 and 32. The administration shall: (1) notify the applicant and allow 20 days for reply; and (2) examine the oppositions and issue a decision accepting or rejecting them after considering the observations.”<sup>45</sup>

The Iranian procedures include the stage of publication and announcement, whereby the Trademark Office publishes the data of the mark in the official gazette, allowing others to submit oppositions within the specified period. The administration studies these oppositions and issues a decision accepting or rejecting them with reasons. Any interested person has the right to appeal the decision before the competent administrative court. Article (38) states that “after publication of the announcement and until registration of the mark, the applicant enjoys certain rights; however, if it is established that the mark was not legal at the time of the act, the defense shall be considered and the appropriate decision issued.” As for the term of protection of the mark under Iranian law, it is ten years, renewable by an official application submitted before the expiry of the protection period, with payment of the prescribed fees in accordance with the applicable regulations. Article (40/d) provides that “the term of registration is ten years, renewable for successive periods, with a grace period of six months subject to a late-payment penalty.”<sup>46</sup>

### **Conclusion**

In conclusion, the study has reached several findings and recommendations, the most prominent of which are as follows:

#### **First: Findings**

1. The trademark constitutes a fundamental pillar of intellectual property and ensures that products and services are distinguished and protected from imitation and infringement.
2. The trademark is a legal and economic tool for promoting fair competition and consumer confidence.
3. Trademark registration requires passing through principal stages: filing the application and documents, technical examination, publication of the application and the opportunity to file oppositions and then granting the official certificate.
4. There are differences between the Iraqi and Iranian systems with respect to the timing of the effect of protection and mechanisms of appeal, but their common objective is to protect owners’ rights and ensure fair competition and transparency of procedures.

#### **Second: Recommendations**

1. Enhancing legal awareness of the importance of the trademark and its rights.
2. Adopting unified international standards for trademark registration when dealing with global markets.
3. Developing electronic publication and opposition mechanisms to facilitate protection of rights and monitoring of infringements.
4. Recognizing that the trademark represents a combination of legal protection and economic value and achieves a balance between the rights of the owner and the public interest.

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<sup>45</sup> Article (37) of the Iranian Law on Patents, Industrial Designs and Trademarks of 1386.

<sup>46</sup> Article (40/d) of the Iranian Law on Patents, Industrial Designs and Trademarks of 1386.

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