

**PRACTITIONER PERSPECTIVE**



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Laurence Cohen, Partner at Latham & Watkins LLP, considers the changing intellectual property landscape in the Gulf and what companies must do to ensure the best brand protection.

The UAE and its neighbours are looking to move from oil-based to industrialised economies. As part of this, the road to intellectual property reform road is long and winding. Changes have been seen in the UAE, where the intellectual property regime can be rated positively. However even here change has been incremental. Recently, the Head of Customs of an Emirate was asked how he knew if goods were counterfeit and answered this wasn't a problem because if goods came from an accredited family importer they were genuine and if they didn't, they weren't. When asked how they could avoid counterfeit goods from Dubai's commercial hub coming to them, they gave the impression such a possibility was unthinkable. This ignores the fact relationships are changing from family importers to corporate importers and institutions need to catch up.

At the moment, each Emirate has its own system. Only one trademark can be registered which can make the system fragmented. I'd like to see it unified with appropriate authorities permitting multiple trademarks to be registered to overcome prioritisation problems. There are situations in the region where laws are treaty-compliant rather than practice-friendly and it would help if intellectual property judgments were published in

full and given binding, rather than persuasive precedent value.

Registration systems should be brought completely online and intellectual property formalities of notarisation and apostatising should be abandoned. The current system where copyright owners are forced to pre-register their rights to be able to enforce them should be removed. Finally, I'd like to see a revision of remedies for those whose rights are infringed.

Individuals infringing another's copyright or trademark are criminally liable. However, there is a lack of effective remedies, particularly when it comes to injunctions to prevent further distribution of offending goods and damage to an organisation's bottom line and reputation. Current violators can expect to pay 10-30,000 AED (or £2,000-5,000) which is not much of a deterrent. However, I feel because there is a limited amount of litigation and enforcement by customs officials is effective, there is no need for a specific intellectual property court in the UAE or across the Gulf.

While the region has a roadmap for IP reform change it may be slow. Some authorities have looked to Singapore for guidance while others, like Bahrain, look to the US. In the EU patent regulation took over 35 years to be implemented and in China it took some 20 years. Meanwhile, companies in the Gulf should get to know customs officials and ensure any rights they may want to protect are registered.

brand protection team who supports the local governments' efforts and work closely with key global agencies fighting counterfeits. The team has been active and effective, and their efforts have been widely recognised by many local government entities.

Additionally, the length of time involved in registering trademarks, and high registration-related costs in some countries can make it challenging to protect trademarks.

For a company like ours with hundreds of brands, and within them, many variants, it is cost-prohibitive to register every single trademark in every single country, in every related class of goods. On the enforcement side, the lack of injunctive relief and lack of legal recourse other than civil court action, if you do not have a local trademark registration can also be challenging in some countries in the region. However, globally, we have realised that the UAE is one of the key markets where we must ensure we have adequate trademark registrations. Key markets are on the list of countries where we register our trademarks.

Where you have a trademark registered in the UAE, the UAE is an exemplary jurisdiction with cost effective, time efficient enforcement by administrative and customs authorities. In our experience, authorities take immediate action in conducting raids and confiscating counterfeit goods.

**OTHER IMPACTS?**

The new Competition Law will impact on our operations as we will need to ensure all employees, at all levels are aware of it and fully comply with it. As you would expect from a multinational company operating in other jurisdictions with similar legislation in place, we already have our own self-regulating policies on this area. Our Code of Business Principles sets out guidelines directing our day-to-day operations and which all Unilever employees and third parties we deal with must follow wherever they are in the world. One of the Code's key messages is prohibition of anti-competitive practices.

This is supplemented and elaborated on by our Code Policy on Anti-Competition which has a minimum set of anti-competition guidelines to be followed in every country, including countries without competition legislation.

So, in reality, even in countries like the UAE where there have not been competition laws, we've already been complying with such guidelines. So once the competition law comes into effect here, we will just have to ensure, any additional considerations appearing in the law, are covered. The much anticipated UAE companies law may also have an impact on us and it will be interesting to see it in final form once it officially comes into effect.