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Civil Liability Arising from the Marketing of a Hotel Trademark

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Abstract:

A trademark serves as a means of communication between its owner and the beneficiary of the service. Economic enterprises seek to promote their goods or services by using attractive means, represented by well-known and distinctive trademarks, to attract and engage the largest possible number of consumers and engage them with the service provided. This is achieved through various advertising media, such as radio, television, the press, publications, and posters placed on public roads. The importance of this research lies in the hotel trademark's critical importance in our current time, as it has become closely linked to our daily lives. Products, goods, and services all bear distinct trademarks that distinguish them from similar products, given its close connection to trade and the economy, and the competition between companies and organizations over trademarks. The research problem is highlighted by the following question: To what extent do civil law provisions affect the protection of the marketing of hotel trademarks and the prevention of infringement?.

Keywords: Civil Liability, Trademark, Marketing, Civil Law Provisions, Economy.

1. Introduction:

Brand marketing emerged as a result of the globalization of trade and the astonishing development of communication, advertising, and publicity. It plays a distinct role in contemporary economic life. It is the first thing that attracts the consumer's attention when placed on products. Therefore, it is a symbol that distinguishes the source of a product or service. It also serves as a means of communication between the brand owner and the consumer of the product. Today, we

see that economic enterprises (hotel organizations) seek to promote their services using attractive means for the public, represented by well-known and distinctive brands, in order to attract and engage the largest possible number of guests and make them attached to the service. This is achieved through various advertising media, such as radio, television, the press, publications, and posters placed on public roads. Consumers often look at the brand that distinguishes the product before deciding to purchase it, as the brand eliminates the need to examine and investigate the quality of the product, as the fame and reputation of the brand signifies the quality or availability of the characteristics desired by the consumer in the product. It is customary for a product that does not bear a brand name to be undesirable to the consumer (the beneficiary of the service). Hotel brands have become more important than ever, as every

hotel owner competes for guests' attention. In today's fiercely competitive world, brand building helps accommodation providers stand out.

The hotel industry is a crowded field where complacency can quickly lead to irrelevance. Today, hotel organizations need a strong brand to continue attracting guests. Every hotel organization must have something unique or amazing to attract guests. When you're one of dozens of hotels promising a similarly amazing experience, a hotel brand is something competitors cannot truly imitate, and guests cannot easily compare it to other hotels in terms of price and features.

To understand this, we will focus on four topics: the first focuses on research methodology, the second on legal liability, the third on marketing as a general concept and the hotel brand, and the fourth on the legal protection of trademarks in Iraqi law.

1.1 Research Problem

It is necessary to address the issue of trademarks by examining civil liability in the legal marketing of trademarks. From this, the following problem was identified: To what extent do civil protection provisions affect the protection of hotel brand marketing and the prevention of infringement?

1.2 Research Objectives

The research aims to recognize that every investment requires a sound legal environment. Therefore, the hotel brand and its marketing seek to encourage free and fair competition, prevent unfair competition, and combat imitation and counterfeiting, which leads to increased capital, encourages local investment, and opens up trade.

1.3 The Importance of the Research

The importance of trademark research lies in its critical importance in our present time, as it has become closely linked to our daily lives. Products, goods, and services all bear distinct trademarks that distinguish them from similar products. Given its close connection to trade and the economy, and the

competition between companies over trademarks, its importance has increased, and it has become a driver of markets. A trademark has acquired a separate value that adds to the value of a company or project. In some cases, its value can be higher than both, as in the case of major trademarks. For this reason, trademark-related crimes have increased, such as trademark imitation to mislead consumers, in addition to trademark counterfeiting and the exploitation of registered trademarks.

1.4 Research Hypothesis

To answer the questions of the current research problem, the following main hypothesis was formulated:

(There is civil protection for the marketing of trademarks in Iraqi legislation).

1.5 Methodology

Throughout the research study, the researcher relied on the descriptive approach, which highlights Iraqi legislation pertaining to trademarks and the method of legal protection. This approach is interspersed with the inductive approach, which involves extrapolating a set of legal texts related to the subject of legal protection for trademarks. The research concluded with results and recommendations.

2. The Nature of Legal Liability:

2.1 The Concept of Legal Liability

Examining legal liability requires a complete detachment from the linguistic and technical meanings of liability. Therefore, liability, linguistically, is liability, from which one bear's responsibility or is held accountable. It means that which is required to be fulfilled or accountable, i.e., a person's obligation to bear the consequences of his actions when breaking a rule (Jalal, 2004, p. 5).

Liability, in general, is a modern legal term, which Islamic jurists equate with "guarantee," meaning that the guarantor

bears the cost of loss, loss, or defect if it occurs to something. Guarantee is applied to the obligation, given that the guarantor's responsibility is preoccupied with what he has guaranteed, so he is obligated to fulfill it. Among the meanings of guarantee among jurists is "the obligation to provide financial compensation for harm to others." Jurists used it to mean bearing the consequences of loss, which is the intended meaning in their principles: "loss for gain" and "tax for guarantee." Liability, in legal terminology, has several meanings that are similar to its linguistic meaning, including "being held accountable or accountable for a specific act or behavior." It has also been said that it is "the state of a person legally obligated to compensate for the harm caused to others by his wrongful act" (Othman, 1971, p. 27).

Meanwhile, (Mansour, 2006, p. 244) defined it as "the obligation of a person to compensate for the harm he caused to others or for the harmful act that created the obligation to compensate." (Al-Abbadi, 2014, p. 12) defined the concept of responsibility in general as a person's commitment to what he pledged to do, or refrain from doing. This concept may be expanded to include a person's commitment to bear the consequences of an act he committed himself, whether he was authorized by him or acting on his behalf. The concept of responsibility is expanded to include a person's commitment to bear the consequences of an act of a person subordinate to him or subject to his supervision, management, guardianship or trusteeship. It also includes the consequences of the actions of things and animals placed in his custody. Finally, the concept of responsibility is expanded to include a person's commitment to respect the obligations and behavior imposed on him by law, under penalty of bearing the consequences of breaching this commitment.

The comprehensive definition of legal liability: The obligation of a responsible person, within the limits of the law, to compensate others for the harm they suffer as a result of property damage or loss of benefits, or for partial or total, material or moral damage.

2.2 The Concept of Civil Liability

Legal scholars have differed greatly in their definition of civil

liability, the effects of which have been evident in court rulings and even in positive legislation. The term "civil liability" is not an ancient term in the language of law. Perhaps the first to establish the rules for this term were the eighteenth-century English philosophers. This term is not found among the drafters of the French Civil Code, who instead use the term "guarantee." As for Iraqi legislation, it uses the term "guarantee" or its derivatives in some texts, and the term "civil liability" and its derivatives in other texts.

The common term among Islamic Sharia scholars is "guarantee." They refer to the guarantee of the contract and the guarantee of the act. French jurists, however, speak more about contractual liability than about tort liability, which they often refer to as a civil crime or quasi-civil crime (Jalal, 2004, p. 10).

Civil liability is a person's obligation to compensate for harm caused to another, whether this obligation is specified in the texts or not. It is contractual if the breach occurs in a contract between the wrongdoer and the injured party, and tort if the breach occurs in a general legal obligation requiring that harm not be inflicted on another, whether this breach is intentional, such as someone who throws a stone at someone intentionally, causing them injury, or unintentional, such as someone who runs, trips, and grabs a person next to them to avoid falling, tearing their clothes, or dropping something they were holding in their hand, causing it to break. (Al-Tabbakh, 2005, p. 33).

2.3 The Importance of Civil Liability

Civil liability is of great importance from both a practical and theoretical perspective. Professor Sourdat was not exaggerating when he said, "Perhaps we cannot find in all of law a more productive and fertile rule than civil liability, given its many applications and diverse forms." In fact, the increasing importance and status of civil liability is nothing but a natural and inevitable consequence of the era in which we live. It is nothing but a tax on the progress and advancement of civilization. On this basis, civil liability has developed in this century to a degree that even the wisest legislators and most far-sighted jurists could have dreamed of in the last century.

What increases the importance of civil liability and its share of

practical application is this general human sentiment that prevails in our era, which is the attempt to find someone responsible for every harm that befalls the injured person, taking into account the idea of social security, which deprives the individual of compensation. In addition, the use of steam, electricity, atoms, and other similar tremendous powers and energies, although it has brought great good to man, has, on the other hand, made him vulnerable to many risks, accidents, and damages. Accidents have increased, and with them, the injured have turned to the judiciary to demand compensation for these harms and risks. All of this is coupled with a great and profound development in social and intellectual aspects.

This material development was accompanied by a psychological and moral development, if this expression is correct. In the past, many people were reluctant to demand compensation out of asceticism or self-restraint. Now, however, people have become more concerned that no harm befall them in their persons or their property.

The severity and danger of accidents and their frequent exposure to them have pushed them to cling to their right, or what they claim is their right, to compensation for any harm, whether material or moral. We now find a man who has stepped on something and slips in the lobby of a public place, or collides while walking with the iron of a protective curtain in front of a commercial store, or stumbles on a rock or a hole on the road, or hits his head on a tree on the sidewalk or a low curtain in a passenger parking lot. Instead of lamenting his bad luck that caused him this affliction or harm, he rushes to court, placing the responsibility on the owner of the place, the municipality, the passenger transport authority, demanding compensation (Al-Sanhuri, 1971, p. 843).

2.4 Types of Civil Liability

The subject of civil liability is one of the most important and complex legal topics. This importance is evident in the fact that there are two types of civil liability: one that arises from a breach of an obligation arising from a contract, which is contractual liability, and the other that arises from an activity that causes harm to others, which is tort liability (Al-Sanhouri, 1971, p. 843).

1) Tort Liability:

Tort liability, also known by some as "actual liability," "objective liability," "material liability," or "thing liability," is defined as the state of a person who has committed an act that requires him to compensate for the harm caused by another, or the state of a person being corrected as a result of committing an act that is harmful to another, which requires that person to compensate for the harm caused to another. Thus, the harmful act creates a state of civil liability, and the obligation to compensate for the damage is the effect of that legal status arising from the harmful activity. Accordingly, tort liability arises as a result of a breach of the general legal duty not to harm others. The effect of the breach of this duty, i.e., the occurrence of the harmful activity, is the obligation to redress the damage incurred by others.

For the injured party to claim compensation for the damage incurred, certain conditions must be met in the unlawful act. These conditions and elements have been the subject of deep disagreement among various laws. In the laws of the traditional capitalist system, liability requires fault, damage, and a causal relationship between the fault and the damage (Marcus, 1970, p. 118). This means that the damage must be the result of the perpetrator's fault. This is what is called personal liability based on fault, which must be proven by the injured party, as is the case in Egyptian law and laws influenced by French jurisprudence. Other laws do not require proof of the wrongdoer's fault by the injured party. This is influenced by Islamic jurisprudence, which calls it "liability," despite the absence of a general rule stipulating that every unlawful harmful act obligates its perpetrator to compensate for the resulting damage.

An act that causes harm to others, or that is likely to harm others and obligates its perpetrator, even if they are not discerning, to compensate for the damage is described as a civil crime. Its penalty is to obligate the perpetrator to pay compensation, and it is thus the source of the obligation. (Al-Sa'idi, 2022, p. 119)

2) Contractual Liability:

From our discussion of tortious liability, we have learned that civil liability is generally divided into contractual liability and tortious liability. The second occurs when a person fails to fulfill the general duty imposed by law on every person, requiring caution and care in their behavior toward others, so as not to cause harm to others. Contractual liability, on the other hand, occurs when one of the parties to a contract fails to fulfill one of the obligations imposed by the contract. Accordingly, contractual liability is the penalty for the contracting parties' failure to fulfill the obligations arising from the contract (Marks, 1970, p. 118).

A contract in a given society reflects the circumstances, conditions, and goals of that society at a particular stage, evolving with its development and contributing effectively to its prosperity and progress. These circumstances are constantly evolving under the influence of social, political, and economic factors. A contract is defined as an agreement between two identical wills to create, transfer, modify, or terminate an obligation. The contracting parties intend to create a legal effect by this agreement. If this is not the case, then a contract cannot exist between them in the sense we intend. Contractual liability arises when three conditions are met: contractual error, damage, and a causal relationship between the error and the damage (Marks, 1970, p. 119). Contractual damage is incurred by the debtor's failure to fulfill his obligation arising from the contract. In this sense, fault occurs

regardless of the reason for the failure to fulfill the obligation, whether it is due to the debtor's fraud and bad faith, negligence, or an act devoid of negligence. The debtor's failure to fulfill his obligation is in itself a contractual fault.

As for damage, it refers here to what befalls the contracting party. It may be material, affecting his property, or moral, affecting his honor and reputation, or affecting his emotions and feelings.

It is not sufficient for the debtor to have fault and for the creditor to suffer damage; the fault must also be the cause of the damage. If the causal relationship is severed, contractual liability is negated. The debtor must prove that the failure to perform was due to an external cause for which he has no evidence. (Kah Shah, 2004, p. 56).

Contractual liability is distinguished from tort liability in terms of compensation, solidarity between debtors, the extent and scope of liability for the actions of others, and exemption from liability.

In terms of compensation, a contracting party who breaches his obligation is only liable under contractual liability for damages expected at the time of the contract, unless there was fraud or gross negligence. However, under tort liability, the party responsible is liable for damages expected at the time of the harmful act, as well as for unforeseen damages. As for joint liability between debtors, in contractual liability, there is no joint liability except based on an explicit clause in the contract or by law. In tort liability, however, the injured party can claim full compensation from any of the parties responsible for his injury; in other words, they are jointly liable by law. Regarding the extent and scope of liability for the acts of others, the debtor, within the contractual scope, is liable for the acts of all those whom he has sought assistance in the implementation of his

obligation, unlike the case within the tort scope, where the list of persons for whom the debtor is liable is specified by the provisions of the law. As far as exemption from liability is concerned, the contracting party has the right within the contractual scope to agree to exempt the debtor from liability for damages caused by the acts of those whom he has sought assistance in the event of their failure to implement the obligation, whether the failure is total or partial. The creditor can resort directly to them without the original debtor. However, within the scope of tort liability, this agreement is invalid for violating public order, since liability therein does not arise from the will of individuals. (Al-Fatlawi, 2014, p. 22).

3. Cognitive Foundations of Marketing

3.1 The Concept of Marketing:

The term marketing first appeared in the United States at the beginning of the 19th century. It refers to the market, a set of processes or activities that work to discover customer desires and develop a set of products or services that satisfy their desires and generate profits for the organization within an appropriate period.

According to the American Marketing Association, marketing was defined in 1965 as the practice of activities that direct the flow of goods and services from the producer to the consumer or user (Al-Nusour, 2015, p. 23).

Due to the criticism directed at the association, it issued another definition of marketing in 1985, stating that it is the processes related to planning and implementing concepts related to pricing, promotion, and distribution of ideas, goods, and services to achieve exchange processes aimed at satisfying individuals and meeting organizational goals (Al-Rubaie, 2015, p. 28). Among the simplest definitions is that it is the process of identifying, diagnosing, and meeting human and social needs (Al-Lami, 2016, p. 17). According to Armstrong, marketing is more important than any other business function

with customers. He states, "Marketing is the management of profitable customer relationships" (Armstrong, 2016, p. 5). The goal of marketing is to attract new customers by providing them with greater value, retain them, and develop relationships with them through achieving their satisfaction.

Michon views marketing as a state of mind and attitude, a management choice, and a set of techniques that, through the presentation of goods and services, allow the needs and desires of consumers to be met in a way that is convenient for the company (Michon, 2006, p. 1).

Marketing can be defined as a way of thinking based on developing and implementing plans and strategies in the field, starting from identifying consumer needs and desires, leading to satisfaction and building lasting relationships with them. It also depends on providing goods, services, and ideas at the right place and time (distribution activity) at competitive prices, and through effective promotional activities to achieve the organization's goals. (Abdul Salam, 2018, p. 66).

Marketing is also defined as an integrated system consisting of a set of activities based on planning, coordinating, and promoting goods and services that satisfy the needs of current and potential customers. Marketing is the activity of individuals directed towards satisfying needs and desires through the process of exchange. (Hamdi, 2014, p. 85).

We summarize the above to develop the following definition of marketing: It is an activity, function, or administrative process carried out by a specific entity within an organization called marketing management. This includes planning, implementing, directing, and controlling the efforts of individuals working in the marketing function. They develop policies and programs for products, goods, services, ideas, people, places, and organizations, as well as pricing, distributing, and promoting them. This is done with the aim of creating exchanges (sales) in the market with different types of consumers, meeting their needs and achieving their goals and the organization's objectives. (Suwaidan, 2019, p. 19).

3.2 Marketing Tourism Brands

When economists often talk about marketing, they always

associate it with commodity production. They usually separate it from the service sector in general and the tourism sector in particular. Although the tourism sector is classified as a service sector, it performs a production function, producing what is known in the tourism sector as a tourism product. Therefore, tourism marketing emerged specifically to market tourism products and services. Interest in the tourism sector has increased recently after countries realized its significant role in economic development. Consequently, interest in tourism marketing has increased as a pillar of revitalizing the tourism sector. From here, the terms tourism marketing and tourism brand emerged. Tourism marketing is defined as all the organized efforts and activities performed in a thoughtful harmony by all tourism service providers, with their various components and elements, aimed at satisfying the tastes of recipients and those seeking tourism in all its forms. (Bouamoucha, 2011, p. 11).

Bartles defined it as a tourist-oriented process aimed at securing and meeting their consumer needs through various distribution channels composed of various tourism organizations that interact with these tourists, under the pressure of the constraints of the external environment in which the interaction takes place, such as economic, technological, ethical, and social constraints. This process aims to facilitate the flow of exchanges to the target market, thereby improving exchange and consumption processes. (Al-Hadid, 1992, p. 12).

Brand marketing is defined as the process of creating and developing a relationship between a brand and consumers. Rather than highlighting an individual product or service, brand marketing promotes the entire brand, using products and services as proof points that support the brand promise. Brand marketing is a method of promoting your product or service by promoting your brand as a whole. Essentially, it tells the story of your service or product by affirming your entire brand. Brand marketing also promotes the brand's products or services in a way that elevates the brand as a whole. It involves creating and maintaining relationships between the brand and consumers. It's worth noting that the channels available for a brand marketing strategy are the same channels companies can use for product marketing activities, such as digital, social, and

paid search advertising. (Meem Journal of Business Administration, 2020, p. 3).

3.3 The Importance of Marketing

Marketing has become a strategic asset within the organization, even within its organizational structure. Its role is not limited to placing products on the market and meeting customer needs, but its importance is evident in other areas (Abu Qahf, 2002, p. 25).

- I. Creating formal utility: Marketers play a significant role in communicating necessary information about consumer needs and desires and transferring it to production teams. This information helps in defining and designing the product, selecting its basic components, quality level, method of use, etc.
- II. . Creating spatial and temporal utility: Spatial utility is achieved through distribution, which allows products to be transported and supplied to the appropriate location. Temporal utility is highlighted through storage, which allows products to be available at various times.
- III. Creating job opportunities and reducing unemployment: Due to the expansion of marketing activity and its multiple branches, it recruits a multidisciplinary workforce (design, market research, promotion, distribution, etc).
- IV. Exploiting available market opportunities and exploring new markets.
- V. Confronting local and international competition.

It is worth noting that modern marketing has become extremely important at the present time to increase competition in tourism markets between various organizations, as each organization strives to be the best in the eyes of tourists. This importance can be explained as follows: (Al-Hadid, 1992, p. 14).

- 1- Marketing helps in studying consumer behavior: The sensitivity of managerial decisions depends on behavioral aspects. If we have a good understanding

of consumer behavior, it becomes easier to study the degree or level of their expectations.

- 2- Marketing helps in managing information: To be more specific, when the tourism market is experiencing intense competition, when we talk about managing multiple industries, information management becomes important. Applying marketing principles in the tourism industry focuses on key decisions based on accurate information. Naturally, this requires strengthening marketing research to ensure that the services provided match the services tourists expect.
- 3- Marketing helps increase competition: Even in the tourism industry, intense competition exists between tourism companies. This requires providing distinguished services to tourists so they can receive appropriate services at competitive prices. Applying marketing principles in the tourism industry is essential, as marketing decisions facilitate improvements in the services provided to tourists .
- 4- Marketing helps facilitate the pricing process: The flexibility of tourism marketing is linked to pricing, making it more credible. Pricing is a complex process that requires prior study of the pricing process and monitoring the policies of competing tourism establishments. In addition, business owners must be fully aware of changing market conditions, as marketing principles are important for highlighting trends that serve the private and public interests of society.
- 5- Marketing contributes to the development of promotional processes: Marketing strategies play a significant role in influencing consumers. To increase demand, marketing organizations must facilitate innovation in promotional decisions. Here, advertisements and promotional campaigns become particularly important. If advertising slogans and

commercials can influence consumers, the process of converting these target consumers into actual consumers becomes easier and more widespread.

3.4 Marketing Objectives

There is no doubt that marketing activity, like other activities, aspires to achieve goals that fall within the organization's strategy. Marketing objectives have been defined as: "The set of final results that various business organizations wish to achieve through marketing activity" (Al-Nusour, 2015, p. 28). Marketing objectives can be classified into three main axes (Al-Rubaie, 2015, p. 35 – 37).

- A. **Profit Achievement:** Every organization works to maximize its profits. However, this goal often remains difficult to achieve. The organization may find itself in an economic environment that requires it to confront the threats and risks that characterize its external environment (competition, government price controls, technological developments, etc.). To ensure the organization's survival and growth, marketing activity plays a role in achieving profit by increasing sales. This is achieved by developing new products in the market, targeting profitable market segments, and exploiting available market opportunities (modern technology, limited competition, studying market requirements, etc.)
- B. **Growth:** Marketing activity plays a role in achieving growth by increasing sales. Perhaps one of the most prominent ways to achieve this is by seeking to conquer new markets and expanding into other sectors to increase market share. Among the most prominent factors driving growth are increased organizational productivity resulting from increased demand and increased competition, which drives the organization to seek new market opportunities.
- C. **Survival:** Every organization aspires to survive, and this can only be achieved by combining the efforts of

the various departments and components that comprise the organization. Marketing activity plays an effective role in achieving this goal through:

- Developing and updating marketing information systems, which in turn provides managers with the information necessary to make timely and effective decisions.
- Keeping pace with market developments and exploiting marketing opportunities (expanding the current market, conquering new markets, or shifting toward profitable products).
- Given the marketer's proximity to the market and the consumer, one of the most important objectives of marketing management is to predict and understand the current and future needs and desires of consumers and to provide the desired satisfaction or gratification by offering appropriate goods and services.

3.4 Marketing Beneficiaries

Marketing beneficiaries can be summarized as follows: (Al-Nusour, 2015, p. 42).

1. The producing organization that seeks to achieve its long-term goals in addition to profit.
2. The consumer, whose needs and requirements can be met at the appropriate time, place, and price.
3. Service providers and recipients.
4. The community, whose needs are met after taking into account its culture, customs, and traditions.
5. Marketing event workers who receive wages, commissions, bonuses, and incentives.
6. Improving people's standard of living by offering innovative products.

7. Leveraging competition between organizations to compete to provide the best possible products and services.

4. Legal Protection for Marketing Hotel Brands

Trademarks are an important tool for distinguishing products and services and play a vital role in business development and success. In this context, brand owners must be aware of the civil legal liability associated with marketing these brands. A trademark is defined as a regular trademark whose definition and conditions are subject to the general provisions for trademarks.

However, it has become well-known in the markets and has attracted the attention of those working in the field of industry, trade, or services because it is placed on high-quality and distinctive products, which has given it global fame. This fame comes as a result of several factors, including the long-standing use of the trademark (its long-term use on the products or services that distinguish it), its popularity, widespread distribution, and spread in global markets, frequent advertising, quality of production, regular service, and other factors that make the trademark globally famous. Examples of this include the Coca-Cola trademark for soft drinks, the Mercedes trademark for cars, the Sony trademark for electrical appliances, the Visa trademark for electronic payment cards, and others, the Marriott Hotels & Resorts trademark, and the Hilton Hotels & Resorts trademark, which has topped the list of hotel brands for nine consecutive years, according to Brand Finance, a leading global consultancy in the field of brand valuation.

Brand Finance is the world's leading brand valuation consultancy. Brand Finance bridges the gap between marketing and finance. It assesses the strength of brands and determines their financial value to help organizations make strategic decisions and create and implement marketing strategies for a specific brand or product. It works to ensure that the brand's identity is maintained and successfully communicated to the target audience. Brand Finance is headquartered in London and operates in more than (25) countries. Hotel brand image is a pivotal concept in marketing literature, as it is closely linked

to consumers' use of its products and services. It reflects the symbolism of their consumption, which is a form of self-expression (Sasmnita & Mohd Suki, 2015, p. 278). It is also directly related to the attitudes and beliefs they hold. They often purchase products from well-known brands because they feel more comfortable with things they already know and are familiar with (Wijaya, 2013, p. 58).

Brand image can be defined as: a set of beliefs about a particular brand. (Alhaddad, 2014, p. 29) In this regard, Kotler and Armstrong see belief as a descriptive idea that people have about something, which makes marketers interested in the beliefs that consumers hold about certain products and services because these beliefs form an image in their minds about the product and the brand, which in turn affects their purchasing behavior (Kotler & Armstrong, 2011, p. 150), while Aaker considered it a set of mental associations related to the brand (Alhaddad, 2014, p. 29), and Keller confirmed this concept in his definition of it as: "A set of perceptions related to the brand that consumers keep in their minds (Keller, 1993, p. 2).

It is worth noting that brand image is one of the most important trends in the global hospitality industry, as it has received significant attention in recent years from academics and practitioners in the field of marketing, due to the many advantages that this concept can achieve for hotel establishments (Martinez & del Bosque, 2014, p. 267), such as improving their financial performance and increasing their profits (Lahap & others, 2016, p.150).

According to (Muqabla, 2009, p. 105), the mental image of hotel establishments is ingrained in guests and customers through a set of factors, some of which can be summarized in the following points:

- Location and construction: Among the factors influencing customers' impressions of a hotel establishment are its exterior design or parking lot, as well as signs and directions, the cooperation of the concierge, and general cleanliness.
- Check-in staff competency: Courteous treatment, a decent and clean appearance, language proficiency, and smooth communication with customers can all

influence the image formed in their minds about the hotel.

- Rooms: These are among the most important places that leave a strong impression on visitors, as the appearance of the room (shape, size, finish, etc.) is most ingrained in their minds.
- Facilities: This includes spaces for meetings and interviews, the general impression of the quality and prices of food and beverages, and entertainment centers.
- Components of a Hotel Brand: According to Cho's (2011, p.16) model, there are three main components for measuring a hotel brand's image. She based her study on Roberts' "Brand Love Theory," which indicates that in order to achieve customer and guest loyalty to a brand, it is necessary to create a brand love experience. This experience is an experience through which the customer or guest feels a strong and deep emotional connection. She also stated that three basic components are required to create a brand love experience: the cognitive component, the sensory component, and the emotional component. She relied on these same components to build her model, and this concept can be summarized as follows:
 - a) The cognitive component: The cognitive dimension reflects the images that the consumer forms in their mind about the brand after they collect, organize, and analyze a set of ideas and data that form in their mind as a result of one or more experiences with it. The customer's experience is a fundamental element of the cognitive component, which influences their perception of the brand and their overall opinion of it.

- b) The Sensory Component: The sensory dimension refers to the consumer's sensory experience with the brand, which is crystallized through the five senses (sight, smell, hearing, touch, and taste). This sensory experience is enjoyable when certain elements are present, such as pleasant music, attractive colors and designs, fragrant scents, a comfortable texture, or pleasant tastes.
- c) The Emotional Component: This dimension refers to the feelings a consumer may experience when interacting with a particular brand or experiencing it. The emotional experience can develop positive feelings and thoughts toward the organization and its offerings.

4.1 Trademark Protection According to the Law

Trademarks are distinguished by the fact that their legal protection constitutes an exception to two fundamental principles of trademark law: (Al-Ahmar, 2004, p. 341).

- i. The principle of territoriality: Trademark protection is limited only to the territory of the country in which it is registered or used. Therefore, any person may register the use of a trademark in a country where it has not been registered or used. However, this is inconsistent with the trademark, and this procedure is no longer sufficient to provide legal protection for it in other countries where the trademark has become well-known but has not been registered. This is especially true since the principle of territoriality encourages trademark infringement in countries where it has not been registered, leading to unlawful use by others and harming the interests of its owner.
- ii. The principle of specialization: This means that trademark protection is limited only when used for products or services similar to those for which the

trademark is registered, but it may be used to distinguish products or services that are not similar (different).

This is inconsistent with the brand, as its popularity and spread have reached a point where it is difficult to accept its use on products that are not similar to those associated with it, due to its association in the minds of consumers. Its use by others to distinguish dissimilar products leads to confusion and ambiguity among consumers about the source of the products. This wastes the efforts and expenses that brand owners have spent on advertising and promotion to achieve brand fame. A trademark enjoys civil protection when used by others on goods or services similar to those on which the trademark was placed, even if it is not registered or used within the country for which protection is required. This is what was indicated by the Iraqi Trademark Law No. (23) of 1957, amended by Law No. (80) of 2004, in Article (4/F2), which stipulates that "the owner of the trademark enjoys the protection granted under this law even if the trademark is not registered in Iraq." Likewise, the Egyptian Intellectual Property Law in Article (68/F1), which stipulates that "the owner of the trademark, whether worldwide or in the Arab Republic of Egypt, has the right to enjoy the protection stipulated in this law even if it is not registered in the Arab Republic of Egypt." It is clear to us from this that the Egyptian legislator stipulates that for a trademark to enjoy civil protection in Egypt, it must be global in addition to its fame within Egypt. That is, the fame of the trademark outside Egypt is not sufficient, regardless of the degree of this fame, but it must also be famous within Egypt.

The Iraqi legislator stipulated that the trademark be well-known and did not specify the place of fame of the trademark. We believe that the legislator intended the trademark to be well-known within Iraq (i.e., the trademark was marketed in the country of origin) in order for it to enjoy protection. If he had intended otherwise, he would have explicitly stated this. The fame of the trademark within the country from which protection is sought is a logical condition, as it is inconceivable that we would ask a country to protect a trademark that is not well-known to it, because its use by others does not lead to confusion or bewilderment among consumers about the source

of the products bearing the trademark due to their lack of knowledge of the trademark that is claimed to be famous.

Therefore, the trademark enjoys protection without requiring registration. Protection here is linked to fame. However, the trademark owner enjoys all the rights arising from ownership of the registered trademark, even if it is not registered, including the right to monopolize the exploitation of the trademark by its owner alone, and his right to establish a usufruct right over it or dispose of it with or without compensation, just like the owner of the registered trademark (Arafa, 2003, p. 118).

In addition, we find that the Iraqi Trademark Law has indicated that the Trademark Registrar must refrain from registering marks identical or similar to a well-known mark if the registration was submitted by someone other than the owner of the well-known mark and related to the use of the mark to distinguish products or services similar to those bearing the well-known mark. This is stated in Article (2/Paragraph 8), which states that "For the purpose of this law, marks identical or similar to a well-known mark shall not be registered if the registration of that mark would cause confusion among consumers regarding the goods distinguished by the mark or similar goods." This is consistent with the text of Article (8/Paragraph 12) of the Jordanian Trademark Law. This is also indicated by the Egyptian Intellectual Property Law in Article (68/Paragraph 2), which states that "The Authority must reject, on its own initiative, any application to register a mark identical to a mark with the intention of using the mark to distinguish products similar to the products for which the mark is used, unless the application is submitted by the owner of the well-known mark." Likewise, Article (714/4) of the French Intellectual Property Law No. (597) of 1999 stipulates that "a famous trademark enjoys legal protection in France even if it is not registered." The French legislator does not require that a famous trademark be registered in order to be protected, but rather requires that it be used so that it can be invoked (Zain Al-Din, 2005, p. 155).

At the level of international agreements, we find the Paris Convention for the Protection of Industrial Property of 1883 as the first legal basis for trademark protection in countries where

it has not been registered, as stated in Article 6/2, which states the following: "The countries of the Union undertake, either on their own initiative if their legislation so permits, or at the request of the interested party, to refuse or invalidate the registration and to prohibit the use of an industrial or commercial mark which constitutes a reproduction, imitation, or translation liable to create confusion with a trademark which, in the opinion of the competent authority of the country of registration or use, is already well-known as the mark of a person enjoying the benefits of this Convention and used for identical or similar goods. This Convention also applies if the essential part of the mark constitutes a reproduction or imitation of such a well-known mark which is liable to create confusion with it." We note that the text of the Convention places the responsibility on each country party to take the initiative to protect the mark, either on its own initiative or at the request of the interested party, by refusing the registration application of the infringing mark, or canceling its registration if it has already been registered, and prohibiting its use if it has already been used. The TRIPS Agreement deals with trademarks through Article 16/1, which states that "the owner of a registered trademark has the absolute right to prevent all parties who have not obtained the owner's consent from using the same or a similar mark in their business for the same or similar goods and services as those for which the trademark is registered, where such use may result in a likelihood of confusion. Confusion is assumed in the case of the use of an identical trademark for identical goods or services. The rights described above shall not prejudice any prior rights currently in existence," or affect the ability of member countries to grant rights in trademarks based on use. Likewise, the Joint Recommendation on the Protection of a Well-Known Mark stipulates in Article 4/Paragraph 1-A that "a mark shall be deemed to be in conflict with a well-known mark if the mark, or a substantial part thereof, constitutes a copy, imitation, translation, or literal transfer of the well-known mark, creating confusion, or if the mark, or a substantial part thereof, is used, registered, or applied for in connection with goods or services identical or similar to those to which the well-known mark applies." From all of the above, we conclude that civil protection for a well-known trademark that has been marketed is based on the fame and reputation

the mark has attained. Therefore, its use by third parties may suggest to the consumer the existence of a commercial connection between the third party's goods and the goods of the owner of the well-known mark, which may lead to unfair competition with the owner of the mark (Al-Kharshoum, 2011, p. 195).

Some agreements have set a specific period for cancelling the registration of a mark, which is a period of not less than five years starting from the date of registration of a third party if the third party is in good faith. However, if the third party is in bad faith, this period does not apply, but rather the period is indefinite. This is what the Paris Agreement stipulates in its article (6/Paragraph 2-2 and 3) which states that "a period of not less than five years from the date of registration must be granted for requesting the cancellation of such a mark. The countries of the Union may specify a period within which a request must be made to prevent its use. No period may be specified for requesting the cancellation or prevention of the use of a mark that has been registered or used in bad faith." This was also indicated by the Joint Recommendation in Article (4/3 and 5), as well as by the French Intellectual Property Law in Article (714/4) (Hanna, 2011, p. 231). The reason for prohibiting the use of a well-known trademark by third parties is to protect the trademark owner from imitation and to prevent confusion among consumers, which would lead them to believe that the source of the product they desire is the owner of the original trademark, which may be of poor quality, causing harm to the owner of the original trademark, whether in the field of goods or services. Examples of these include the Australian Kraft brand for dairy products, the Hilton brand for hotel services, and other trademarks that enjoy legal protection. Finally, we would like to point out that civil protection for the marketing of a well-known trademark is achieved through an unfair competition lawsuit, which is an application of the general rules of tortious liability based on harmful acts. This is stipulated in Article (204) of the Iraqi Civil Code No. 40 of 1951, which stipulates that "any infringement that causes harm to others requires compensation." Likewise, Article (163) of the Egyptian Civil Code No. (131) of 1948 stipulates that "any error that causes harm to a third party obligates the perpetrator to pay compensation." That is, the owner of a famous trademark has

the right to file this lawsuit before the competent authorities (civil courts) when the conditions are met, namely, the error, the harm, and the causal relationship between them. Error occurs when a third party infringes on the famous trademark in any form, such as imitating, counterfeiting, or using it in bad faith for similar products or services. There is no distinction here between material or moral damage, as both warrant compensation. This damage to the trademark owner must be the result of and caused by the infringer's actions. If these conditions are met in the lawsuit, the court must take all legal measures to prevent the infringer from continuing to infringe on the trademark and to eliminate the harm. It must also award compensation commensurate with the damage, whether the famous trademark is registered or unregistered. This is what Article (66) of the Egyptian Commercial Code No. (17) of 1999 indicates:

- 1- Any act that violates the customs and principles observed in commercial transactions is considered unfair competition, including, in particular, infringement on the trademarks of others.
- 2- Any act of unfair competition obligates the perpetrator to compensate for the damage caused by it. The court may order compensation by eliminating the damage and publishing the judgment at the expense of the convicted person in a daily newspaper.

This lawsuit may be filed by any person harmed by the use of the well-known trademark by others on similar or dissimilar goods. If there are multiple harmed parties, each of them may file the lawsuit independently, provided they prove the harm against them. The lawsuit may be filed against the infringer of the trademark and any other party who participated in the infringement, provided they prove they knew of the illegality of the act or could have known of it, such as a printing press owner who prints cards bearing a counterfeit trademark (Lutfi, 2008: 234).

Ultimately, a trademark or service mark is primarily a means of marketing a company's products and services in the market and competing with similar products and services. Successful use of this means can lead to the success of the company itself

and make the brand itself more financially valuable. A company may focus more on using trademarks to communicate its products and services to local, regional, and international markets. Choosing and developing a trademark by a company is a delicate and complex process that requires careful study and attention from all departments of the company. There are many fundamental considerations that must be taken into account by the company when choosing and developing a trademark.

5. Conclusion and Recommendations

5.1 Conclusion

Trademarks aims to facilitate identification of the source of product manufacturing, the source of sales, or the source of services, which helps attract consumers. There are conditions that must be met for a trademark to enjoy legal protection: it must be legitimate, distinctive, and does not break the public order and public morals, and must be registered in accordance with the relevant legislation. A trademark or service mark is primarily a means of marketing a company's products and services in the market and competing with similar products and services. Civil protection for a well-known trademark that has been marketed is based on the fame and reputation that the trademark has achieved. Trademarks represent an important tool in distinguishing products and services and play a vital role in business development and success.

5.2 Recommendations

Based on the results of the study, the researchers recommend the following:

1. It is necessary to update legislation and laws related to trademark protection to include deterrent penalties.
2. Establish specialized courts to solve disputes in the field of intellectual and industrial property, by working expert judges and lawyers specialized in this field.
3. Tightening the penalties stipulated in the Trademark Law, such as increasing the prison term for counterfeiters.

4. It is necessary to join the World Trade Organization, and this project should not remain merely dead letter, so that trademarks, designs, and industrial models enjoy the necessary protection.

5. Maintaining constant knowledge of developments in trademark laws at the national and global levels.6. Expanding the imposition of security throughout the geographical area of Iraq.

6. Relying on legal experts in the field of intellectual property to assist in implementing, marketing, and protecting trademark rights.

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