

A Look at Non-Conventional Trademarks

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February 2015

The term “trademark” normally refers to a conventional set of marks (e.g. letters, numerals, words, logos, pictures, symbols, or combinations of one or more of these elements) provided that such signs are capable of distinguishing the goods and/or services of one trader to the other. However, certain types of non-conventional trademarks have become more widely accepted in recent times as a result of legislative changes expanding the definition of “trademark”.

A non-conventional trademark, also known as a nontraditional trademark, is any new type of trademark which does not belong to a pre-existing, conventional category of trade mark, and which is often difficult to register, but which may nevertheless fulfil the essential trademark function of uniquely identifying the commercial origin of products or services. The term is broadly inclusive as it encompasses marks which do not fall into the conventional set of marks mentioned above, and therefore includes marks based on appearance, shape, sound, smell, taste and texture. The most important factor when it comes to conventional or non-conventional trademarks is that the mark is distinguishable.

Non-conventional trademarks may therefore be *visible* signs (e.g. colours, shapes, moving images, holograms and positions), or *non-visible* signs (e.g. sounds, scents, tastes and textures). One famous case is the Tiffany Blue which is synonymous with Tiffany & Co., the New York City jewellery company. *Tiffany & Co.’s unique shade of the colour blue, as displayed on its packaging and boxes, is trademarked. Accordingly Tiffany & Co. is protected from other jewellers who would use the same colour for boxes or packaging and thereby cause brand confusion.*

Similarly in the UAE, colours have been granted trademark protection when used in specific, limited contexts such as packaging or marketing. In fact, in April of 2007, the UAE trademark office granted trademark protection for a particular shade of orange used on the packaging of a rice product. In recent times, sounds have been increasingly used as trademarks in the marketplace. However, traditionally a sound was not considered to be a trademark and it has been difficult to protect sound as a trademark through registration.

In Bahrain, by virtue of an official Circular number 14/23-3 dated 18 November 2014, the Trademark Registry has now started accepting trademark applications for sound trademarks. The requirements to file a sound trademark in Bahrain are:

- Musical note composition of the sound trademark;
- Compact Disc containing the music files in MP3 audio file or any other compatible format, together with other required documents for registering a trademark, such as legalised power of attorney and legalised certificate of incorporation of the applicant company.

In practice, when seeking registration of non-conventional trademarks such as sounds and colors it is important to remember that such identifiers are registrable and enforceable so long as they are capable of identifying the trader as the source of the goods and/or services. As such, maintaining distinctivity and exclusivity is an important factor when considering registration of non-conventional trademarks.