



## Parallel Import in the Middle East

### **QATAR:**

Kindly note that parallel importing cannot be stopped in Qatar even if the trademark owner has registered it in the country. The only way to stop such an act is to have an exclusive agent registered at the agency department of The Ministry of Economy and Commerce who have the right to file a complaint against any importer or distributor.

### **JORDAN:**

Parallel import is allowed in Jordan as long as the imported goods are genuine regardless of whether these goods were imported by the exclusive agent or not.

The Customs Law has excluded goods in-transit through the border measures, however; if the competent authority obtained information on any in-transit shipment that may carry counterfeit goods, they are authorized to stop its entrance as such an act is considered as a crime in the territory of Jordan.

### **UAE:**

On the importation of original products and sale of the same, please note that any trademark owner has no right to take any action under the UAE Trademark Law to prohibit the importation of original products to the United Arab Emirates.

Kindly be advised that there is no such law prevailing in the United Arab Emirates to stop this kind of importation. Under the UAE Law, no term recognized as Parallel Import. The only way to stop the entering of these products into the United Arab Emirates is to enter into an Agency Agreement with a Local agent. The UAE Agency Law provides an exclusive right to an Agent to sell the products covered under the Agreement in the United Arab Emirates. Moreover, the Commercial Agents are also entitled to prevent products subject to their agency from being imported into the UAE, if the

agent is not the consignee. The Agent has the right to prohibit the sale by a third party and to file a complaint before the police to prohibit the selling of the products in addition to a complaint before the Customs Authority to prohibit the concerned products from entering into the country.

If any party has an exclusive distributor (registered at the Ministry of Economy) for importing and distributing his products in the United Arab Emirates, the said agent has the right to prohibit any third party from importing the products covered under the Distribution or Agency Agreement as the Distributor is awarded with this right under the UAE Agency Law.

The Distributor may file a complaint before the Customs Authority requesting them to prohibit importation of any concern products (covered under the registered Distribution Agreement) by any third party in the United Arab Emirates.

We need to clarify the following issues pertaining to the execution of a Distribution/Agency Agreement in the United Arab Emirates:

- A. The Distribution Agreement must be registered at the Ministry of Economy. The non-registration of the Agreement will render the whole Agreement as Void-ab-intio.
- B. For entering into the Distribution Agreement, the agent must be a citizen of the United Arab Emirates or in case of entity, it must be owned by UAE citizens (“Nationals”). Otherwise, the contract would be null and void and the contracting parties would be subject to penalties and punishments prescribed by the UAE Agency Law.

### **New Agency Agreement**

The client should consider the above-mentioned conditions for appointing a new agent in the United Arab Emirates along with the below-mentioned facts.

### **Termination of Agency Agreement:**

The ability to terminate a Commercial Agency under Article 8 of the Agency Law was quite difficult unless done for valid reasons acceptable to the Commercial Agencies Committee. Foreign principals will be prevented from terminating or refusing to renew the agency unless they can show to the Committee and/or the concerned court (as applicable) “a material reason justifying its termination or non-renewal”. The requirement for a “justifiable cause” has now been reintroduced. This new amendment under Law No. 2 of 2010 does not allow both parties - even if in fixed term agreements - to go directly to the court before filing their dispute with the Committee.

It is therefore now more important to have very clear detailed and binding termination Provisions in Commercial Agency Agreements. For example, failure to meet specific targets, dealing with competitors and competitive commodities and any other material provisions that an agent is not in compliance with could constitute a “material breach” thus enabling the Committee and/or the court (as applicable) to accept that there is “a material reason justifying” the termination or non-renewal of the agreement.

## **Registration of New Agency Agreements**

A new Agency Agreement may not be registered in the name of another agent, regardless of whether the previous Agency Agreement provides for a fixed term. The new agency may only be registered:

- If the previous agreement was terminated by consensus of both the principal and the agent;
- Where it is found that there is “a material reason justifying its termination or non-renewal” that is approved by the Committee; or
- If “a final and conclusive judicial judgment is rendered ordering that the agency be struck off”.

## **Suggestions:**

We suggest that a trademark owner can enter into an Agency Agreement for prohibiting Parallel Import in the United Arab Emirates. At the same time, the owner should be very careful in selecting the agent. Any Agency Agreement should be clear and without any ambiguity and should be drafted following the above suggested lines.

## **KSA:**

There is no law in KSA that prevents Parallel Import. Under the KSA Law, no term recognized as Parallel Import.

The only option to prevent Parallel Imports is to register the trademarks at the Customs and to provide them with the names of the authorized importers.

As for any current non-authorized use in KSA, it is recommended to send a cease and desist letter to the unauthorized resellers to stop this use/sale. In case the infringer does not obey to the cease and desist letter, the court path has to be followed without hesitation before the Ministry of Commerce (based on the Trademark Law and Agency Law) and/or under the unfair competition.

## **LEBANON:**

Article 2 of the Lebanese Decree on commercial representation states the following:

**Art.2:** “Each commercial representation contract that arises after this decree has entered into force, has to be written and can be for a limited or unlimited period of time.

This contract could contain a provision limiting the representation in one representative or requiring the guarantee of the representative for those he is contracting for the account of his Client or a provision consisting of depositing the goods in order to be delivered to customers.

The provision on limiting the representation does not apply to third persons unless it has been declared by the representative through the registration in the commercial register, and does not apply on food products except those of particular consumption determined by a Decree issued by the Council of Ministers after consulting a committee formed by the General Manager of the Ministry of Economy and Trade and a representative of each of the union chamber of trade representatives in Lebanon and the general national union of cooperative societies and the general Labour Union and the chamber of commerce. This committee is appointed by a Decree issued by the Council of Ministers.

The limitation of the commercial representation on food products can be re-established by a Decree issued by the Council of Ministers after consulting the committee mentioned in the previous paragraph when the economic conditions permit”.

**According to this article:**

If the import is related to food products and if they are genuine, there is no exclusivity on such products and thus there is nothing that can be done in this case (except for the ones explicitly determined by a Decree issued by the Council of Ministers).

As for other products (such as clothes for instance) which enjoy exclusivity, we may prevent their import before the Lebanese Customs.

Moreover, if such products were somehow smuggled into the country, we can submit a demand to the Judge of Emergency Proceedings and request the immediate seizure of these products.

**TURKEY:**

Parallel import in Turkey is not prohibited and no action can be done against parallel import. Hence, as long as the goods are genuine, no action could be taken against the importer or the dealer.

**KUWAIT:**

According to the New Commercial Agencies Law exclusivity is prohibited, thus the import by several agents/parties is possible.

In general, the import of any products was never limited to one party in Kuwait, thus many counterfeit products may enter the country.

In addition, there are no applications to be submitted before the Customs for any alerts, however; if a court decision is issued (which could be very difficult to obtain), it is possible to limit such infringements.

**BAHRAIN:**

There is no regulation in Bahrain preventing the Parallel Import. Therefore, any genuine products may enter the Bahrain Market regardless of who is the importer or who is the owner of the registered trademark.

**SYRIA:**

As long as the products are genuine and comply with the standards of goods and products, no legal action can be taken against the importer.

**EGYPT:**

Parallel importation is not generally banned in Egypt. According to Articles 10, 71, and 127, and Article 147, the owner of the mark, patent, and industrial design shall not have the right to take any legal action against any third party for selling genuine branded goods in Egypt as long as the owner

undertakes the marketing of those products in any country or authorizes (by giving a recorded license) a third party to do so.

**Kindly find herein under the related articles:**

**Article 10 which read as follows:**

“A patent shall confer on its owner the right to prevent a third party from exploiting the invention by any means.

The right of a patent owner to prevent a third party from importing, using, selling or distributing a product shall lapse when he commercializes the product in any country or authorizes a third party to do so.

The following shall not be considered as infringements of that right when carried out by third parties:

1. Activities carried out for scientific research purposes. page 4
2. Where a third party proceeded, in Egypt, in good faith, with the making of a product or use of a process or made serious preparations for such activities prior to the date of an application for patent by another person for the same product or process. The former shall, notwithstanding the grant of patent, have the right to continue with such activities only within his enterprise and without extending the scope of those activities. Such right shall not be assigned or transferred without the other elements of the enterprise.
3. Indirect uses of the production process, subject of the invention, in order to obtain other products.
4. Use of the invention on a land vehicle, vessel or aircraft belonging to a country or entity member of the World Trade Organization, or a country that applies reciprocity to Egypt, when such a land vehicle, vessel or aircraft is temporarily or accidentally present in Egypt.
5. Where a third party proceeds, during the protection period of a product, with its manufacturing, assembly, use or sale, with a view to obtain a marketing license, provided that the marketing starts after the expiry of such a protection period.
6. Any other acts by third parties, provided that they shall not unreasonably hamper the normal exploitation of the patent, and shall not be unreasonably prejudicial to the legitimate”

**Article 71 which read as follows:**

“The right of the mark owner to prevent third parties from the import, use, sale or distribution of products distinguished by such a mark shall lapse when the owner undertakes the marketing of those products in any country, or authorizes a third party to do so”

**Article 127 which reads as follows:**

“The registration of an industrial design shall confer on its owner the right to prohibit third parties from the use, manufacture, sale or import of products bearing or incorporating such an industrial design.

The right to prevent other parties from importing, selling or distributing such products, shall lapse where the owner undertakes to market those products in any state or license a third party to do so.

The use by a third party of a protected industrial design in any of the following shall not be deemed to constitute an infringement of such a right:

1. Activities relating to scientific research.
2. Use for teaching and training purposes.
3. Non-commercial activities.
4. Manufacture or sale of parts of such products, for the purpose of repair, against fair compensation.
5. Other uses that do not unreasonably conflict with the normal exploitation of the protected industrial design and that do not unreasonably compromise the legitimate interests of the owner, taking into consideration the legitimate interests of third parties”

**Article 147 which read as follows:**

“The author and his universal successor shall have the exclusive right to authorize or prevent any form of exploitation of his work, particularly through reproduction, broadcasting, re-broadcasting, public performance, public communication, translation, adaptation, rental , lending or making the work available to the public in any manner, including through computers, internet, information networks, communication networks and other means.

The exclusive right for computer program rentals shall only apply to the main rental enterprise; it shall not apply to renting audiovisual works inasmuch as the circulation of such copies does not cause material prejudice to the owner of the exclusive right in question.

The author and his successor shall also have the right to control any disposal of the original copy of the work, and shall consequently be entitled to a certain percentage of not more than 10% of the proceedings resulting from every disposal of that copy.

The right to prevent third parties from importing, using, selling or distributing his protected work, shall lapse where the copyright owner undertakes to exploit or market his work in any state or authorize a third party to do so.”

**OMAN:**

Hereunder is a brief about the customs services regarding the exporting & importing process in Oman:

• **Importing**

Importing could be defined as the process of bringing goods to the Sultanate through Customs offices by land, sea or air according to the determined laws in this regard.

To clear any imported goods, the following documents are required:

An accredited copy of the commercial registration and an activity form (or permission for importing if such a form doesn't exist).

- A valid copy of the affiliation certificate to Oman Chamber of Commerce and Industry (OCCI).
- A valid certificate from the manufacturer.
- A valid quotation list.
- Packing lists.

- Bill of Lading (at sea and air custom offices only).
- A manifest of the shipment (a document which contains a detailed description of the cargo).
- A permission to deliver goods from the shipping agent.
- A comprehensive valid written authorization from the person in charge for the custom clearance.
- Filling in the import declaration and form for clearing and classifying the goods according to the Customs procedure.

In case of absence of a valid purchase invoice or a valid certificate from the manufacturer, the clearance will cost R.O 20 paid in cash. This money could be reimbursed if the required documents are submitted within 90 days from the date of payment.

Provide approval from the authority in charge (for the restricted goods only).

Paying the required taxes and custom fees for the total value of the shipment including cargo and insurance (CIF).

- **Exporting**

Importing could be defined as the process of taking goods to the Sultanate through Customs offices by land, sea or air according to the determined laws in this regard.

To clear goods to be exported, the following documents are required:

- A copy from the export invoice.
- Packing lists
- An application letter for the export of used or personal belongings issued by the employer (for non-Omani citizens only).
- Filling in the import declaration and form for clearing, classifying the goods according to the Customs procedure.
- Provide approval from the authority in charge (for restricted goods only).

- **Re-exporting**

Re-exporting is defined as taking out or exporting the goods outside the Sultanate or to the free zone according to the followed rules and regulations.

Type of goods which can be re-exported are:

- The imported goods which haven't been withdrawn from the custom stores (at air and sea custom offices only).
- Goods which have been imported to be exported and which have been granted a temporary release in return for a bank or cash warranty including the custom fees within a period not more than 6 months from the release date.
- The imported goods to the Sultanate under the status of temporary entry and their owners wish to re-export them.
- The suspended goods which are put in stores.

The required conditions to benefit from the re-exporting system:

- Re-exporting system includes all the afore-mentioned goods, except those which are suspended or on private fees.
- The cargo which to be re-exported must be from the same mission with the same custom manifest. Hence, it could be re-exported in parts under the condition that each part costs not less than RO 2000.
- The name of the source must be the same of the manufacturer under whose name the cargo arrived or with his previous authorization to someone else, provided that the fees should be returned to the importer.
- If those goods are brought back to the country, due taxes and fees must be paid.

For the clearance of the re-exporting goods, the following documents are required:

- An application letter for re-exporting.
- A manifest of the shipment (at air and sea custom offices only).
- An invoice of the exporting lists.
- Packing lists.
- A copy of the importing lists (invoice).
- Filling in the import declaration and form for clearing, classifying the goods according to the Customs procedure.
- Fees on the goods to be re-exported will be refunded after being confirmed by the custom officers.