

## **Exploring the Administrative Role of the Ministry of Industry and Trade in Safeguarding Industrial Designs and Models: A Criminological Perspective**

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### **Abstract**

Industrial designs and models are vital components of a nation's intellectual property landscape, fostering innovation, economic growth, and competitiveness. In Jordan, as in many countries, The Ministry of Industry and Trade holds a pivotal administrative role in protecting these assets. This research paper presents a comprehensive criminological analysis of the Jordanian Ministry of Industry and Trade's effectiveness in Safeguarding industrial design and model infringement, this study sheds light on the legal protection for Industrial designs and models. The findings offer insight into the dynamics of industrial design and model protection in Jordan and propose recommendations for policy improvements in the pursuit of a more robust and resilient intellectual property protection regime.

**Keywords:** drawings, models, industrial, law, registry, ministry.

### **1. Introduction**

The importance of this research is demonstrated by the fact that it deals with an important topic, which is the administrative role of the Ministry of Industry and Trade in protecting industrial designs and models, Criminological Perspective, as the legislator in the Industrial Designs and Models Law entrusted the task of registering industrial designs and models to the Ministry of Industry and Trade in order for these drawings and models to enjoy legal protection, and as a result of the development Science in all fields and the introduction of intellectual property rights in the field of industry led to the need for countries to compete in innovations, including medical innovation, The protection of industrial property is also one of the reasons for the development and advancement of industrial technology, despite some pitfalls due to piracy, counterfeiting and counterfeiting activities. Many industrial innovations have been imitated and built around the world. In view of the

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increase in crimes related to infringement of the owners of industrial designs and models, there has become an urgent need for the presence of legislation protecting industrial designs and models. Therefore, countries hastened to issue legislation that protects these drawings and models, including Jordan. The Jordanian legislator issued Law No. 14/2000 regarding industrial designs and models, and the protection of industrial designs and models requires that the owner of the protection be granted the right to use and prevent imitation or copying the industrial drawing or model without his permission, as the protection owner can prevent the import, export or sale of any part of Any product bearing its industrial design or model, Therefore, this study aims to clarify the concept of industrial designs and models in jurisprudence and law, and the indications of their practical importance, and clarify the conditions that must be met in them to be registered in the Ministry of Industry and Trade to enjoy legal protection, and clarify the data that must be available in the register of industrial designs and models that is prepared by the Ministry, and a statement of a decision The Registrar of Industrial Designs and Models regarding the submitted registration applications, and a statement of the right to object to the application for registration of industrial designs and models with the Registrar. Therefore, the study will depend on the descriptive approach to clarify this topic. This research paper aims to provide a comprehensive criminological analysis of the Jordanian Ministry of Industry and Trade's role in safeguarding industrial designs and models.

## **2. Concept of Industrial Designs**

The legislator stipulated in Article 2 of the Industrial Designs and Models Law of 2000 AD that the industrial drawing: “is any installation or coordination of lines that gives the product a lustre or gives it a special shape, whether it is done using a machine, or in a manual way, including textile designs.” He defined the industrial model as “every stereoscopic shape, whether linked to lines, colours, or not, gives a special appearance that can be used for industrial or craft purposes.” As a result of the scientific development in all fields and the introduction of intellectual property rights in the field of industry, this led to the need for countries to compete in innovations, including medical innovation, and the protection of industrial property is one of the reasons for the development and advancement of industrial technology despite some pitfalls due to piracy, counterfeiting and counterfeiting activities. Many industrial innovations have been imitated and built around the world. In view of the increase in crimes related to infringement of the owners of industrial designs and models, there has become an urgent need for the presence of legislation protecting industrial designs and models. Therefore, countries hastened

to issue legislation that protects these drawings and models. The industrial drawing or industrial model is subject to registration if the following conditions are met:

1. It is new and has not been disclosed to the public anywhere in the world by any means whatsoever, including using it or publishing it in a tangible way, whether the disclosure was made before filing the registration application or before the priority date of the application and in accordance with the provisions of this law.
2. It must have been invented independently.

The disclosure of the industrial drawing or industrial model to the public shall not be considered if it occurred within the twelve months preceding the date of filing the application for its registration in the Kingdom or the date of claiming the priority of the application, because of an action taken by the applicant for registration or due to an unjustified act of a third party against him. It is not permissible to register industrial designs or Models imposed mainly by functional or purely technical considerations, provided that the Registrar takes his decision based on the recommendation of a technical committee that he forms for this purpose. It is prohibited to register industrial designs or industrial models that violate public order or public morals. (Abdulaziz, 2019).

The right to register an industrial drawing or model is as follows

To the innovator or to whomever the rights of the design or model are assigned. And to all the persons involved in creating the design or model if it is the result of their joint effort, if it is registered equally among them, unless they agree otherwise. And for the first innovator to file his application for registration if it was invented by more than one person and each of them was independent from the other, and for the employer if the worker invented it because of executing an employment contract under which he committed himself to accomplish this innovation, unless the contract stipulates otherwise. (Al-Muhaisen, 2011)

### **3. Register of Industrial Designs**

The legislator granted the Ministry of Industry and Trade the authority to protect industrial designs and models by depositing the required data in a special administrative register called the Industrial Designs and Models Register, as Article 3 stipulates that “a register shall be organized in the ministry under the supervision of the registrar called (Industrial Designs and Models Register) It contains all data related to industrial designs and models, the names and addresses of their owners, and the legal procedures and actions that have taken place, including:

1. Any transfer, assignment, transfer of ownership or license from the owner of the drawing or model to others.
2. The mortgage or seizure imposed on the drawing or model, and any other restriction on the use of any of them. The public has the right to view the register in

accordance with the instructions issued by the Minister for this purpose and to be published in the Official Gazette. A computer may be used to record industrial drawings, industrial models, and related data. The data and documents extracted from it and certified by the Registrar shall be evidence against all unless the person concerned proves the contrary.

The industrial drawing or model shall be registered in accordance with Article 6 as follows: A- The application for registration shall be filed with the Registrar on the form prepared for this purpose indicating the type of product and accompanied by drawings, photographs and explanatory data representing the drawing or model. B - The application for registration may include more than one industrial drawing or industrial model, if they are all of one type, one group, or one installation in accordance with the provisions of the relevant international agreements. In this case, the prescribed fee for each industrial drawing or industrial model shall be collected. (Al-Jilali, 2015).

#### **4. The Right to Object to the Application for Registration of Industrial Designs and Models**

The Industrial Designs and Models Law also granted the right to object to the administrative procedures of the application for registration during the registration process; Article 7 of it stipulates that if the registration application does not meet its legal requirements, the Registrar must ask the applicant to amend it. And if it is not amended, the registrar has the right to consider the person a waiver of the application, and the law gives the right to the registration applicant to object - directly - by appealing to the Administrative Court within sixty days from the date of his notification. The law also gives third parties the right to object to the Registrar's decision if he accepts the application for registration of the initial industrial drawing or model, But before the final enrolment decision; That is, after the issuance of the acceptance decision and before the applicant for registration pays the prescribed legal fee, the objector submits a fee of one hundred dinars with a list of two copies in which he mentions his reasons. On the other hand, the applicant for registration has the right to respond to the objection within 30 days from the date of notification of the objection statement, or during the period that the registrar specifies it to file the response, and the response is reasoned, after which the objecting parties and the applicant for registration have within 30 days to submit their data and respond to them. (Funani, 2017).

After completing these procedures, the registrar announces a date for hearing the case and gives the two parties an opportunity not less than fifteen days before the date of the hearing. The registrar may issue his decision after hearing the statements of either party or for their pleadings, and the Registrar has the power to

extend a deadline for deciding on the objection, provided that the extension of the objection period is reasoned. The objection stage before the issuance of the industrial drawing or model registration certificate is not the final stage of the objection to the Registrar's decision to register an industrial drawing or model. Even if the applicant for registration was granted a final registration approval certificate for his application, (Hamdallah · 1997). The legislator permitted any interested party to apply to the registrar to invalidate the registration of the industrial drawing or model if it was registered in violation of the provisions of this law, and the owner of the drawing or model is notified of this application, provided that the registrar issues his decision in this regard. However, its decision may be appealed to the Administrative Court within sixty days from the date of its notification, but the legal protection of the industrial drawing or model will continue for a while. Issuance of the court's decision. (Zahih, 2018).

## **5. Legal Protection of Drawing or Industrial Model**

### **5.1. Penal protection**

After registration, the owner of the industrial fee or model acquires the right to protect it by preventing others if he does not obtain his consent to manufacture, import or sell products for commercial purposes. Such images are considered to be the rights of the owner of the drawing or industrial model, requiring legal liability, (Dalaal , 2007), when a person knows or is able to know that he has infringed an industrial fee or model that is legally protected. It is noteworthy that the Jordanian legislature has not specified a penalty for acts of infringement of the industrial fee holder's rights, which means that the penalty for such acts is the penalty prescribed for misdemeanours in the Penal Code. (Zain Eldeen, 2022).

### **5.2. Civil protection**

Civil protection, in accordance with the general rules of liability, is designed to protect all rights and is guaranteed by all legislation. Any civil protection is regarded as the umbrella in which all rights of all kinds are upheld, based on the legal view that "any harm to others must be done, albeit indistinguishable, by guaranteeing damage". The right to draw or model falls under the umbrella of civil protection, whereby a person whose right has been infringed is entitled to initiate a civil action (Rights) A person who has caused or caused the infringement by seeking compensation for any material or moral damage suffered as a result of such infringement on the basis of unlawful competition, even if the fee or form is not registered, according to the prevailing opinion. Jordan's legislation appears to require the recording of an industrial drawing or model for the purpose

of protecting it, that is, the protection of an industrial drawing or industrial model is provided only after duly registered. (Al-Shalish, 2007).

### **5.3. Provisional Procedures**

Article 16 of the Industrial Fees and Models Act contains the following procedures:

The owner of the industrial fee or model when instituting his civil suit to prevent infringement of his right to draw or model or during the examination of this case may apply to the competent court with a bank or cash guarantee acceptable to it for any of the following actions: (Eldeen, 2022). Stop trespassing. Reservation on products subject to encroachment wherever they exist. Preservation of evidence related to trespassing. (Alhendi, 2022), The owner of the industrial fee or model may, prior to the establishment of his or her case, submit a request to the Court, accompanied by a bank or monetary guarantee of acceptance, for any of the actions provided for in paragraph (a). of this article, without notifying the summonsed person, and the Court may grant his request if it proves any of the following: (Eldeen, 2022), that the infringement of his rights occurred. encroachment is imminent and may cause irreparable harm. He fears that evidence of trespass will disappear or be destroyed. If the owner of the fee or form fails to file his case within eight days of the date of the court's response to his application, the proceedings in this regard shall be deemed cancelled. The applicant may appeal the Court's decision to take provisional proceedings to the Court of Appeal within eight days from the date on which the Court communicates or understands it and its decision is conclusive. (Al- Saraera, 2013). The claimant may claim compensation for the damage suffered if it is established that the applicant is not entitled to take custodial action or that the applicant's claim was not filed within eight days of the date of the court's response to his request for detention. The defendant seeks compensation for the damage suffered if the outcome of the proceedings is established that The plaintiff is not correct in his case. The Court may, in any event, use expert and competent opinions. These are the provisional procedures that the owner of an industrial drawing or industrial model may request from the competent court to safeguard his or her rights to draw or model and to pay an assault, or to cease infringement. (Eldeen, 2022).

## **6. Criminological Aspects of Industrial Design and Model Infringement**

### **6.1 Use for commercial purpose an industrial fee or model registered in accordance**

with the provisions of this Law or not materially different from it:

The use of an industrial fee or model that has been incorrectly recorded by any other person is a criminal offence, punishable by law, and the expression of the product's total form rather than similarities; That is, the product is in a way that leads the public to confuse the two drawings or models, Thus, they cannot distinguish between them if they find minor differences between them, which is confusing for the public. The use itself is not a misdemeanor punishable by the legislator as if it were for personal use. Whereas if the use of a product containing an industrial fee or model that has already been registered or is not materially different from the product that has been registered, for a commercial purpose, in this case the act of assault is committed and the perpetrator is punished in accordance with article 30 of the Industrial Fees and Models Act, There is no explanation for the accused's claim that he did not know about the registration of an industrial fee or model that assaulted him (Al-Othman, 2022)

This crime is achieved when the perpetrator uses a real industrial fee or model on his products even though he is not his owner. A part of the jurisprudence considers that the crime of use is different from the crime of imitating the drawing or industrial model in terms of describing the graphic or industrial model used is not an imitation but a real one, but was raped without the consent of its owner. With the bad faith of the aggressor, by raping the money of others as a result of his use of unreal products and goods, the aim is also to make the public wrong and to humiliate them that it is the same product represented by a real industrial drawing or model that enjoys the trust and the public. A part of the jurisprudence considers that the Jordanian legislature's intention is not to introduce criminal provisions in the Industrial Fees or Models Act as a mitigation of the perpetrator's liability in order to be entitled to compensation without fear of criminal accountability. The Penal Code punishes the perpetrator of offences against another's property and defines them as offences of the use of the right of others; Article 416 of the Jordanian Penal Code stipulates that: "Anyone who, without intending to misappropriate, unjustly uses an object of harm to others, shall be liable to up to six months' imprisonment and/or a fine of up to 20 dinars. Thus, the offence of using an industrial drawing or model that has already been registered or is not materially different from it is achieved by the availability of its physical or moral elements, such as the offence of mimicking a commercial invisible drawing or a registered industrial model or not materially different from it. The offence of placing undue data on an industrial drawing or model leading to a belief in its registration. (Al-Othman, 2022).

## **6.2. Sell, offer for sale, import or possession for the purpose of trafficking products**

In the form of an industrial fee or model registered in accordance with the provisions of this Law, or include such a fee or form, or not materially different from it. Each of these acts constitutes an offence in itself. A person who sells products containing an aggressor's industrial fee or model is considered an offence, as is the case when he offers, imports or acquires a sale for the purpose of trading it. The physical element of a misdemeanor sale, offer to sell, import or acquire for the purpose of trafficking products constituting registered industrial fees or models: The offence of selling registered and protected industrial fees or models is achieved through the perpetrator's act of sale, albeit once and not repeated, Whether the seller makes the offender a profit through this process export ", or a loss, and it does not matter whether the sale is earmarked for export or directed at the market locally Also, it is no different if the sale constitutes a trade-off method, It does not matter the quality and quality of goods even if they are poor The offence remains, as does the counterfeit commodity better than the protected commodity of the drawing or the accustomed industrial model (Al-Othman, 2022). Some of the jurisprudence considers that anyone who sells a counterfeit must be punished with the same punishment as the one who made it; This is because the purpose of the manufacture is only for the purpose of sale, thereby affecting the commercial competition of the right holder.

An offer for sale is the placement of counterfeit goods in the business or the granting of samples by retailers while their purpose is to publicize them for sale, and it may be tantamount to being offered in a public or weekly market, in the form of mobile trade or in any public place. In the opinion of part of the jurisprudence, notification of sale of the commodity as propaganda in a particular propaganda is not a tradition of the fact that the real sale of counterfeit goods is not proven, while the prevailing view is that propaganda and advertising of images of the offender's sale constitutes a misdemeanour for sale; Because originally, they're meant to promote counterfeit goods to sell them. For the offence of importing a product constituting an aggressor industrial fee or model, the offence is required to originate in another State and entered the customs territory of the State concerned, constitutes a customs offence of importing counterfeit goods, and the minutes of the General Department of Customs have an argument and have absolute evidentiary force and can only be challenged by forgery.

On the other hand, a misdemeanour acquires the aggressor's goods if they are intended to be trafficked, and the offence is therefore not intended for personal use. This misdemeanour establishes the possession of the goods whether they are stored in a secret, private, public, or public store (Al-Othman, 2022). The element



of a misdemeanour sale, offer for sale, import or possession for the purpose of trading products constituting RSOMA or registered industrial models. The cornerstone of this crime is in the form of mayors; The legislator, aware of this, has stated that the element of the offender's knowledge must be that he is selling, offering for sale, importing, or possessing with commercial intent products bearing a counterfeit fee or industrial model, and his will must be to do so whatever the result. The court must demonstrate the bad faith of the offender in its judgement, but the judgement is flawed. This misdemeanour is due even if no damage is done to the owner of the drawing or industrial model but the knowledge and direction of the offender's will towards achieving the criminal act (Al-Othman, 2022).

Some of the jurisprudence considers that the offences in question are sufficient for the general purpose of achieving the offence in the form of sale, offer to sell or import, whereas the general intent of the offence of possession of products taking a counterfeit fee or industrial model is not sufficient, but must have the special intention of intending to trade or trade; That is, with the offender's intent to possess such products for profit or to move the product from one hand to another, An act of possession alone does not constitute any harm or gravity, but if possession is associated with the purpose of trafficking, or trading, it constitutes an act of danger and is criminalized for the act of possession. (Al-Momani, 2016). On the other hand, the perpetrator of any of the offences mentioned by us can, by selling, offering to sell, importing, or possessing products containing a fee, or an industrial model of an aggressor, pay in good faith through some evidence, such as speeding up the names of those who have delivered the products or goods. The rule is that there is no solidarity between them - each to the extent that it is caused by the misdemeanour - if the offence is terminated because of their goodwill, it shall not preclude another conviction (Al-Othman, 2022).

## **7. Recommendations**

Stipulating the element of innovation in industrial fees and models in Jordanian law within the objective requirements of the industrial drawing or model. The law provides for the publication of administrative decisions codified in the administrative record of industrial drawings and models.

Criminal accountability of a moral person if he commits an offence provided for by law, consistent with the nature of the offence moral person, without prejudice to the criminal liability of the natural persons who belong to that moral person.

To provide for the right of the competent court to publish the civil judicial judgement at the expense of the convicted person in a daily newspaper.

Provision for the right of a defendant who has been subjected to substantive proceedings or who has initiated provisional proceedings against him arbitrarily, the Court decided in his favour to claim compensation for the damage suffered.

## **8. Conclusion**

An industrial drawing is defined as any installation or coordination of lines that gives the product splendour or gives it a special shape, whether it is done using a machine or manually, including textile designs. Associated, gives a special appearance that can be used for industrial or craft purposes.

An industrial drawing or industrial model is subject to registration if it is new and has not been disclosed to the public anywhere in the world by any means whatsoever, including its use or publication in a tangible form, whether the disclosure was made before filing the application for registration or before the priority date of the application, as the case may be, and in accordance with the provisions of this law It must have been invented independently.

The right to register an industrial drawing or model shall belong to the innovator or to whomever the design or model rights devolve, and to all persons involved in creating the design or model if it is the result of their joint effort, if it is registered equally among them, unless they agree otherwise. And for the first innovator to file his application for registration if it was invented by more than one person and each of them was independent from the other. And the employer has the right if the worker invented it because of executing a work contract under which he committed himself to accomplishing this innovation unless the contract stipulates otherwise. Criminological Aspects of Industrial Design and Model Infringement are use for commercial purpose an industrial fee or model registered in accordance, and sell, offer for sale, import or possession for the purpose of trafficking products, and the owner of the industrial fee or model when instituting his civil suit to prevent infringement of his right to draw or model or during the examination of this case may apply to the competent court with a bank or cash guarantee acceptable to it for any of the following actions, Stop trespassing. Reservation on products subject to encroachment wherever they exist. Preservation of evidence related to trespassing

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