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The impact of trademark protection on online keyword advertising in the UAE

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Abstract: This article critically examines the implications of trademark protection on online keyword advertising in the United Arab Emirates. It contributes to the existing literature by addressing the lack of UAE-specific research in the intersection of trademark law and digital keyword advertising, offering doctrinal insights drawn from local jurisprudence. As digital marketing increasingly relies on search engine advertising platforms like Google AdWords, the use of trademarks as keywords raises complex legal questions around infringement, consumer confusion and fair competition. The article analyses the functions of trademarks like origin, quality assurance and advertising, and evaluates how these are recognised under the UAE Trademark Law. Drawing from UAE legal precedents and comparative jurisprudence, particularly the EU's *Google France v. Louis Vuitton* case, the article argues that UAE law primarily protects the origin function and that keyword advertising would not constitute infringement unless it misleads consumers regarding the source of goods and services. The analysis reveals a gap in the UAE legal literature on online infringement and underscores the policy need for clearer statutory guidance on digital advertising practices to ensure consumer protection and fair competition in e-commerce. It offers UAE-centric insights to help policymakers balance trademark protection with innovation-driven market growth.

Keywords: trademark protection; trademark law; unfair competition; online keyword advertising.

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1 Introduction

Trademarks are informative tools that allow for the identification and association of goods and services to a specific producer (Buick, 2023). An essential function of a trademark is to provide consumers with information regarding the origin and quality of a good so as to make an informed decision during the purchasing process (Linford, 2024). Conforming to this, the trademark law tries to stimulate the stream of information in markets to ultimately create better-informed consumers (Watson, 2011). And for this purpose, protection is provided against misleading and deceptive uses of trademarks. In a more economic context, the deceptive use of trademarks can reduce market efficiency as customers are misled to purchase wrong products, ultimately reducing profits earned by corporations and tarnishing their goodwill (Gambone, 2024). So, while it is established that the law is developed for maintaining consumer protection, there is also an inherent need to foster a more competitive market (Buccafusco et al., 2024).

More recently, competition has expanded beyond traditional physical markets and consumer access to product information is dominated by search engine providers such as Google, which holds a monopoly with a market share of over 90%, that have revolutionised the way in which information is accessed. Global e-commerce sales are projected to grow to \$7.3 trillion in 2025 as compared to \$6.4 trillion in 2024 (Chevalier, 2021; Orzol and Szopik-Depczyńska, 2023). And these sales are made possible and enabled by search engine providers, which narrow down specifically desired information amid the overwhelming amount of information available online. One such way of doing this is through the online advertising services, such as the AdWords program by Google, wherein trademarks can be bought as keywords to be displayed as search results (Gulyani, 2022). The question now arises on where the line is drawn on the use of these keywords; are they safe advertising instruments or a violation of trademark owner's rights and as such, constituting as trademark infringement.

Trademark protection in the UAE was first codified under Federal Law No. 37 of 1992, which primarily targeted counterfeiting in the physical marketplace. This framework was modernised by Federal Decree No. 36 of 2021 on Trademarks, aligning the UAE laws with the Paris Convention and TRIPS (agreement on trade-related aspects of intellectual property rights) and strengthening civil and criminal remedies. In the UAE, the Trademark Law is relatively new and the main focus is given to the essential function of consumer protection and their ability to identify the source of the products. Both the earlier and current statutes emphasise the origin-identification function and the UAE courts have consistently treated consumer confusion as the manifestation of infringement (Case No 397 of 2019, Commercial Appeal).

While the law is silent on the rising issue of online keyword advertisements, the main aim of this paper is to evaluate the UAE Trademark Law and its current trademark protection system, to establish the extent to which this protection is granted in the online

realm of keyword advertising. It will be argued that although there may be cases of unfair competition, without the distortion of the ability of consumers to differentiate between the source of goods and products, the use of trademarks as keywords would not cause trademark infringement. This historical and doctrinal backdrop underscores the need for this research to interpret whether the 2021 amended law, designed for traditional markets, can adequately address emerging digital advertising practices.

2 Methodology

This article employs a doctrinal and comparative approach, examining the UAE Trademark law, together with relevant UAE court decisions on consumer confusion-based infringement. These are analysed in comparison with key EU jurisprudence, particularly *Google France v. Louis Vuitton* (Joined Cases C-236/08 to C-238/08), to assess whether the UAE's origin-centred framework adequately regulates keyword advertising while maintaining fair competition in digital markets.

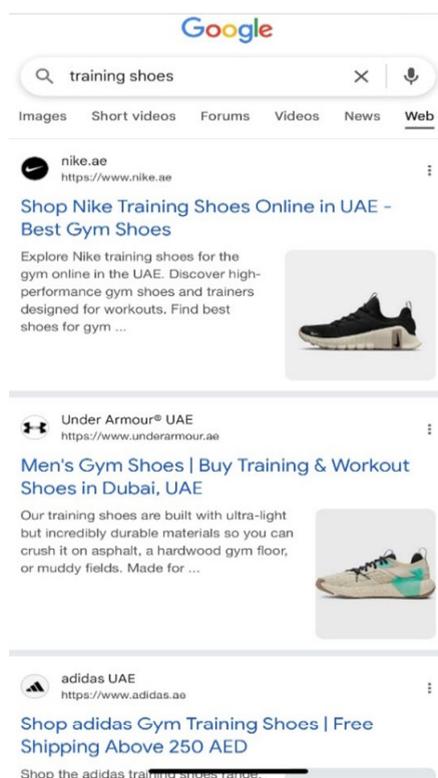
This will be done by first exploring the mechanism of online keyword advertisements and how search engine providers improve the effectiveness of advertisements by selling trademarks as searchable keywords. Following this, the essential functions of a trademark need to be recognised, and which of these functions are recognised and protected by the UAE law needs to be established. An analysis of the UAE Trademark Law and a look into court decisions will allow us to interpret the law in reference to online keyword advertisements. Finally, an evaluation of whether this protection is sufficient, avoiding overprotection of trademark rights and leading to a suppression in valuable information required for a well-informed consumer base, or is it lacking in the ever-growing world of digital commerce and its limitless capabilities?

3 The issue of online keyword advertising

Internet search engine providers (ISPs) effectively exercise a degree of control over the presentation of web information using a constantly changing mathematical algorithm which takes into account a host of factors, such as relevance, uniqueness of webpage contents, keywords and other requirements of the searcher (Dan Oja, 2013). The most prominent businesses in a search exercise are those that are able to direct the right traffic to their webpage, reaping the benefits of World Wide Web (known as the Web or WWW) commerce, and this is stimulated by a broad range of activities to be carried out on its webpage, known as search engine optimisation (SEO). Consumers tend to visit websites which can be found on the first page of ISPs (Hawkins et al., 2010). With this in mind, businesses, in particular those less well-known traders, have to take whatever opportunities are made available to have their website links introduced among those at the top of the natural (organic) results. The keyword link alone can be rather ineffective, so ISPs created an online advertising product by which traders could overcome such obstacles and elevate web pages naturally found to the top of immediate results, for a fee. Google, for example, earns a revenue of over \$180 billion, of which around \$140 billion is through ad sales (Johnson, 2021), providing a paid referencing service called 'AdWords', enabling any commercial undertaking to purchase one or more particular keywords to use in their advertisements. When internet users perform a search using one

or more of those keywords, two sets of results are typically displayed, the first being ‘natural’ results from the main text where Google arranges them by the application of its own objective criteria premised upon the search term. A consumer will enter a search subject, perhaps ‘training shoes’ into Google, and a number of results will be displayed that are related to the search terms; prominent companies like Nike, Adidas, or Under Armour all compete for prevalence on displayed search results to draw the attention of customers (Figure 1). This type of search is basically unproblematic, yielded on the basis of ‘best match’ criteria. Google attempts to match the search term through algorithms to arrange and sort the information on the internet in order of relevance (Meale, 2008).

Figure 1 Search results that come up when ‘training shoes’ is typed (see online version for colours)

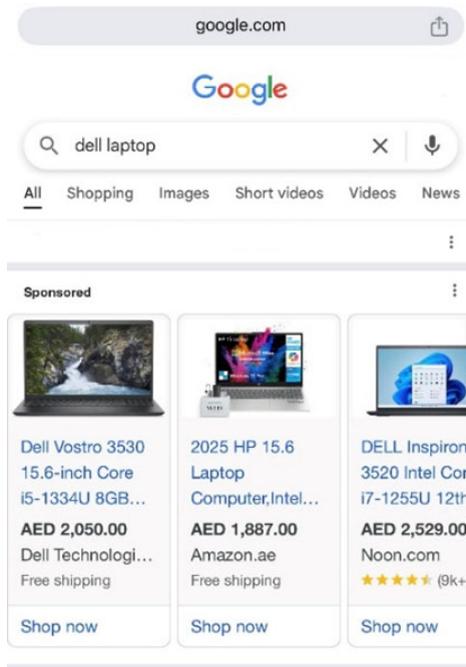


It is the second set of results which appear beside or above the ‘natural’ results in the form of sponsored advertisements which are problematic. These are the keywords sold by Google to elevate the priority of the word purchaser (Meale, 2008). A consumer may choose to enter the name of a well-known laptop brand ‘Dell’; in addition to yielding natural results for Dell, the search will yield or at least has the potential to yield results for competitors such as HP, perhaps as a consequence of the owners of these competing products purchasing the term ‘Dell laptop’ as a keyword (Figure 2). The purchase of the name of a trademark does not require the consent of the mark owner, a licence or the need for a commercial link. ISPs generate the most relevant advertisements in response to

a search word, and consumers are likely to consider these advertisements to be as relevant as the links displayed in the natural result (Tan, 2010).

In Figure 2, the second ad has the name HP clearly stated, and when the link for it is opened, there is no doubt that it is a product by the company HP. So, there is no confusion as to the origin of the product, nor is there any type of misleading information linked to it. Also, in this example, the keyword is bought by a third-party website, Amazon. However, if the results were from the official HP webpage, then the fact that HP had bought a keyword of its competitor to try to present itself to their audience could be argued as constituting as infringement. In essence, this would allow HP to take a part of the consumer base of its competitor, which would ultimately lead to the latter's loss in profits. Ultimately it would allow advertisers to engage in freeriding, and over the years, it has given rise to litigation cases, especially in the EU courts (Case C-324/09) [2011]).

Figure 2 Search results that come up when 'dell laptop' is typed (see online version for colours)



Reputation as an attribute of trademark value is particularly important in marketing and internet trading. Consumer online shopping, for example, is often commenced by search conducted on the basis of a particular name of product (Tornquist and Hird, 2010). While consumers may arguably have a quality-branding association between the image of a well-established brand and particular kind of products, it is likely they will use a trademarks' name as a starting point for their online shopping (Melanie, 2012); Dell, for example, is a synonym for a laptop due to the brand's popularity. It is difficult, however, to measure the specific intention of consumers who use trademarks in their online searches. For instance, 'targeted' or 'navigational' searchers use mainly the name of a trademark as a keyword to find the trademark owner's website or to gain information about a certain product (Goldman, 2005; Bonewitz, 2007). On other hand,

'informational' or 'contextual' searchers use the name of the trademark in their online search as a starting point (or source of information) for their online shopping, to seek alternative products and compare prices and reviews (Bonewitz, 2007). Familiarity, has therefore, become a valuable asset for businesses in the global economy so trademark owners will be understandably eager to exclusively appropriate this familiarity for their own benefit, and to seek protection against other rivals which may make use of their 'property' (Phillips, 2012). If HP bought the keyword 'Dell', a trademark of Dell Technologies, it would show up on the consumer's radar. The primary reasoning of HP's actions behind this would be to gain access to the established consumer base acquired by Dell Technologies through its goodwill and advertisement efforts. In such a situation, informational searchers are granted wider access to information, while targeted searchers may be diverted from their original intent. Hence, recognising the economic potential of trademarks as a justification for protection of rights can be problematic, in that others who seek to make use of it in their own commercial interests will face legal liability (Case *Ewca Civ 535*). As a consequence, the acknowledged owner of the property right can potentially exercise control over its use across markets including the online market, thereby restricting competition. This is the case despite no issue or confusion regarding the origin function. This additional layer of property right protection and promotion is significant in the context of ISPs results.

The World Wide Web (known as the Web or WWW) has a massive role in the supply of information about virtually everything, with broadly free, open and uncontrolled access. Such access is potentially capable of being undermined where trademark holders are enabled to significantly control use of their property rights to mere 'navigational' searches. This is despite the fact that the provision of information is essential to trade and the enhancement of competition. The sale of trademark keywords is arguably the lifeblood of ISPs such as Google, ensuring commercial viability and the provision of its service, so restriction thereof limits the provision of information and therefore inhibits choice. Rival commercial entities and the owners of alternative trademark rights and ideas will face the same restriction, so competition and choice is damaged in that manner (Tan, 2010). Keyword marketing provides a clear insight into the effect on the freedom of trade new entrants to the market face when emphasis is placed by adjudicators on the protection of trademarks' functions. Therefore, the functions of a trademark and the rationale for its protection needs to be considered, and which of these functions are protected under the UAE law need to be established in order to examine the impact of trademark protection on the online keyword advertising business.

4 Trademark functions and rationale for protection

The justification for trademark protection, and consequent limitations placed on competition, has attracted much debate amongst scholars and practitioners in the field of intellectual property (IP). The purpose of trademark protection has to be considered in the context of its own constraints and need for a balance of rights and interests of others in law (Xu, 2025). Identifying and defining the developing nature of the reasons for protecting trademarks gives insight into the evolution of the law, and in facilitating the work of courts and adjudicators to respond to the changing economic and social conditions (El-Said, 2005). The definition of purpose must consider the functions that trademarks have in commercial practice, combined with analysis of the economic

rationales that justify such protections. It is proposed, therefore, to discuss the economic roles of trademarks and differentiate between the common functions of origin, quality and advertising of products and services.

4.1 Trademark functions

Trademarks serve and perform many functions in a market. Theorists commonly iterate three functions of trademarks: origin, quality or guarantee, and advertisement or investment function (Cornish, 2010). However, in order to show the role played by a trademark when performing each function, it is important to keep in mind that these functions are closely related to each other and the classification of these three functions are split into two groups, the legal and the economic: the legal function which is represented by the origin function, and the economic function which is represented by the quality and investment functions (Beier, 1970).

4.1.1 The origin function

Businesses must advertise to sell, survive and gain advancement, often with a promise of uniqueness of their product or service; the plethora of enterprises is endless, as is the number of opportunities to advertise in the market. This makes it difficult for modern consumers to make buying decisions, whether rational or emotive (Cornish, 2010). As a consequence, trademarks have become a primary consideration in the decision to buy (Cornish, 2010). The trademark compliments a customer's ability to conceptualise the 'abstract notion' of a product, enabling the individualisation of the product by creating a generally positive link between product and mark (Maniatis and Sanders, 1993). This process typically results in identification of a particular business undertaking; in short the origin function of a trademark refers to its facility to denote the source of the product or service (Maniatis and Sanders, 1993).

Most modern legal systems recognise the origin function as an indicator of source in their legislation and judicial decision-making; it assists in the prevention of counterfeiting or piracy practices (Schechter, 1927). The UAE trademark law incorporates this indispensable function in its definition of a trademark under Article 2. The Court of Cassation stated that the main purpose of the trademark lies in the distinguishing of products in order to avoid confusion, uncertainty or doubt among consumers (Case No 397 of 2019, Commercial Appeal). And there is considerable emphasis on the origin function as the primary justification for trademark protection and indicator of the source of a product or service. The importance of the origin function in the differentiation process is evident. The trademark has effectively become a marketable commodity of itself. However, this does not undermine its qualification for, or the owner's entitlement to protection, because the consumer remains entitled to the fulfilment of expectations, a guarantee.

4.1.2 The quality (guarantee) function

Trademarks have developed as a consequence of the modern global commercial environment to perform the function of guaranteeing consumers a quality assurance in the products to which they are affixed (Hanak, 1975; Diamond, 1983). Hanak asserts that the origin of the recognition of this function is unclear, but the quality assurance theory of

trademark purpose finds its roots in the 1920's article by Frank I Schechter whom Hanak avers made an indispensable contribution in the field of trademark literature. Schechter concluded that '[t]he true functions of the trademark are, then, to identify a product as satisfactory and thereby to stimulate further purchases by the consuming public' (Schechter, 1927). Despite this provenance, there is no consensus amongst trademark academics and judges as to the legal existence of the quality guarantee function (Sanders and Maniatis, 1993).

It is argued that the source-origin function of trademark protection is the only justification for trademark protection in the context of balance with competition law. The quality guarantee function can only be legally acknowledged as a part of the origin purpose if binding obligations are imposed upon the trademark owner to ensure that his goods or services are of a certain quality and measure up to consumer expectations (Bone, 2004). Maniatis and Sanders, for example, argue that 'despite the fact that the trademark partially fulfils the role of a guarantee of quality, this function is not a legally binding warranty'. Their concern is that the availability of such actionable guarantees of consistency to the consumer raises the spectre of litigation arising from enforceability which should be left to market forces and loyal retention through continuing satisfaction, rather than troubling the courts: 'the market is not a place for angels and the consumer demand for legislative supra-market intervention may be desirable' (Bone, 2004).

Brown also rejects the legitimacy of the quality guarantee function, contending that since a trademark serves as no more than the hope of an owner for repeat purchases, the term 'guarantee function' 'smacks strongly of the ad-man's desire to create the illusion of a guarantee without in fact making more than the minimum warranty of merchantable quality' (Brown, 1999). Reasserting the primacy of origin, he describes the quality function as 'a somewhat overblown attempt to escape from the strict doctrinal requirement of a known source; it should not obscure the legitimate informational value of labels pointing to an established reputation' (Brown, 1999).

4.1.3 The advertisement-investment function

It can be argued that the origin and quality functions logically develop the trademark into use as an advertising instrument, inviting the consumer to purchase into the 'cachet' or 'aura' of the product bearing the sign. A sense of uniqueness of character is the result of extensive and expensive efforts of the proprietor in promotion of the mark and goods or services it signifies (Fletcher, 1981–1982). The owner seeks to directly associate their mark with a particular product in the mind of the consumer, creating a public impression or symbol of the unique characteristic of his particular products (Schechter, 1927).

Recognition of advertising as a separate function in the range of justifications for legal protection allows the trademark to be the most effective method for the creation and perpetuation of goodwill in itself, independent of that of the product or its maker (Sanders and Maniatis, 1993). Schechter describes this independent acquisition of goodwill as occurring by the 'imprinting on the public mind an anonymous and impersonal guaranty of satisfaction [thereby] creating a desire for further satisfaction' of the products to which the mark is affixed; simply, 'the mark actually sells the goods' (Schechter, 1927). The use of modern, advanced communications and advertising techniques has enabled producers to promote their goods to a much wider, potentially global group of purchasers. In pursuit of that end, the trademark is considered an effective selling point, functioning as a conduit through which the seller communicates

the value and high quality of the product. Brown calls it a 'commercial magnet' for stimulating further sales of the product and creates and retains custom (Brown, 1999) (Rutherford, 1990). Gielen is a little more dramatically descriptive, asserting the character of the trademark has been transformed from mere existence on the rational and physical plane to that of the emotional and psychological (Gielen, 1992). The mark enables consumers to identify the product in their exercise of choice, and it (eventually) simplifies promotion and advertising by manufacturers and retailers to promote their goods or services. This approach to the trademark essentially functions as a means of identification and communication, 'the trade mark is a messenger' (Gielen, 1992). Phillips avers a communication purpose of the advertising function is the 'lifestyle statement' often achieved through large-scale investment which would include the sponsoring of sports teams and events, and utilising the endorsement of prominent celebrities (Phillips, 2003). In this context, rather than being a mere indicator of the origin or quality of the goods, it's empowering buyers to purchase products which say something about themselves, a declaration that 'this is the sort of person I am' (Klerman, 1998). Individual consumers 'purchase branded goods for the purpose of demonstrating to others that they are consumers of the particular good' and in such cases, the marks themselves become communicative symbols, a function potentially worthy of the protection of the law. Pfeffer calls this the 'expressive use' of trademarks (Pfeffer, 2006).

Advertising therefore represents a most potent sales instrument, imprinting the trademark with human-like emotive attachment rather than mechanistic performance (Meenaghan, 1995). This stimulates the mark owner to spend a large amount of money on advertising on what is the basic single purpose of the promotion of goods and services to maximise profits. Nevertheless, the ambition of a trademark owner usually extends beyond the simple pursuit of profit, and, for example, the proprietor of a fashion trademark will seek to add value to the mark to place the brand in the lifestyle context. This increases the value of the brand by consumer recognition as a desired social signal; the product does not just perform functionally, but makes social statements on behalf of the consumer (Meenaghan, 1995). 'Salience' is the word used in marketing to describe the potential that some trademarks have to hook the consumer and draw attention to their products (Ehrenberg et al., 1997). This 'cognitive availability' inherent in the mark, coupled with the attractiveness of its image, is as much a result of astute advertising as reputation. The salience of the mark must therefore be at risk of dilution from unauthorised signs. The latter need not actually mislead the consumer on the essential origin of the competitive product, or indeed any economic link to the original, but is still potentially able to take advantage of its 'availability heuristic', the immediate association of the competitor with the attributes of the original (Jolls et al., 1998). The advertising function of the trademark therefore becomes an essential part of the mark and product themselves, and as such should attract appropriate legal protection.

4.2 Discussion of the legal and economic functions

In the commercial argument for a wide protection of trademark functions, the source origin function remains significant as both a legal and market function. They perform other functions, either guaranteeing to consumers a certain degree of consistency in the quality of a product or service, or being a symbol, which attracts attention to a particular commodity, independent of quality but which possesses advertising value. Some academic commentators resist protection being accorded to these latter functions in a

competitive, free market economy (Fhima, 2005). Beier, albeit writing in 1970, before the global communications revolution, designates quality and advertising functions as ‘economic’ rather than ‘legal’ (Beier, 1970). He contends they have no legal basis under trademark law since they are derived from consumer knowledge of the identity of the origin of the products. A fundamental change in view is apparent in the evolution of today’s trademark law from its base beginnings. Beier, writing this time in 1995, acknowledged that trademark law has witnessed a fundamental conversion in the past three decades. He notes the trademark is maintained by the formal act of registration after a ‘development period’ of three to five years, facilitating legal protection for its use in the marketplace, subject to regular renewal. A well-known, established mark now represents a potent advertising and marketing instrument, freely assignable, often licensed and frequently attracting others to illegitimately appropriate its value to themselves, thus requiring sanction. Beier accepts that where a trademark gains progressing popularity amongst traders in a market, the more its owner will be successful in developing it into an advertising tool, making it a licensing commodity of itself beyond issues of similarity of goods, and therefore it must be enforceable against imitation; ‘without relinquishing its traditional function as an indication of commercial origin and its related quality function, trademark protection has ventured into new dimensions in recent years’.

Any trademark, effectively promoted, may acquire considerable value and therefore entitlement to legal protection, as a result of origin, quality and advertising functions, leaving it vulnerable to exploitation by rivals, especially due to the intangibility of its effects on a product. Klieger argues ‘taken together, these functions of trademarks as product, source, and quality identifiers, and as vessels for the development of brand personas, elevate trademarks above physical assets and other forms of IP as the most valuable assets of many companies. Put simply, a trademark is that which makes tomorrow’s business something more than an accident’ (Klieger, 1997). Interference therefore has the potential to deprive the mark owner of customer loyalty without the expense of acquisition of rights, and damage interests with sub-standard copies which undermine the trademark reputation (Horwitz, 2001). It is, as such, arguably worthy of protection.

The theoretical foundations of trademark protection combine both legal and economic rationales. Early research indicates that trademarks do not serve merely as indicators of origin but also as repositories of advertising and investment value that preserve accumulated goodwill (Schechter, 1927). Subsequent economic analysis emphasised that trademarks serve as tools that facilitate the market by reducing consumer search costs and promoting effective decision-making, while cautioning that excessive protection of ancillary functions can distort competition (Landes and Posner, 1987; Dogan and Lemley, 2007). Further research indicates that these dynamics intensify in online settings where sponsored links and keywords are used (Dogan and Lemley, 2004). More recent doctrinal research emphasises the necessity of striking a balance between competitive freedom and consumer protection obligations (Bartholomew, 2024; Stedman, 2019). Collectively, these perspectives offer the theoretical foundation for evaluating whether the origin-centred approach employed by the UAE remains adequate for handling the challenges posed by keyword advertising in digital markets.

Building on these theoretical foundations, recent scholarship increasingly examines the interface between trademark law and digital marketing practices, revealing unresolved questions about the scope of trademark protection in online advertising. Sachdev emphasises how trademark use might cause disruptions in search engine

advertising, social media promotions and virtual platforms (Sachdev, 2025). Arcidiacono examines EU jurisprudence in relation to AI-driven behavioural advertising on digital markets (Arcidiacono, 2025). Thio et al. (2024) explore the vulnerability of brand identity in keyword bidding strategies and Farley considers how algorithmic curation reshapes the functional role of trademarks (Farley, 2023). According to Gambone (2024), brand protection domains have increasing economic and reputational stakes. Additionally recent study on keyword search advertising highlights conflicts between competitive online marketing and trademark origin-identification function (Miao, 2024). Despite these contributions, a significant gap remains in scholarship addressing how the UAE Federal Decree No. 36 of 2021 applies to keyword advertising, an issue directly addressed by this study.

5 UAE trademarks law and protection of trademark functions

The Federal Law No.36 of 2021 on Trademarks is a federal law applying across all Emirates and is a form of reference in the decision-making of the respective courts. The Trademark Law (hereinafter referred to as TM law) is relatively new, thus the jurisprudence of the UAE TM Law is limited in the soundness of a framework that should provide a level of certainty to the interpretation of the extent and effect of the legislation.

Different perspectives are taken in the examination of the concept of trademarks, but in the legal context, an emphasis is placed herein on the definition under the new TM Law, which of itself, invites broad interpretations in analysis. Article 2 of TM Law states that:

“Shall be considered a trademark all that takes a distinctive shape composed of names, words, signatures, letters, numbers, drawings, symbols, addresses, hallmarks, stamps, pictures, engravings, advertisements, packages or any other mark or a combination thereof if used or meant to be used either in distinguishing goods, products or services of whatever origin, or establishing that the goods or products are owned by the owner of the Trademark because he manufactures, selects or trades therein, or that a service has been rendered...”.

Accordingly, the primary role of a ‘trademark’ is to identify a particular source producer, or a certain merchandise, distinguishing them from others (‘Case No.136, Commercial’, (Dubai Court of Cassation, 2006); ‘Case No. 86’, (Dubai Court of Cassation, 2000); Case No 692 of 2015, Commercial; Case No 1400 of 2011, Commercial). The Court of Cassation had clarified that the purpose of trademark protection is specifically to guarantee that the mark functions as an ‘indication of origin’, and thus to provide consumers with sufficient information to avoid confusion of particular goods or services with others (‘Case No.252, Civil’, (Dubai Court of Cassation, 1996); Case No 138, Partial Commercial, (Dubai Courts of First Instance, 2017)). The main purpose of the trademark, according to the Court, lies in the distinguishing of products in order to avoid confusion, uncertainty or doubt among consumers by indicating the owner of the products (‘Case No. 397 of 2019, Commercial’). This is essentially the consideration of mark protection in the context of differentiating between one product or service from another, or from a potential competitor. The Court of Cassation has asserted:

“The purpose of the trademark is to distinguish products to attract consumers because of the services it performs for them, which is the ease of identifying their preferred goods. This purpose is achieved by contrasting the marks used in distinguishing a particular product so as to not confuse it with its counterpart and therefore avoid confusion and misleading among consumers.” (‘Case No.252, Civil’)

The objective of the ‘distinctiveness’ criterion is to convey an explicit or symbolic message of the source of products or services, mirrors the importance of the origin of trade (Torremans, 2005). The Court of Cassation determined that the characteristic of a guarantee of origin gives the trademark a method of attracting customers and a competitive advantage to its owner due to its exclusive right to use it (‘Case No. 258’, (Dubai Court of Cassation, 2002)). A trademark owner therefore, affords a consumer the means of identifying that a product or service is under their complete control, for the purpose of engaging in undistorted competition with other undertakings. Product identification is the foundation of competitive advantage and such competition will be distorted if the trademark owner is not enabled by law to so protect the result of its undertaking and exploit any advantage it confers (Griffiths, 2011). In the pursuit of free competition, it gives the trademark owner the right to adopt any goods or services that are produced by another as his own, so long as those products meet the specification standards of the original owner (Case No. 304 (Dubai Court of Cassation, 2000)).

The importance of the origin function in the differentiation process is evident. Therefore, the ‘origin function’ of the trademark has considerable emphasis as the primary justification for trademark protection and indicator of the source of a product or service. That is not to say, however, that other ancillary functions are not recognised by the courts. Issues of taking unfair advantage of an established mark and functions of ‘quality’ and ‘advertising’ were made reference to in the courts in addition to that of the source origin of the products. The court makes reference to freely benefiting or free riding from the reputation of a brand that the owner acquired through his effort, and explained that this reputation is negatively affected when poor quality products are used (Case No 858 of 2012, Case No 1785 of 2019; Case No 87 of 2020; Case No 1886 of 2014).

However, to examine what the application of the law accepts to be the real and proper rational basis of trademark protection, the infringement criteria provided by the law in addition to court decisions need to be explored.

5.1 Infringement criteria

Article 49 of the TM Law sets out expressly the infringement criteria. The wording of the offences can make it difficult to bring actions against anything other than direct counterfeit or imitation, and in most Court cases, consumer interpretation is given the main focus; whether or not a consumer will be able to distinguish between two marks, or if it will cause them to link the two due to confusion. It specifically mentions that sanctions will be issued against those that use counterfeit goods or forged trademarks. There are three conditions laid out under this article that when observed, constitute as trademark infringement:

- 1 “Whoever counterfeits a duly registered trademark or imitates it in such a way as to mislead the public, in respect of goods or services characterised by the original mark or those similar to them, and whoever knowingly makes fraudulent use of a counterfeited or imitated trademark
- 2 Whoever, in bad faith, affixes on his products a registered trademark belonging to another person or uses it without any right to do so.
- 3 Whoever sells, offers for sale or circulation, or possesses for sale purposes, products bearing counterfeited or forged trademark or unrightfully affixed on it with knowledge thereof, and whoever extends or offers to provide services under a counterfeited or imitated trademark or one unrightfully used, with knowledge thereof”.

Accordingly, the law encompasses and prohibits certain commercial activities by third parties by making specific reference to dealings in imitation of look-alike and counterfeit products, which would constitute as a case of straightforward infringement. The rationale of such protection apart from the potential damage to the imitated trademark lies within the consumers. When a trademark is counterfeited, there is no doubt that customers are being misled as to the origin of the products, nor is there any question regarding the intent of the sellers, and as such, mere possession of imitated trademarks would be considered liable under the law as well. In such a case, confusion is presumed and the protection is absolute.

Article 41 (2) makes reference to the presence of bad faith when making use of a registered trademark. As is the case with an imitated trademark, bad faith does not need to be established either. This was seen in a case brought forth to the Dubai Courts by Cartier, a well-known and recognised brand, against the defendant, whereby it was established that the latter was selling jewellery similar to a certain Cartier piece, ‘Amulette de Cartier’. An expert was appointed to ascertain the similarity and it was found that both the products were virtually identical; that is, they were counterfeit goods. In response to this, the Court alleged trademark infringement, stating that the counterfeit products would damage Cartier’s business and reputation, leading to unfair competition. In return, the defendant claimed that any infringement on their part was done unintentionally and without any intent of bad faith; this claim, however, was dismissed by the Court. Under the TM Law, it is not specified what exactly constitutes as bad faith; it is only implied through certain case law that hiding the true source of a good is an indication of bad faith, as is knowingly selling counterfeit goods or forged trademarks in order to cause confusion (Case No 1227 of 2013, Full Commercial). In *Dubai Forwell Trading v. Berggrove Pty*, the court laid out that selling counterfeit products bearing the imitated trademark to create confusion ‘confirms its bad faith’.

In addition to the TM Law, the Code of Commercial Practice also alludes to the misrepresentation of the origin of the goods, which could be extended to the use of trademarks. It is clearly stated in the latter that a trader should not use any means that can mislead consumers on the origin of goods with the intent to take the customers of its competitors (Article 65, Federal Law No 18 of 1993 Issuing the Commercial Transactions Law). This also makes reference to unfair competition, which is absent in the TM Law. And while the law is silent on it, and theoretically, the UAE Competition Law does not apply to trademark infringement, the Courts make mention of unfair competition and its damaging effects to a brand’s business and reputation in a few cases,

including the Cartier case. Apart from the TM Law and unfair competition, the Courts make exhaustive references to Articles 65 and 66 of the Code of Commercial Practice, which are stated as follows:

“Article 65: A trader may not disclose such matters as are inconsistent with the reality regarding the origin or description of his goods, or any other matters pertaining to their nature or importance. He may not either declare falsely that he holds a status or degree or award, nor may he resort to any other misleading means, with the intent thereby to usurp the customers of a competition trader; or else, he shall be liable for compensation

Article 66: A trader may not resort to fraud and cheating when marketing his goods, nor may he spread or publish false particulars tending to be prejudicial to the interests of another competitor trader; in default he shall be liable for damages”

And while both these articles extend protection to distortion of competition, it is linked to the false disclosure of the origin of the products, implying unfair competition when the origin function is primarily involved. Therefore, confusion is the manifestation of infringement under the UAE law.

5.2 Protection of well-known trademarks

It can be argued that the advertising function is linked to a greater degree to the protection of established and well-known trademarks. There is no dispute that well-known trademarks have a higher risk of being subject to imitation due to the higher commercial value they bring in. As such, they demand competent protection. In the UAE, protection is extended to well-known trademarks under Article 4 of the TM Law, which applies to those that are not registered in the UAE but registered internationally.

Article 4 of the TM law states that:

- 1 Trademarks of worldwide fame transcending the boundaries of their country of origin to other countries may not be registered except upon application of the original owner of an official power of attorney issued thereby.
- 2 In order to determine whether the mark has acquired fame, the extent of the concerned public’s knowledge thereof due to its promotion should be taken into consideration.
- 3 Renowned trademarks must not be registered to distinguish goods or services that are not similar or conform to those distinguished by such trademark, in case:
 - The use of the trademark indicates a relation between the goods or services to be distinguished and the goods or services of the owner of the original mark.
 - The use of the trademark may cause prejudice to the interests of the owner of the original mark.”

Trademarks with international recognition and proof of prior use constitute as well-known trademarks in the UAE. The new TM law has clarified the criteria of what constitutes as a well-known trademark by stating the specific period of its use and registration, the number of countries it is registered or known in, the value of the mark and the extent to which is known to the public due to its advertisements and promotions.

If this has been established, the trademark cannot be used by anyone without the consent of the owner.

The Courts rationale behind the protection given to well-known trademarks essentially pertains to the concept of ‘free-riding’ or ‘parasitic’ act (Case No 87 of 2020, Full Commercial). In Red Bull case, the court was of the view that the competitor had intentionally taken use of the Red Bull trademarks traits to take advantage of the already established reputation of Red Bull, referring to the advertisement function. The court makes also reference to the subsequent loss of confidence by the customers in the original trademark due to the poor quality of the imitated goods, alluding to the quality function (Case No 499 of 2017, Full Commercial; Case No 1624 of 2014, Wholly Commercial).

However, the protection granted to well-known trademarks is limited to the criteria set under Article 49 of the TM Law; consumer confusion. It does not extend to non-like goods unless there is a possibility for the consumers to form a link between the two trademarks (Case No 87 of 2020 and Case No 1785 of 2019, Wholly Commercial). In the case where similar trademarks are used rather than counterfeit, it needs to be established that two marks are so similar to the limit that it would cause the consumers to link the two together as one and therefore create confusion.

5.3 Confusion is the manifestation of infringement

The courts in the UAE have been clear in deciding that an infringement of a trademark is an act of unfair competition (In Case No 87 of 2020, Case No 1785 of 2019, Case No 757 of 2017, Case No 764 of 2016, Case No 1624 of 2014, Case No 499 of 2017, (Wholly Commercial); Case No 508 of 2015, Case No 679 of 2017, Case No 401 of 2017, Case No 138 of 2017, (Partial Commercial). Their reasoning for this has been consistent and twofold; imitation of a trademark allows the infringer to attract customers of the original trademark owner in an unfair manner, leading to loss in market share and profits, as well as a direct hit on the reputation built on years of commercial and industrial effort (Case No 757 of 2017 and Case No 47 of 2019, Wholly Commercial). However, through case law, it is proven that although it has been established that the ancillary functions of a trademark are considered and made reference to in judgements, the primary focus of the infringement criteria lies with the consumer, and whether the use of trademarks is such that it would cause them to confuse between the origin of the products. That is, the purpose of trademark protection is specifically to guarantee that the mark functions as an ‘indication of origin’, and thus to provide consumers with sufficient information to avoid confusion of particular goods or services with others.

Accordingly, it can be seen that the UAE Courts adopt a more cautious approach, reluctant to accept that protection for trademarks should go beyond the conventional boundaries, limited to the origin function, which protects consumers against confusion. Therefore, according to the courts, ‘confusion is the manifestation of infringement’ (Case No 757 of 2017, Wholly Commercial). This has been the case so far for traditional cases; in the online sphere, to date, no cases are available in the UAE to the public related to trademark infringement through online marketing methods. Accordingly, what constitutes infringement online can only be implied through the interpretation of the law and court judgments.

6 Implications of online keyword advertising

Traditionally, the issue of trademark use is on its way to being well established under the UAE law. When it comes to the physical environment and its structure, wherein commercial activities take place, there are substantial limitations on infringing and non-infringing human conduct. These limitations are, however, not firm in the current online state of affairs. With the rise of the use and dependence on the internet, there has been an exponential growth in international trade, with producers and suppliers throughout the world innovating and competing for consumers, inventing new ways of marketing and seeking, perhaps stealing, advantage over their competitors. According to the Dubai Chamber, the retail e-commerce market in the UAE reached \$3.9 billion in 2020, an almost 50% increase from the previous year due to the COVID-19 pandemic. This has been projected to increase to \$8 billion by the year 2025. With this level of predicted growth, there is a need for an emergence of IP rights, especially with respect to trademarks, in the online sphere.

The importance of the protection of trademarks and their development as a valuable, marketable asset remains vital, as perhaps they are more at risk of harm. Accordingly, the argument that keyword advertising causes potential damage to the trademark owner has been the impetus for seeking protection for their functions. And while there is mention of consumer protection and reference made to displaying incorrect information about a product and advertising through deceit online in the Federal Law No. 34 of 2021 (Cybercrimes Law), there is nothing specifically mentioned about the criteria or consequences of trademark infringement on the internet under the current UAE legislation. Furthermore, there have been little to no cases made accessible relating to online keyword advertisement with respect to trademark infringement. Therefore, the interpretation and analysis done of the TM law as well as the available court judgements in the traditional market will help in gaining an understanding of what would potentially constitute as infringement online. Thus, the question now arises: does the use of trademarks as 'keywords' constitute trademark infringement in the UAE under the current TM Law?

Reflecting on this question, it is proposed that, first, the use of a competitor's registered trademark as a keyword in online advertising under the UAE TM Law should not amount to infringement unless it deceives customers or impairs their ability to identify the true origin of the goods or services (Case No 397 of 2019, Commercial Appeal; Case No 757 of 2017). Secondly, it is anticipated that when determining liability for keyword advertising, the UAE courts will continue to prioritise the origin-identification function over ancillary advertising or investment functions, in tandem with the reasoning used by the Court of Justice of the European Union in *Google France v. Louis Vuitton* (Joined Cases C-236/08 to C-238/08). Lastly, it may be predicted that judicial interpretation will rely on these established doctrines and international jurisprudence in the absence of domestic precedent specifically addressing keyword advertising. Therefore, protection is restricted to circumstances in which the use of keywords results in actual or probable misunderstanding or misleading association.

In the case of online keyword advertisement and trademark infringement, it is important to show that the infringing party did not imply any type of affiliation with the competitors' trademark and they must show independence of both the concerned trademarks. When using a registered trademark as a keyword in order to divert the consumers from their original intent or destination, the ancillary function of

advertisement played by a trademark comes to light. In essence, it provides encouragement to look at other, rival products and services, leading to blurring of the image, and less loyal customers. Competitors gain an unfair advantage in the use of the image owner's reputation. It harms the trademark owner by essentially allowing others to free-ride off their goodwill; a lesser-known brand can buy the trademark of a well-known brand and present itself to the audience gained by the latter, distorting the established market share and causing dilution.

A landmark case in this domain is *Google France v. Louis Vuitton Malletier SA*, in this case, the court ruled that advertisers are allowed to utilise third-party trademarks as keywords in online advertisements as long as they don't deceive customers or imply a business relationship with the trademark owner. Notably, the European Court of Justice decided that unless it compromises the fundamental purpose of identifying origin, such keyword use does not automatically amount to trademark infringement. The court also clarified that, as long as it continued to act as an impartial intermediary, Google as a platform cannot be held directly responsible for the trademark usage of its advertisers (Joined Cases C-236/08 to C-238/08).

The above case set tone for future assessments of online keyword use, especially in jurisdictions that prioritise consumer confusion as the primary test for infringement. Although, this case is not binding in the UAE, it offers a comparative insight into how keyword advertising can be evaluated without automatically classifying it as infringing.

In the UAE, due to the absence of case law from the online sphere, the infringement criteria of the TM Law can be interpreted. As mentioned earlier, the structure of Article 49 of the TM Law dictates three possible scenarios where infringement liability arises. The first case involves counterfeits or imitations of registered trademarks. The law states that a trademark characterises a good or service, and any imitations that could possibly mislead the public would be considered as infringing. These counterfeit goods have been targeted quite vigorously. In practice, the Department of Economic Development (DED) has been targeting online markets in addition to traditional physical markets. For online infringement and counterfeit goods, the commercial compliance and consumer protection (CCCP) sector of the DED carries out regular surveillance, closing down multiple social media accounts and online stores in order to protect and increase the competitive business environment.

The second scenario deals with using a registered trademark without prior permission in bad faith. The underlining meaning of bad faith is not clarified under the law, although the court makes reference to it in its judgements, by stating that the act of using a trademark without right, using it with the intent of harming and illegally competing with the true owner, hiding the true source of a good, and leading consumers away from the true owner are indications of bad faith. And finally, the third and last scenario, an extension of the first, refers to anyone offering or possessing for sale goods bearing the forged trademarks as being held liable.

However, inferences drawn from the analysis of court judgements of traditional trademark cases points toward the direction that the law will most likely be interpreted by the courts. It seems to be the case that keyword advertising would not cause trademark infringement unless there is a situation of confusion regarding the true source of goods and services. This has been established through the precedents set by the courts. In any case where there is a clear difference between the two trademarks, whereby the consumers are clearly informed of the origin of the product, it would not be considered as infringing. To further understand this, we can look back and consider Figure 2, if Dell

had bought the keyword of its competitor. This would not be a case of trademark infringement in the UAE as the consumer is perfectly aware that Dell is a separate commodity, not under the umbrella of its rival. In such a case, the consumer does not have to worry about the origin of the product, and can say to themselves ‘I need not investigate the attributes of the brand I am about to purchase because the trademark is a shorthand way of telling me that the attributes are the same as that of the brand I enjoyed earlier’ (McKenna, 2013). However, if the circumstance is such that confusion could arise in the minds of the consumer as to the origin of the product, it would be classified as infringement. In *Zalatio v. Zalatio*, the court stated that the latter did not distinguish itself in form from the former, and that consumers might believe that ‘the two parties to the lawsuit are one party and at the very least that there is a connection or link between them’ (Case No. 1886 of 2014, Wholly Commercial).

The fact that the origin function is the only function protected by the UAE TM law is quite interesting. The rationale for this strongly points towards consumer protection. If the other functions of a trademark are considered, the sellers are protected from being able to invest resources in the goodwill created by the product and its mark. Dilution of their quality function would be prevented, while buyers would be protected through enhancement of their ability to be better informed in a narrow sense, and being able to rely on source indicators in a broader sense. This protection ensures that both consumers and sellers are able to trust trademark vocabulary and consider it as a reliable shorthand (Dogan and Lemley, 2004). Only if the accuracy of trademarks can be trusted, will the functions of a trademark be able to perform properly (Dogan and Lemley, 2004). And this is where the law comes in.

These observations suggest the UAE’s focus on the origin-identification function preserves the primary consumer protection role of trademarks while avoiding overextension into their advertising value. By reducing search costs and maintaining competition in digital advertising, objectives long acknowledged in trademark theory and modern economic analysis, restricting liability for keyword advertising to cases of genuine or likely confusion also enhances market efficiency.

7 Conclusions

This article set out to explore the UAE TM Law and the extent of protection granted to trademarks, with particular reference to the use of online keyword advertising services. The current UAE law seems to recognise the importance of conventional boundaries of limiting the protection of consumers against confusion by preventing of harm to the source origin. The essential origin function remains the main function; a ‘trademark’ which does not serve as an indication of the origin of a product on which it is attached or displayed cannot be registered and therefore can gain no legal protection.

It is apparent that in the world of modern commerce, the essential ‘origin’ function by which products would be identified by consumers has developed such that trademarks have the facility to perform various economic functions which serve the interests of both consumers and owners. They have been able to guarantee to consumers that a product is satisfactory for the purpose required and has a degree of consistent quality. Huge investments in advertising and promotion have led to the development of a communication function under which the trademark owner would seek to convey the lifestyle messages or enjoy a reputation that attracted customers and preserved their

loyalty. This led to the most prominent question sought to be answered by this study; which of the relatively new variety of functions are protected by the UAE TM law, and in particular, it's implications on online keyword advertising.

Keyword advertising is an effective way for brand owners to reach their intended audience. At the same time, it allows this audience to get access to a greater supply of information than traditionally possible, fulfilling the fundamental and primary goal of trademark law, that is, having better-informed consumers in the face of freely flowing information while protecting them from misinformation and deceit (Watson, 2011).

However, it is true that 'every advantage has its disadvantage'. The problem with keyword advertisement is triggered when trademarks are bought as keywords by third parties (Roy and Marsoof, 2024). This raises the question of why exactly trademarks must be protected. The functions of a trademark were considered here, as well as establishing which functions are worthy of legal protection. While the origin function has been given primary importance, its ancillary functions remain vague and unprotected by the TM Law. This separation of the functions can be justified as scenarios of a 'potentially endless list of functions' can be brought forth by trademark owners in an attempt to gain monopolistic headway, and an elevation of trademark beyond its conventional 'badge of origin' might lead to a trademark being 'far more than simply a maker's mark' (Meale and Smith, 2010). As such, the protection of other functions of trademarks, particularly those of an economic nature, should be left to the regulation and legislation governing unfair competition. The TM Law gives sole importance to the origin function, which is supported through established case precedents, indicating that the use of keyword advertising would not cause trademark infringement (Abdou, 2025).

Key findings of this study indicate that:

- 1 the UAE's origin-identification function continues to be the primary indicator for infringement in both traditional and online contexts
- 2 keyword advertising generally does not constitute infringement unless it causes actual or likely confusion
- 3 limiting protection to the origin function preserves competitive advertising and reduces consumer search costs by avoiding undue control over the advertising value of marks.

Ultimately, it must be realised that the UAE TM Law is relatively recent. And issues regarding trademark infringement, especially online infringement, have certain different features that are subject to constant and rapid change and development, due to the nature of dealings. And although the nature of these dealings is more or less similar to traditional economic dealings under the TM Law, this area needs more attention than is currently being given, especially in the long term, so as to achieve a healthy legal environment for internet dealings, whereby the proper application of the law can be established.

In addition to elucidating the scope of liability for keyword advertising under the UAE TM law, these findings advance scholarly research by strengthening the doctrinal comprehension of how the origin-identification function operates in emerging digital markets. They draw attention to the need for further empirical research on consumer perception of online sponsored links in the UAE and other hybrid legal systems. According to the analysis, clear and transparent online advertising practices that do not

imply financial ties with trademark owners are unlikely to violate the UAE TM law. This lowers compliance uncertainty and supports competitive digital markets.

Declarations

The authors report there are no competing interests to declare.

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