

Legal Protection of Perfume Industry in Saudi Arabia and the Challenge of Dupe Comparative Advertising: A Comparative Analytical Study

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Abstract

The global perfume market has recently witnessed rapid growth in imitation fragrances, commonly referred to as “dupes.” These products replicate the scent profiles of luxury brands through reverse engineering and attract consumers due to their affordability. However, they raise complex legal questions, particularly in the field of intellectual property. This paper critically examines the extent to which Saudi legal frameworks protect the fragrance industry under intellectual property law, including patents, trade secrets, trademarks, and industrial designs. It also assesses the effectiveness of these mechanisms in safeguarding the core element of a perfume: its scent.

The study further conducts a comparative analysis of how the United States, the European Union, and Saudi Arabia regulate dupe perfumes, particularly in relation to comparative advertising and consumer protection. It concludes that the Saudi legal framework is more closely aligned with the U.S. model than with the European approach. Under Saudi law, dupe perfumes are permitted as long as they are not counterfeit. Comparative

advertising of such products is likewise permitted, provided that specific conditions are met.

Keywords: Saudi IP Law, Dupe Perfumes, Reverse Engineering, Comparative Advertising, Unfair Competition, Fragrance Industry.

الحماية القانونية لصناعة العطور في المملكة العربية السعودية وتحديات الإعلان المقارن للعطور المستنسخة: دراسة تحليلية مقارنة

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المستخلص

شهد سوق العطور العالمي في السنوات الأخيرة تزايداً ملحوظاً في انتشار ما يُعرف بالعطور المستنسخة، وهي منتجات تُستخدم فيها تقنيات الهندسة العكسية لنسخ الخصائص العطرية للعطور الفارحة. وتستقطب هذه المنتجات شريحة واسعة من المستهلكين نظراً لأسعارها المنخفضة مقارنةً بالمنتجات الأصلية. غير أن انتشار هذا النوع من العطور يثير جملة من التساؤلات القانونية المعقدة، لاسيما في نطاق حماية حقوق الملكية الفكرية.

تهدف هذه الدراسة إلى تحليل الأطر النظامية السعودية لحماية صناعة العطور، وذلك من خلال تناول وسائل الحماية المتاحة في أنظمة الملكية الفكرية، مثل براءات الاختراع والأسرار التجارية والعلامات التجارية والنماذج الصناعية، مع الوقوف على مدى كفاءة هذه الوسائل في حماية العنصر الجوهرى للعطر، وهو رائحته.

كما تتناول الدراسة تحليلاً مقارناً بين نهج كلٍّ من الولايات المتحدة والإتحاد الأوروبي والنظام السعودي في تنظيم العطور المستنسخة، وتحديداً فيما يتعلق بالإعلان المقارن وحماية المستهلك. وتخلص نتائج الدراسة إلى أن الإطار النظامي في المملكة العربية السعودية أقرب إلى النموذج الأمريكي منه إلى النموذج الأوروبي، إذ يجيز صناعة وتداول العطور المستنسخة ما دامت لا تشكّل تقليداً من شأنه تضليل المستهلك. كما يجيز الإعلان المقارن لهذه العطور بشروط معينة.

الكلمات المفتاحية: الملكية الفكرية، العطور المستنسخة، الهندسة العكسية، الإعلان المقارن، المنافسة، صناعة العطور.

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Introduction

The fragrance industry in Saudi Arabia is one of the largest within the Gulf Cooperation Council (GCC).¹ It currently generates approximately USD 517.12 million in annual revenue and is projected to grow at a compound annual rate of 2.34 percent between 2025 and 2030.² For decades, international luxury houses such as Dior, Chanel, and Yves Saint Laurent have dominated the Saudi market through retail distributors and franchised boutiques. Alongside these global brands, local Saudi perfume houses have gradually emerged and expanded. Several of them now operate across the Gulf and have even entered European markets, including France and the United Kingdom.

In recent years, however, the market has undergone a notable shift. A growing number of companies now manufacture and sell perfumes that replicate the scent profiles of luxury brands.³ These products, commonly referred to as “dupes,” are often created through reverse engineering. They are marketed as offering a comparable olfactory experience at a fraction of the cost. Relying heavily on comparative marketing, they frequently suggest equivalence with high-end originals. As a result, dupe perfumes have gained remarkable popularity among consumers seeking similar quality without the luxury price tag.

The growth of the dupe industry raises significant legal and commercial questions. First, the replication of established fragrances raises challenges of intellectual property protection. Second, the use of comparative advertising to promote these products gives rise to concerns regarding fairness and potential free riding.

Research Questions

The central question this paper addresses is: To what extent does the Saudi legal framework provide effective protection for the

fragrance industry, and on what legal bases does it permit the manufacture and comparative advertising of dupe perfumes? To answer this question, the study examines three sub-questions:

1. To what extent do intellectual property rights under Saudi law protect perfumes and their distinctive elements?
2. How do the United States, the European Union, and Saudi Arabia respectively regulate dupe perfumes and comparative advertising?
3. What lessons can Saudi Arabia draw from the approaches adopted in the United States and the European Union?

Structure of the Paper

This paper is divided into two main parts. Part I examines the intellectual property mechanisms available under Saudi law for protecting perfumes. These mechanisms include patents, trade secrets, trademarks, and industrial designs. It also identifies the key limitations of each form of protection.

Part II addresses the phenomenon of dupe perfumes. It provides a comparative analysis of how the United States, and the European Union regulate such products and their use of comparative advertising. The discussion then turns to the Saudi approach, examining how existing laws govern comparative advertising and how forthcoming legislative drafts may further develop this area.

Part I: Legal Protection of Perfumes under Saudi Intellectual Property Law

The legal protection of perfumes in Saudi Arabia relies on multiple intellectual property frameworks, each addressing a different aspect of the product. Patent law may cover technically innovative perfume compositions. Industrial design law protects the external appearance of bottles and packaging. Trademark law safeguards brand identity and product differentiation. Trade secret

law preserves the confidentiality of perfume formulas. The following sections analyze how each of these areas of law operates in practice and evaluate their effectiveness in protecting perfumes under Saudi law.

A. Patent Law

Saudi patent law defines an invention as “an idea developed by an inventor those results in a solution to a certain problem in the field of technology.”⁴ To qualify for patent protection, an invention must meet three main requirements:

1. Novelty: The invention must be new.⁵ It must not have been disclosed to the public by any means, including writing, oral statements, use, or otherwise anywhere in the world before the filing date.⁶
2. Inventive Step (Non-Obviousness):⁷ The invention must not be obvious to someone with ordinary skill in the relevant technical field, based on prior art.⁸
3. Industrial Applicability:⁹ The invention must be suitable for use in an industry, such as manufacturing, agriculture, services, handicrafts, or fisheries.¹⁰

If these conditions are met, the patent gives the holder exclusive rights for 20 years from the filing date.¹¹ These include the right to stop others from making, selling, using, storing, or importing the patented product.¹² If the patent covers a process, it includes stopping others from using the process or benefiting from its results.¹³

Because of these exclusive rights, patents also prohibit reverse engineering.¹⁴ Any recreation or reproduction of a patented invention without consent would be unlawful, even if developed independently.

Despite their strength in principle, patents are rarely effective for protecting perfumes.¹⁵ This is due to several key limitations. The

first is the lack of a technological solution. Patent law protects inventions that solve technical problems, whereas perfumes are typically artistic or sensory in nature. Their main purpose is to provide a pleasant smell rather than to address a technical issue. For this reason, most perfumes do not qualify for patent protection.¹⁶

However, there are limited exceptions. A perfume may qualify for a patent only if the formula addresses a clear technical problem. An illustration of this is U.S. Patent No. 7,169,746, filed by Shiseido.¹⁷ The patent describes a perfume composition that aims to influence psychological states such as relaxation or stimulation.¹⁸ This goes beyond the ordinary function of providing a pleasant scent. The grant of the patent indicates that the claimed effects were considered a sufficient technical contribution. In this way, the invention met the threshold of patentability.

The second limitation that makes patent protection less effective for perfumes is its limited duration.¹⁹ Even when a perfume formula qualifies for patent protection, that protection lasts only 20 years.²⁰ Once the patent expires, the formula enters the public domain and can be legally replicated.²¹ This creates a challenge for perfume brands that rely on long-term exclusivity to preserve their brand identity.

In summary, while patent law offers strong legal protection for inventions that meet specific criteria, it remains an impractical tool for safeguarding most perfumes. The requirement of a technological solution excludes the vast majority of fragrances, which are designed for sensory appeal rather than technical innovation. Even when a perfume composition qualifies for patent protection, the limited duration of 20 years weakens its long-term

commercial value. Accordingly, patent law plays only a minimal role in protecting the perfume industry in Saudi Arabia.

B. Industrial design

Perfumes may also be eligible for protection under Saudi Industrial Design Law. An industrial design is defined as: “A composition of two-dimensional lines or colors, or any three-dimensional shape that gives an industrial product, or a product of traditional crafts, a special appearance, provided that this is not solely for a functional or technical purpose, including textile designs.”²²

To qualify for protection, a design must meet specific requirements. The most important of these is novelty.²³ A design is considered novel if it has not been publicly disclosed in any tangible form. This includes disclosure through publication, public use, or any other accessible method. The disclosure must not have occurred before the filing date or the priority date.²⁴ If this condition is satisfied, the applicant can obtain an industrial design certificate.

The certificate grants the holder exclusive rights. These include the ability to prevent others from manufacturing, selling, or importing any product that contains or substantially copies the protected design.²⁵

Although industrial designs provide effective protection under Saudi law, their scope remains limited when applied to perfumes. These rights cover only the external appearance of a product, including its shape and decorative elements.²⁶ For example, the Carolina Herrera Good Girl perfume bottle, which is designed in the shape of a high-heeled shoe, can be registered as an industrial design. Another example is the Chanel No. 5 bottle. Its iconic rectangular form and minimalist style are also registerable.

Thus, industrial design protection is limited to the external appearance of the perfume and does not extend to the fragrance itself. As a result, a significant gap in protection remains. If a competitor replicates the scent while using a different bottle design, there is no infringement under industrial design law. The core element of the product, the olfactory composition, remains entirely unprotected.

In addition, industrial design protection is time limited. In Saudi Arabia, design rights last for a maximum of fifteen years and cannot be renewed.²⁷ After this period, the design enters the public domain. For luxury perfume brands, this limited duration may be insufficient. Many of these brands rely on long-term design consistency as a central part of their identity and market positioning. Therefore, industrial design law protects only the visual elements of perfume products, leaving their scents beyond the scope of protection.

C. Trademark

Trademark law is the most widely used form of intellectual property protection in the perfume industry. In Saudi Arabia, the legal framework offers robust protection for both traditional and non-traditional marks. This provides perfume manufacturers with an effective mechanism to safeguard brand identity, product packaging, and related branding elements.

The statutory definition of a trademark under Saudi law is deliberately broad. It provides that a trademark is: “Anything having a distinctive form if used or intended to be used either to distinguish goods, products, or services of a facility or other facilities, or to indicate the rendering of a service or the control of inspection of goods or services.”²⁸ The law also provides a non-exhaustive list of what may constitute a trademark. This includes

names, words, letters, figures, drawings, logos, pictures, engravings, and distinctive packaging.²⁹

This broad definition gives brand owners significant flexibility in how they distinguish their products in the market. Marks may be verbal, such as Chanel No. 5 or J'adore by Dior. They may also be letter-based, such as "LV" for Louis Vuitton or "H" for Hermès. Visual motifs also serve as trademarks. The floral design associated with Gucci Bloom is an immediate brand signal. Packaging often functions as a trademark as well. The torso-shaped bottle of Jean Paul Gaultier's Le Male and the embossed seal of Viktor & Rolf are well-known examples.

Under Saudi law, a mark must satisfy four conditions to qualify for registration. These are distinctiveness, novelty, legitimacy, and non-deceptiveness.³⁰ If these conditions are met, the mark is registered for ten years and may be renewed indefinitely in further ten-year terms. Unlike patents or industrial designs, trademarks are not subject to a non-extendable limit.³¹ The ability to renew trademarks indefinitely is especially important in the perfume industry. This is because brand value often relies on maintaining a stable identity over time.

The Saudi Trademark Law provides clear remedies against infringement. These include imitating a registered mark in a way that is likely to confuse or mislead the public, using counterfeit or deceptively similar marks in bad faith, and selling goods bearing such marks with knowledge of the infringement. Penalties range from one month to three years of imprisonment and/or fines of 5,000 to 1,000,000 Saudi Riyals. Lesser offenses such as knowingly trading in falsely marked goods may still result in up to one year of imprisonment and/or fines of up to 100,000 Saudi Riyals.³²

Saudi law also recognizes non-traditional marks, including olfactory marks.³³ This raises the question of whether a perfume's scent could itself be registered as a trademark. The statute provides no procedural standards or technical criteria for such registrations, and there is no precedent in Saudi Arabia. Internationally, courts have largely rejected such applications.³⁴ The reasoning is that the fragrance of a perfume constitutes the product itself rather than a separate indicator of origin.³⁵ In other words, the scent of a perfume cannot function as a trademark because it represents the product being sold, not a sign that identifies its commercial source.

This limitation has important implications for the perfume industry. While trademarks protect brand identity, they do not extend to the scent itself. Competitors may lawfully analyze and reproduce a perfume's formula through reverse engineering, as long as the imitation is not falsely marketed or sold under a protected mark. As a result, this remains a significant limitation in legal protection. Trademark law safeguards the external identity of the brand but leaves the essence of the product, its scent, without protection.

D. Trade secret

Another mechanism for protecting perfumes in Saudi Arabia is trade secret protection. To qualify as a trade secret under Saudi law, the information shall satisfy three conditions. First, it must not be generally known or readily accessible to the public. Second, it must provide a commercial advantage by remaining confidential. Third, the rightful holder must take reasonable measures to maintain its secrecy.³⁶ These measures may include non-disclosure agreements, restricted access, and internal security protocols.

Saudi law does not impose a specific time limit on trade secret protection.³⁷ So long as the information remains undisclosed and continues to meet the statutory requirements, protection shall endure indefinitely. This flexibility renders trade secret law particularly attractive for the perfume industry, where brand value and formula secrecy are essential to maintaining long-term competitiveness.

Despite these advantages, trade secret protection has notable limitations. Foremost, it affords no legal remedy against independent discovery or lawful reverse engineering.³⁸ If a competitor independently develops the same fragrance or successfully reverse engineers it from a commercially available product, the original holder of the trade secret has no enforceable claim under Saudi law. Therefore, trade secret law is effective in preserving confidentiality. However, it cannot prevent independent creation or reverse engineering of perfume formulas.

E. Summary of IP Protection for Perfumes in Saudi Arabia

After examining the various intellectual property rights applicable to the perfume industry, it becomes clear that the current legal framework in Saudi Arabia provides several avenues for protection. These include patents, industrial designs, trademarks, and trade secrets. Each of these rights contributes to safeguarding different aspects of perfume products.

The following table summarizes the scope and limitations of each form of protection.

IP right	Scope of protection	Duration	Strengths	Limitations
Patent	Novel technical inventions (e.g. delivery systems, formulas)	20 years (non-renewable)	Strong protection if technical criteria are met	Strict requirements; limited to qualifying inventions; no protection for scent alone
Industrial design	External appearance (e.g. shape, form, decorative features)	10 years + 5-year renewal (max 15 years)	Protects distinctive bottle shapes and design features	No protection for fragrance; time-limited
Trademark	Brand elements: names, logos, bottle design, packaging	10 years, renewable indefinitely	Long-term protection for brand identity and packaging	Does not protect the fragrance or formula
Trade secret	Confidential business information (e.g. perfume formula)	Indefinite (as long as secrecy is maintained)	Flexible duration; protects formulas	No protection against reverse engineering or independent discovery

As the table shows, these mechanisms, though valuable, leave important gaps. They do not adequately address the distinctive feature of perfumes: their scent. The fragrance itself, which embodies both the identity and commercial value of the product, remains outside the scope of effective legal protection. This challenge is not confined to Saudi Arabia. Globally, different jurisdictions have examined whether scents might qualify for copyright protection.³⁹ So far, most such attempts have failed, largely because of the subjective and intangible nature of smell.⁴⁰ Accordingly, there is a need for a more integrated and targeted approach to perfume protection, both within Saudi Arabia and at the international level.

Part II: Dupe Perfumes, Comparative Advertising, and Legal Approaches in Saudi Arabia, the United States, and the European Union

As mentioned in Part I, one of the central challenges raised by dupe perfumes is the limited legal protection available for the olfactory profile of a fragrance. This challenge becomes more complex when dupe brands rely on comparative advertising to signal similarity to luxury perfumes. Dupe perfume brands often promote their products by referencing or suggesting similarity to high-end fragrances while offering them at far lower prices. These practices raise concerns about fair competition. They are especially problematic when dupe brands derive commercial value from the reputation and recognition of luxury houses.

This part is divided into two sections. The first defines dupe perfumes, distinguishes them from counterfeit goods, and examines how comparative advertising is used to market them. It also outlines the main forms that such advertising may take. The second section examines how the United States, the European Union, and Saudi Arabia regulate dupe perfumes and comparative advertising. It highlights the key similarities and differences between these legal systems.

A. Dupe Perfumes and Comparative Advertising

1. Definition and Distinction from Counterfeit Products

“Dupe” is shorthand for “duplicate.”⁴¹ It commonly refers to a product designed to replicate the scent experience of a luxury perfume without claiming to be the original.⁴² Dupe perfumes are typically created through reverse engineering.⁴³ They are sold at lower prices and attract consumers who want premium scent experiences at more accessible costs.⁴⁴

Dupe perfumes are different from counterfeit perfumes. The latter intentionally misleads consumers by copying not only the

scent but also trademarks, logos, packaging, and distinctive bottle designs of genuine brands.⁴⁵ This direct imitation typically constitutes clear trademark infringement. Unlike counterfeit goods, dupe perfumes do not deliberately deceive consumers into believing they are purchasing the original product.⁴⁶ They are usually marketed as being “inspired by” or “smelling like” specific luxury perfumes. Thus, dupe perfumes generally avoid direct trademark infringement by employing different brand names, packaging, and bottle designs.⁴⁷

However, dupe perfumes raise significant legal, commercial, and economic concerns. From a legal perspective, dupe brands often depend heavily on comparative advertising. Such advertising references or implies similarity to high-end fragrances through phrases such as “smells like X” or “inspired by Y.” This practice enables dupe brands to benefit from the reputation of luxury perfumes without contributing to the brand equity that luxury houses have built. This phenomenon is known as reputational free riding.

Another concern relates to inaccurate comparison. Inaccurate or overstated comparisons may mislead consumers and create deceptive impressions about similarity in quality or origin. This problem has intensified with the rise of social media, which has significantly amplified comparative advertising for dupe perfumes.⁴⁸ Influencers frequently conduct side-by-side reviews comparing dupe perfumes with their luxury counterparts.⁴⁹ This trend reflects growing concerns among luxury brands about potential harm to brand distinctiveness and an increased risk of consumer confusion.

From a commercial standpoint, dupe perfumes pose economic challenges to original fragrance producers. Luxury brands typically invest substantial resources in research and development

to create unique scent profiles.⁵⁰ Dupe manufacturers bypass these investments by reverse-engineering established scents. This practice is lawful because most legal systems do not protect the olfactory component of a perfume, as discussed earlier.

Recent market forecasts indicate that the dupe perfume sector will continue to expand.⁵¹ Its value is expected to rise from about USD 3 billion in 2025 to more than USD 11 billion by 2034, with an annual growth rate of 15.8 percent.⁵² This growth reduces the returns that original brands receive for their creative investments. It also highlights the broader problem that current intellectual property law offers limited protection for non-traditional elements such as scent.

2. Comparative advertising

Comparative advertising is a promotional strategy in which an advertiser contrasts its product or service with one or more competing brands.⁵³ It typically appears in two forms: direct and indirect.⁵⁴ Direct comparative advertising explicitly identifies a competing brand by name, logo, or other distinctive feature.⁵⁵ A classic example is Pepsi's "Pepsi Challenge" campaign from the 1970s. It invited consumers to taste Pepsi and Coca-Cola side by side to show which tasted better.⁵⁶ Apple's "Get a Mac" campaign, which ran between 2006 and 2009, also fits this category. In this campaign, Apple personified a Mac and a PC to highlight differences in usability and performance.⁵⁷ The ads aimed to convey that the Mac offered a superior user experience.

Indirect comparative advertising, by contrast, does not name the competitor. Instead, it alludes to competitors through generic phrasing such as "the leading brand" or "other products."⁵⁸ This style still communicates a sense of superiority or differentiation without explicitly identifying the competitor. Avis's "We Try Harder" campaign from 1962 illustrates this approach.⁵⁹ Although

Hertz was never mentioned, the campaign clearly targeted it and positioned Avis as a brand determined to outperform the top competitor, Hertz.⁶⁰

The purpose of comparative advertising is to provide consumers with useful information while promoting competition in the marketplace.⁶¹ Yet the practice raises significant legal challenges. These include trademark infringement, defamation, product disparagement, misleading or deceptive advertising, and unfair competition.⁶² Different jurisdictions have addressed this phenomenon in varying ways.⁶³ Some legal systems encourage comparative advertising, while others impose strict limits, as will be discussed later in this part. The central challenge is achieving a balance between protecting consumers and ensuring fair competition among businesses.⁶⁴ The law should promote transparency in advertising while preventing unfair harm to competitors.

B. Comparative Legal Frameworks on Dupe Perfumes and Advertising in Saudi Arabia, the United States of America, and the European Union

Comparative advertising in the context of dupe perfumes lies at the intersection of intellectual property law, consumer protection, and fair competition. This section examines how three major jurisdictions, the United States, the European Union, and Saudi Arabia, regulate such advertising. It focuses in particular on the legal permissibility of referencing luxury brand trademarks in the marketing of dupe or “smell-alike” fragrances. It also highlights where Saudi Arabia aligns with the United States and the European Union systems and where it diverges.

1. The United States

The United States adopts a consumer-information-focused approach to comparative advertising. This is especially true for

dupe perfumes. Comparative advertising is generally permitted so long as it is truthful and not misleading.⁶⁵ This reflects a broader policy that favors transparent commercial communication and accurate consumer information. In the United States, trademark law is primarily intended to prevent consumer confusion.⁶⁶ It is not designed to protect brand owners from lawful competition or from truthful references to their marks.⁶⁷

Comparative advertising is regulated by Section 43(a)(1)(B) of the Lanham Act (15 U.S.C. § 1125(a)) and the Federal Trade Commission's policy on comparative advertising (16 C.F.R. § 14.15(b)).⁶⁸ The FTC policy defines comparative advertising as: "advertising that compares alternative brands on measurable attributes or price and identifies the other brand by name or other distinctive information."⁶⁹ The policy encourages clear, truthful, and accurate comparisons that help consumers make informed choices.⁷⁰ It also prohibits comparative claims that are false or misleading.⁷¹

Both the Lanham Act and the guidelines of the FTC treat comparative advertising as a method of providing information to consumers.⁷² They do not regard it as a threat to the protection of trademarks.⁷³ Accordingly, the United States legal framework permits direct references to other brands in advertising.⁷⁴ Statements such as "smell alike," "inspired by," or "if you like [Brand X], you will love ours" may be used. These statements are permissible provided that they are truthful and not misleading to consumers.

A foundational case that illustrates this permissive stance is *Smith v. Chanel, Inc.*⁷⁵ Smith marketed a perfume called Second Chance, which closely replicated the scent of Chanel No. 5. It advertised that the scent had been "duplicated 100% perfect." Chanel sued for trademark infringement and unfair competition.

The Ninth Circuit rejected Chanel's claim. The court held that a manufacturer may truthfully reference a competitor's trademark when advertising an unpatented product. However, such a reference is lawful only if it is accurate and does not imply sponsorship or endorsement. The court emphasized that the purpose of trademark law is to prevent consumer confusion, not to eliminate imitation. Thus, so long as the advertising is truthful, clear, and not deceptive, the use of another's trademark is permissible. This decision confirmed that "smell-alike" perfumes may be legally marketed under U.S. law if the advertising is honest and does not mislead consumers.

A later case, *Sherrell Perfumers v. Revlon*,⁷⁶ clarified the extent of this permissiveness. Sherrell advertised its products as "Copy Cat Equivalent Fragrances". It also described them as "copies of the world's most famous perfumes and colognes" that would save consumers "50% or more". Revlon argued that these broad claims created confusion and unfairly exploited the reputation of luxury brands.

The court partially agreed. It acknowledged that Sherrell had the right to reverse-engineer unpatented fragrances and to use comparative references. However, it found that broad claims of "superb copies" risked misleading consumers into assuming equivalence in quality and origin. This language could lead consumers to believe the products were identical in quality and origin, although they were not. The court held that duplication of scent is not unlawful. However, the advertising must be accurate and must not imply endorsement, sponsorship, or affiliation.

In combination, U.S. case law, the Lanham Act, and the FTC's guidance show that the United States adopts a relatively liberal and consumer-oriented model of comparative advertising. This framework permits direct and explicit comparisons, including

references to a competitor's trademark. Such use is lawful so long as the advertising is truthful, not misleading, non-deceptive, and does not create a false association.

2. European Union

The European Union adopts a more restrictive and brand protective approach. This is especially clear for dupe perfume advertising. Comparative advertising is permitted under EU law but subject to strict conditions. These conditions come from Directive 2006/114/EC on Misleading and Comparative Advertising and from the Trade Marks Directive.⁷⁷ The first regulates comparative advertising in general. The second protects trademarks that have a reputation.

Article 4 of Directive 2006/114/EC lists eight cumulative conditions that determine the lawful limits of comparative claims. They are as follows:

- a. The advertising must not be misleading, as defined in this Directive or in Directive 2005/29/EC on unfair commercial practices.
- b. It must compare goods or services that meet the same needs or are intended for the same purpose.
- c. The comparison must be objective and relate to one or more material, relevant, verifiable, and representative features, which may include price.
- d. It must not discredit or denigrate a competitor's trademarks, trade names, goods, or services.
- e. Where products have a designation of origin, the comparison must involve products with the same designation.
- f. It must not take unfair advantage of the reputation of a competitor's trademark, trade name, or designation of origin.

- g. It must not present goods or services as imitations or replicas of those bearing a protected trademark.
- h. It must not create confusion among traders or consumers between the advertiser's and a competitor's trademarks, trade names, goods, or services.⁷⁸

These conditions reflect more than an effort to ensure consumers' access to information.⁷⁹ They reflect a strong policy that protects trademark reputation.⁸⁰ Conditions (f) and (g) are especially central to the EU's treatment of dupe and "smell-alike" fragrances. Under these provisions, the use of claims such as "smells like" or "inspired by" is generally unlawful, even when accurate.⁸¹ This is because such statements either take unfair advantage of a reputed mark or present the product as an imitation.⁸² For this reason, and unlike the United States, the European Union gives greater weight to the protection of trademark reputation than to the promotion of comparative advertising.⁸³

Moreover, the Trade Marks Directive reinforces this approach. Article 10(2)(c) gives trademark owners additional protection when their marks have a reputation.⁸⁴ It allows them to prevent the use of a sign that takes unfair advantage of the mark or harms its distinctiveness or reputation. Such harms include dilution, tarnishment, and free-riding. Importantly, this protection applies even when consumers are not confused.

The seminal case of *L'Oréal v. Bellure* demonstrates the restrictive nature of this framework.⁸⁵ Bellure marketed smell-alike perfumes and referred to well-known L'Oréal marks, including TRESOR, MIRACLE, NOA, and ANAIS-ANAIS. It also used comparison lists that paired each Bellure perfume with the corresponding L'Oréal fragrance. The products were sold at prices significantly lower than L'Oréal's. The case also involved

the use of look-alike packaging that closely resembled L'Oréal's bottle designs.

The key issue before the Court was whether Bellure's conduct constituted taking "unfair advantage" of L'Oréal's reputation. The Court held that the Trade Marks Directive protects reputed marks against three types of harm: dilution, tarnishment, and unfair advantage. It clarified that any one of these forms of injury is sufficient for infringement. Thus, unfair advantage may be found even in the absence of consumer confusion, dilution, or tarnishment.

The Court further explained that unfair advantage occurs when a trader "rides on the coat-tails" of a well-known trademark.⁸⁶ In such cases, the trader benefits from the mark's attraction, prestige, or marketing power without making equivalent investments.⁸⁷ This type of free-riding is unlawful even when the comparison is factually accurate and non-deceptive.

In conclusion, L'Oréal v. Bellure reflects the EU's strongly brand-protective stance. While reverse engineering of perfumes remains lawful, the use of well-known trademarks to promote dupe perfumes is generally prohibited. The ruling shows that the Court is willing to restrict the use of reputed trademarks in comparative contexts. Such use is prohibited when it takes unfair advantage of a mark's reputation. Taken together, these principles illustrate a legal environment in which trademark reputation is prioritized even when doing so limits broader market competition.

3. The Saudi Arabia Approach

The Saudi legal framework for comparative advertising and fair competition is still developing. There is currently no binding statute that regulates brand-to-brand comparisons. However, recent legislative proposals show a move toward internationally recognized approaches. This shift is reflected in the draft

Consumer Protection Law and the draft Commercial Transactions Law.

Under the draft Consumer Protection Law (March 2022), Article 19 would permit comparative advertising only under specific conditions:

- a. The advertisement must not involve misleading practices;
- b. It must compare goods or services that meet the same consumer needs;
- c. The comparison must concern one or more essential and verifiable features;
- d. It must not discredit or denigrate the competitor.⁸⁸

In addition, the draft Commercial Transactions Law would strengthen the framework against unfair competition. Article 32 requires merchants to act with honesty and integrity. It directs them to avoid any practice that could harm competitors. In particular, merchants must refrain from:

- a. acts that create confusion with a competitor's products or commercial activity;
- b. false claims that may undermine public confidence in a competitor's products or business; and
- c. misleading statements or representations to the public concerning the nature, method of manufacture, characteristics, or quantity of goods.⁸⁹

Taken together, these drafts show a move toward clearer standards for fair competition and accurate advertising. While the Saudi drafts reflect several features of the European model, such as requiring verifiable comparisons and banning misleading content, they still lack important safeguards. Most notably, they do not explicitly prohibit using a competitor's trademark in a way

that takes unfair advantage of its reputation. They also do not prohibit marketing products as “similar to” protected marks.

This issue is particularly significant in the context of dupe perfumes. The European Union addresses it by imposing strict limits on comparative advertising. Under EU law, comparative advertising is not allowed when it uses the reputation of a competitor’s trademark. It is also not allowed when it suggests that a product is an imitation of a protected brand. These prohibitions give brand owners stronger protection. They also limit the ability of dupe sellers to market their products as equivalents or substitutes for well-known fragrances, even when consumers are not confused.

Thus, from a comparative perspective, the Saudi drafts more closely resemble the U.S. approach than the EU’s. Like the American model, they allow more flexibility in comparative advertising. Their emphasis is on the truthfulness of claims rather than on their impact on brand reputation.

In conclusion, Saudi Arabia’s draft legal framework represents a meaningful step toward international alignment. It adopts a position closer to the United States than to the EU’s more structured and brand-protective model. To strengthen protection for original fragrance producers, the Saudi drafts would benefit from explicit prohibitions on exploiting another brand’s reputation. They would also benefit from clearer limits on marketing practices that allow sellers to profit unfairly from a competitor’s reputation. These refinements would support fair competition and protect consumers from misleading or deceptive advertising.

Conclusion

A. Research outcomes

This research highlights how Saudi Arabian law currently protects perfumes and regulates comparative advertising, particularly in relation to dupe perfumes. The key findings are as follows:

1. Saudi Arabian law provides protection for perfumes through several legal mechanisms, including patents, trade secrets, trademarks, and industrial designs. However, these rights do not fully safeguard perfumes, particularly their scent.
2. Saudi Arabia recognizes non-traditional trademarks, including olfactory (scent) marks, under its trademark law. Nevertheless, the current legal framework provides no clear criteria for determining what qualifies as a registrable scent. To date, there has been no attempt to register a perfume scent as a trademark in Saudi Arabia. In other jurisdictions, applications to register the scent of perfumes have generally been rejected. This suggests that a perfume's scent is unlikely to qualify for registration as a trademark in Saudi Arabia.
3. The draft Consumer Protection Law and the draft Commercial Transactions Law represent a significant step toward regulating comparative advertising and unfair competition. These drafts establish basic principles, such as truthfulness, objectivity, and avoidance of disparagement, which align with international standards. However, they do not include explicit prohibitions on taking unfair advantage of a competitor's trademark reputation or on marketing imitation products.
4. The current and draft Saudi frameworks appear to align more closely with the consumer-information-oriented approach of the United States. They mark a departure from the brand-protective model developed within the European Union. This

distinction arises because the Saudi framework does not appear to impose explicit prohibitions on referencing brand reputation or on presenting products as imitations in comparative advertising. As a result, the Saudi approach places greater emphasis on truthful commercial communication. It therefore offers relatively limited protection for the reputational interests of well-known trademarks.

5. Under both the current and draft Saudi trademark laws, dupe perfumes remain permissible provided that they are not counterfeit products. Furthermore, sellers may promote fragrances as similar or comparable to luxury brands, so long as their claims are accurate and unlikely to cause consumer confusion.

B. Recommendations

Drawing on the research findings, this study presents a number of recommendations directed to the Saudi legislator. These recommendations aim to support the further development of laws governing comparative advertising and consumer protection in relation to dupe products, particularly dupe perfumes.

1. Affirm the legality of reverse engineering while ensuring fair commercial practices. Reverse engineering of perfume formulas is lawful under Saudi intellectual property law, as the olfactory composition of perfumes is not protected by copyright. This practice promotes market competition and provides consumers with affordable alternatives. However, further regulatory guidance is recommended. This would help ensure that companies engaged in reverse engineering do not mislead consumers or infringe trademarks when marketing their products.

2. Introduce clearer rules on comparative advertising involving well-known brands. Comparative advertising that

references or relies on the reputation of established or well-known brands without authorization requires more detailed legislative guidance. Phrases such as “smells like” or “inspired by” may help consumers identify product categories, but they can also mislead consumers or unfairly exploit the reputation of recognized brands. Accordingly, legislative measures should clarify when comparative advertising crosses into misleading or reputation-exploiting conduct. These rules would help prevent deceptive comparisons and limit practices that take unfair advantage of the reputation of established brands.

3. Establish standards for social media marketing of dupe perfumes. Social media influencers increasingly promote dupe perfumes by associating them with well-known brands. This indirect advertising may mislead consumers and unjustly exploit brand reputation. To address this, Saudi regulators are encouraged to extend existing influencer marketing policies to include clear standards that prohibit or limit comparative and imitation-based promotion. Such measures would help protect both consumers and trademark owners of well-known brands.

EndNote

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¹² Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, art. 47(a).

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¹⁹ Cronin, "Lost and Found," 256.

²⁰ Cronin, "Lost and Found," 256; *Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs*, art. 19(a).

²¹ See AlGhamdi, *Huquq al-Milkiyāt al-Fikriyah*, 126.

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²⁴ *Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs*, art. 59.

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²⁷ *Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs*, art. 19(d).

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²⁹ *GCC Trademark Law*, Royal Decree No. M/49, art. 2.

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