

**Presentation on the Experience of SMEs in the textile sector on Managing IP Assets
including the Problem of Counterfeiting in EGYPT.**

Prepared by: Karim El Helaly

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I. History of textiles in Egypt:

A. Coptic textile

For both the pharaonic Egyptians and the Greeks, clothing was indicative of social and economic status. Textile rarely survives in the archaeological records because the fabric decomposes easily. Remarkably the **Coptic** textile survived because of the burial practices of the Copts and the dry climate of Egypt. The Copts used dyes made from animal and vegetable compounds. The colors first used by the Copts were purple, red, and yellow. The dyes may reflect the Roman custom of color usage, whereby certain colors indicate social status. Purple was a preferred color, but it was time consuming and expensive to produce. The purple dye was made from the secretions of the purple-shell.

A. Tunic Fragment with Clavus Section



C. shawls and white linen Dalmatic tunics



B. Oval Dress Ornament



Ancient Egyptian Tomb Painting of Weaving



B. Islamic Textiles:

Many of the extant early **Islamic** textiles were found in Egypt, primarily in graves, where the dark and dry conditions helped to preserve them. These textiles date from the eighth or ninth century and were likely produced in Egypt, where tapestry-weaving had existed since Pharaonic times. The art of Textiles was most important in Islamic society, the production of dyes, fibers, mordant, and other possessions needed to weave textiles, along with the transport of finished fabrics, was the strongest industry in comparison to the iron & steel industries of modern times. The importance of the textiles is evident from the number of words for textiles that have passed from Arabic to Persian into European languages, the terms derive from the location where a specific fabric was first woven.

Fragment of fabric, Egypt, 12th century, linen & silk. Cairo Museum of Islamic Art.¹



II. Textile in Egypt today

¹ This fabric comes from the Coptic linen weaving workshops established under the control of caliph in the Fatimids dynasty. Some part are adorned with flower motifs, while lower part has two bands containing white inscription on a red ground, referring to "fortune & prosperity."

Today, Textile industry is one of the most important industries to Egypt. It represents the corner-stone of Egypt's industrial and economical structure with all historical and social perspectives. Egypt has become one of the best known of all textile-producing countries in the world, based on its traditional culture of cotton growing. Its reputation as supplier of one of the world's highest quality cottons has reinforced the growing importance of its textiles and clothing industry. Today, Egypt is one of the important textile and garments producers and exporters world-wide. The Egyptian textile industry produces the entire range of products, from yarns to garments and made-ups. The process of privatization which was launched in the mid 1990s, together with the economical reforms and the industrial modernization program, all those programs provided the industry with the ability to respond more directly to the challenge of international competition and has helped to create an investment-friendly-business -environment. Today, the investments in textile sector reach over L.E.25 billion, the domestic production realizes L.E. 9 billion and textile exports valued at L.E.3.7 billion which represents 25% of the total Egyptian exports (petrol sector excluded). The Egyptian textile industry is made up of some 3200 enterprises, cover by around one million laborers represent 30% of the total laborers employed by the industrial sector in general. Textile industry in Egypt is composed of three sectors: public, private and investment sectors. The Cotton & Textile Industries Holding company represents the public sector, with 40 large integrated companies in total. Four companies of the public sector have already been privatized. The private sector includes numerous small and medium sized enterprises (“SME’s”). The investment sector includes companies either installed inland or in the free zone, which is rapidly expanding. Each of the three sectors specializes in different stages of the production process. The public sector still dominates the spinning and weaving of cotton: 70% of spinning is carried out in the public sector, 50% of the weaving and finishing. On the other hand, the private and investment sectors account for most of the manufacture of knitting and clothing. These sector which have a majority of SME’s, produce 80% and 75% of total output in knitted and clothing categories respectively.

Export of the Egyptian textile products. In 2002, the total value of Egypt's textile exports of different kinds of fibers reached about L.E.3652 million of which L.E.698 million, for yarns, L.E.277 million, for fabrics, L.E.1119 million, for woven clothing, L.E.1174 million, for knitted products, L.E.210 million, for terry products and LE.174 million, for made-ups. The table below clarifies the figures for exports during the last five years by quantity and value.

Some of the **existing challenges** facing the Textile industry are as follows; **(1)** The trouble of financing witnessed in most spinning and weaving companies as a result of the increase of bank loans and the overdrawing, **(2)** exposed firms to successive losses; **(3)** The breaking down of the machinery and equipment owned by the majority of firms as a result of non- existence of suitable investments to carry out replacement and renewal operations; **(4)** Increasing of taxes levied on imports of machines, spare parts and production components specially which have no replacement in the local market; **(5)** The uptrend of cost production elements such as cost of wages and waste percentage which its rise led to the escalation of total cost; **(6)** The incompetence of work-force at sales and marketing divisions in most companies; **(7)** The great depression striking the entire markets.

In general, it is worth noting that, the present set-up of the textile industry in Egypt is causing much concern to firm vis-a- vis the declining productivity/sales and the increase of stocks, the up-trending of loans, the hazardous drawing from banks and the resultant losses of most companies in recent years, all call for quick remedy. In the light of the above, it may be well noted that today the entire sectors of the textile industry in Egypt is facing several challenges. However, the situation is expected to face more challenges during the next phase, following the entire liberation of world trade by January 1,2005. Accordingly, there are institutional considerations that must be taken into account to enable a better environment for the textile industry in Egypt, covering all the sectors. Those **considerations** may be summarized as follows;

1) To continue tying up the Egyptian economy with international economic organizations through mutual agreements, and setting up of free zones and making us of privileges granted by such agreements in an effort to modernize the industry, transfer the advanced technology and to further markets access of such countries; 2) Establishing several free trade zones among Arab and Mediterranean countries in order to pave the way for establishing a Joint Market. 3) In addition, it is equally important to activate the role of COMESA group of which Egypt is a member; 4) Reducing custom duties levied on imports of machines and spare parts, treated as capital goods. Likewise, duties levied on production components should be marked down in case of non availability of local replacement where these will contribute to reducing the final cost; 5) Expanding the setting up of technical training centers to enhance the efficiency level of the labor force; 6) It is important to follow up the application of the standard specifications in order to guarantee the required quality -level of the products; 7) Reducing interest rates on loans and formulating drastic solutions to remedy the problem of debts' burden which is the principal obstacle facing marketing of textile products; 8) To put measures that bind all producers and exporters, working in the textile industry, to provide authorities with full information relevant to their activities in order to keep an entire database of all the textile sectors.

Many of above consideration are active now, such as the implementation of the industrial modernization program which offered by the European Union two years ago. Besides, other steps have already been taken recently such as the decision issued for correction of foreign currencies rates against Egyptian pound which expected to push exports by concluding bids at suitable prices in comparison with the competitive countries. Another serious problem Egypt may encounter in the soon future is the recent increase in the rate for specific duties on the ready-made clothing importation in accordance with the Ministerial decree issued recently by the Custom and tariff authority. Said decree complicated Egypt's situation with the European Union. Also, said decree is being examined in view of Egypt's obligation found in the market dissemination chapter annexed to the GATT (1994). This is due to the fact that, Egypt is collecting annual custom duties (**Ad-Valorem**) of class 30% and 54% in addition to the novel specific

duties which will result in an unacceptable increase of 979%. This conflict if not resolved may lead to a dispute settlement between the European Union and Egypt. Similar cases took place between the a) European Union against Argentina, 2) the US against India. Both cases were concluded in favor of the European Union and the US where Argentina and India were found in violation of the International treaties provisions. Therefore, it is highly recommended that Egypt revisit said decree and amend in pursuit of the international treaties.

Exports Table of Textiles and Clothing Products* during 1999-2003

Product s	1999		2000		2001		2002		2003estimated	
	Tons	000 L.E	Tons	000 L.E	Tons	000 L.E	Tons	000 L.E	Tons	000 L.E
Yarns	3737 7	519554	50166	681949	41084	641456	41270	692048	50016	1061152
Fabrics	1000 2	169379	18216	345007	12184	245166	12476	276628	28170	328920
Woven Clothing	1566 4	679823	20538	899771	20191	103051 4	22321	111907 8	28170	1695962
Knitted Products	1968 9	891506	22701	100428 4	20812	100310 7	23634	117401 4	23870	1479858
Terry Products	5491	118977	5286	112465	6364	151441	7144	210300	10934	357760
Made- Ups	7851	149166	9129	167086	8044	167939	7647	174359	9134	287732
Others	810	4495	934	5267	1805	8539	716	4952	442	4168
Total	9688 4	253290 0	12697 0	321582 9	11048 4	324816 2	11520 8	365137 9	13419 2	5215552

* Excluding Carpets and other textiles floor covering.

III. Managing Intellectual Assets in the textile sector for SME's:

In June 2002, Egypt enacted the Nation's first comprehensive IP law No. 82/2002 ("IP law") based on its accession to the WTO and the Uruguay Rounds signed in Marrakech on 15-04-1994. The new IP law is composed of four books; i) Patents and Utility Models, Layout-Designs for Integrated Circuits, and Undisclosed Information; ii) trademarks, trade names, geographical indications and industrial designs; iii) Copyrights and related rights; iv) Plant Varieties. One of the main goals of the IP law is promote all fields of technology in all industries including the textile industry. Furthermore, the new IP law incorporated provisions to comply with those stated in article 25.2 TRIP's that calls WTO members to ensure that the requirements for the protection of textile designs, particularly in regard to cost, examination and publication, do not unreasonably impair the ability to secure protection.

With the strong presence of a rule of law for the protection of IP in general and for the textile designs in particular, and the unbundling of the textile companies into spin-offs and the sale of factories to foreign investors, and the new technology being introduced to the industry mandates, all these factors encouraged the need for a better strategy towards the management of Intellectual Assets utilized on the textile industry. In conformity with this new direction experts managers are brought in to run enterprises including SME's for fixed intervals of three to six years during which they were successful to introduce certain Intellectual Asset Management ("IAM") practices. The concept of IAM is considered novel in Egypt, however, SME's acknowledged that, it is deemed necessary to realize their untapped value by implementing common and trusted IAM practices.

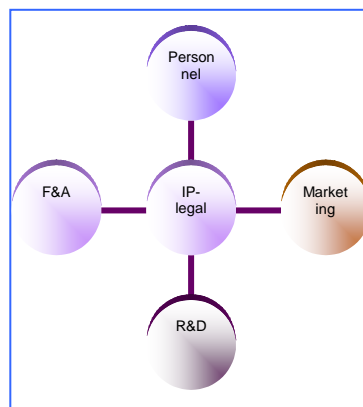
IP strategy. In the beginning most of the SME's were not aware of the term "IP strategy", and those who were aware of said strategy, they were not able to link it to their business objective. In other words, the technical, business and legal personnel were speaking different languages and they didn't know where to begin. Following the policy of bringing foreign management with expertise in building a world-class IP strategy, SME's in Egypt aims to develop a strategy that; (1) links to the business objective; (2)

links to the company's vision, mission, and goals; (3) filtering opportunities; (4) understand of the Human Capital.

The implementation of the IAM practices is still in an embryonic stage for SME's in the textile industry in Egypt, yet SME's acknowledge the importance of creating value from their Intellectual Assets to stay in the market. Accordingly, they are required to utilize commonly and trusted IAM practices. Some SME's already began by conducting an IP audit in order to allocate untapped IP assets, followed by creating distinctive products for their customers, moving to the implementation of protecting their innovations with intellectual protection.

A recent IAM program that was implemented in a Small textile Enterprise in Egypt started with creating a company discipline similar to the one illustrated below:

Company Discipline



After integrating the above discipline into every facet of the company's business, the company adopted the following steps to implement the IAM program:

- Run an Inventory on (i) the Intellectual Property Rights (patents, trademarks, designs, copyright, trade secrets), (ii) the Intellectual Assets (codified knowledge and know-how, contracts, permits, and non-compete), (iii) Intellectual Capital (human, organizational, customer, distributor, supplier capital);

- Organize and cluster for evaluation;
- Create an electronic database for management (MS access is sufficient)
- Create a Physical filing system
- Conduct a Portfolio screening
- Deploy Portfolio categorization

Following the implementation steps above, the company had a very interesting questionnaire that was developed for the company to maintain its IAM program and those are:

1. What IPR's or technology areas/know-how can be licensed?
2. What can be commercialized?
3. Are the IPR's/technology rights being enforced?
4. What IPR's are about to expire, and create low value and should be disposed of?
5. What are my competitors doing?

Now, the company is more confident towards the understanding of its own Intellectual Assets and the management thereof, with a better focus on the market, and uses the information generated from the IAM program to gain strategic advantage and long-term growth. And the company now is generating immediate short-term financial gain, and not before long the company will start to maximize its competitive position for long-term future growth.

IV. Anti-counterfeiting provisions under Egyptian laws

The textile industry like any other industry in Egypt resorts to the civil and criminal procedures available under Egyptian applicable laws to fight counterfeits. However, the new IP law makes available civil and criminal procedures that the industry may benefit from tremendously. For the purpose of this paper we will refer only to those provisions related to patents, trademark and industrial designs that are found in the new Egyptian IP law.

1. Patents.

- a. **Criminal procedures.** Under Article 32 of the IP law “...*a person may be subject to a fine of not less than 20,000 pounds and not more than 100,000 pounds if he/she undertakes: (1) the imitation, for commercialization purposes, of the subject matter of an invention or a utility model for which a patent has been granted in accordance with the provisions of this Law; (2) the sale, offer for sale or circulation, importation or possession with the intention to trade, of products known to that party as imitations, where the patent for the invention or the utility model for such products is granted and valid in Egypt; (3) the unlawful use, on products, advertisements, trademarks, packaging or others, of indications that may lead to believe that such a party has obtained a patent for an invention or a utility model. Repetition of the offence shall be punishable by imprisonment for a period of no more than two years and by a fine of not less than 40,000 pounds and not more than 200,000 pounds. In all cases, the court shall order the seizure of the infringing imitated products and the implements used in the imitation. The conviction decision shall be published in one or more daily newspapers, at the expense of the convicted party...*”

- b. **Civil procedures.** Under Article 33 of the IP law “...*The holder of a patent or a utility model may request the president of the competent court, as may be the case, to order conservatory measures against products or goods that are claimed to imitate a patented product, according to the detailed description established in the patent or utility model document. The necessary conservatory measures shall be ordered to preserve such products and goods in their state. The aforementioned order may be issued before instituting the proceedings. Such order shall lapse if the proceedings are not instituted within 8 days from the date of the injunction....*”

2. Trademarks.

- a. **Criminal procedures.** Under Article 113 of the IP law a person “... *shall be punishable by imprisonment for a period of not less than two months and by a fine of not less than 5,000 pounds and not more than 20,000 pounds, or by either punishment, if he/she: (1)counterfeits a trademark registered in accordance with the law or imitates it in a manner which is likely to mislead the public; (2)fraudulently uses counterfeit or imitated trademarks; (3)fraudulently affixes to his products a trademark belonging to a third party; (4) knowingly sells, offers for sale or distributes, or acquires for the purpose of sale, products bearing a counterfeit or imitated mark, or on which the mark was unlawfully affixed. In case of repetition, the offence shall be punishable by imprisonment for a term of not less than two months and by a fine of not less than 10,000 pounds and than 50,000 pounds. In all cases, the court shall order the confiscation of the infringing products, the revenue and the returns of such products as well as the implements used in the infringement. The court may, when issuing a condemnation, order the closure of the enterprise used to commit his infringement, for a period not exceeding six months. In the event of repetition the enterprise shall imperatively be closed down.*

b. **Civil procedures.** Under Article 115 “...The president of the competent court considering the merits of the case may, upon a request by an interested party, and on petition, order one or more appropriate conservatory measures, and in particular: (1) Establish the infringement of a protected right. (2) Draw up an exhaustive inventory and detailed description of all the machines and implements used or may have been used in the infringement, as well as the products, goods, signboards of shops, packaging, invoices, correspondence, advertisements or the like, on which the mark or the geographical indication, subject of the offence, might have been affixed, as well as the products imported, on their arrival. (3) Order the seizure of the articles stated in item (2). In all cases, the President of the court may order the assignment of one or more experts to assist the bailiff in charge of the execution. He may order the requesting party to provide an appropriate security. The requesting shall submit the merits of the case to the competent court, within 15 days of issuing the order, failing which such order shall cease to have effect.” Furthermore, Article 117 states that “...The court may, in any civil or penal action, order the sale of the articles distrained, or to be distrained, and deduct their value from the amounts of the compensation or fines, or dispose of them by any other means the court may deem appropriate. The court may also order the destruction of the illegal marks and, where necessary, the destruction of the products, goods, signboards, packaging, invoices, correspondence, advertisements or other items bearing these marks or bearing illegal description or geographical indications, infringing the provisions of this Book. It may also order the destruction of the machines and implements used specifically in the act of infringement. The court may further order that its judgment be published in one or more newspapers at the expense of the convicted party. The court may order some or all of the above measures, even in the event of acquittal...”

3. Industrial designs.

- a. **Criminal procedures.** Under Article 134 of the IP law “...a person shall be punishable by a fine of not less than 4,000 pounds and not more than 10,000 pounds if he/she: (1) imitates a protected industrial design registered according to the provisions of this Law; (2) knowingly, manufactures, sells, offers for sale, acquires for trade or circulation, products bearing imitated industrial designs; (3) unlawfully affixes on products, advertisements, trademarks, certain implements or the like, indications that may lead to believe that such a person has registered an industrial design. In case of repetition, the punishment shall be imprisonment for a period of not less than one month and a fine of not less than 8,000 pounds and not more than 20,000 pounds. In all cases, the court shall order the confiscation of the incriminated industrial design, the infringed products and the implements used in the infringement. The convicting order shall be published in one or more newspapers at the expense of the convicted party.”

- b. **Civil procedures.** Article 135 of the IP law states that “...The president of the competent court considering the merits of the case may, upon a request of any interested party, and by an order issued on the basis of a petition, order one or more appropriate conservatory measures, and in particular: (1) Establish the infringement of a protected right. (2) Draw up an exhaustive inventory and detailed description of the infringed products and the implements used or may have been used in the infringement. (3) Order the seizure of the articles stated in item (2). In all cases, the president of the court may order the assignment of one or more experts to assist the bailiff in charge of the execution; and may order the requesting party to provide an appropriate security. The requesting party shall submit the merits of the case to the competent court, within 15 days of issuing the order, failing which such order shall cease to have effect.

Unfair competition. Also, the IP owner may file a claim on the grounds of unfair competition as per Article 66 of law 17/99 which stipulates the following; “...“*unfair competition acts shall mean all acts contravening to traditions and principles considered in commercial practice, and the following acts shall be considered as such; **infringement on the trademarks, trade names, patents or the trade secret/industrial secrets** subject to the investments of their respective owners, or persuading the employees at the employer’s business office to disclose the secrets without the authorization of the owner, or leave their jobs... every unfair competition act liable its committer to compensate for the damage/harm arising from it. Furthermore, the court may issue an order to remove the harm/damage arising from the unfair competition acts, and publish the ruling in one of the daily publication on the expenses the infringer...*”

V. Conclusion

Albeit, the new IP law aims to bridge the gap between Egypt and the innovative world, and to provide an incentive for all industries including the textile industry, it is contingent on; (1) raising of IP awareness, (2) adequate implementation of law, (3) implementing common and trusted IAM practices, (4) effective enforcement of the law by the competent authorities i.e. flexibility of issuing temporary and permanent injunctions, (5) coordination between the enforcement authorities and the customs authorities.

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