

The Effectiveness of Criminal Protection of Trademarks against Counterfeiting under Algerian Law

فعالية الحماية الجزائية للعلامات التجارية من التقليد في القانون الجزائري

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Received
Apr – 01 - 2026

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Accepted
Sep – 08 - 2026

Published
Oct – 31 - 2026

Abstract: This article examines the effectiveness of punitive measures established under Algerian trademark law in protecting consumer health and interests against the growing phenomenon of counterfeit products. The choice of this topic is driven by the increasing prevalence of trademark counterfeiting in the economic sector, particularly in markets involving essential goods such as pharmaceuticals and cosmetics, where the risks to consumer well-being are immediate and severe. The study aims to assess whether the existing punitive framework fulfils its intended protective function or whether the persistence of counterfeiting reveals gaps in deterrence and enforcement. To address this central issue, the research adopts an analytical and descriptive methodology, drawing upon legislative texts, comparative legal insights, and recent socio-economic developments that have intensified the circulation of counterfeit goods. The analysis highlights both the psychological impact of counterfeit products on consumer decision-making and the physical risks they pose to public health. The findings indicate that while Algerian legislation provides a structured punitive policy against trademark counterfeiting, the continuing expansion of this illicit activity raises critical questions about the practical effectiveness of these measures in ensuring consumer safety.

key words: trademark counterfeiting- punitive measures- consumer protection-Algerian trademark law-deterrence policy- public health.

المخلص: تتناول هذه المقالة فعالية التدابير العقابية المقررة في التشريع الجزائري لحماية العلامات التجارية في صون صحة المستهلك ومصالحه من ظاهرة المنتجات المقلدة المتنامية. ويعود اختيار هذا الموضوع إلى الانتشار المتزايد لجرائم تقليد العلامات في القطاع الاقتصادي، لاسيما في الأسواق المرتبطة بالمواد الأساسية كالأدوية ومستحضرات التجميل، حيث تشكل المخاطر على صحة المستهلك وسلامته تهديداً مباشراً وجسيماً. وتهدف الدراسة إلى تقييم ما إذا كان الإطار العقابي القائم يحقق الغاية الوقائية المرجوة منه، أم أن استمرار تفاقم ظاهرة التقليد يكشف عن ثغرات في منظومة الردع وآليات التنفيذ. ولعالجة هذه الإشكالية المركزية، تعتمد الدراسة منهجاً وصفيّاً تحليليّاً يستند إلى النصوص التشريعية، والمعطيات القانونية المقارنة، والتطورات الاجتماعية-الاقتصادية الحديثة التي زادت من وتيرة انتشار السلع المقلدة. وقد أبرز التحليل الأثر النفسي الذي تحدثه المنتجات المقلدة في توجيه قرارات المستهلك، إلى جانب المخاطر المادية المباشرة التي تلحقها بالصحة العامة. وتبين من خلال النتائج أن التشريع الجزائري يتضمن سياسة عقابية منظمة لمكافحة تقليد العلامات التجارية، غير أن استمرار توسع هذه الممارسات غير المشروعة يثير تساؤلات جوهرية حول الفعالية العملية لهذه التدابير في ضمان حماية المستهلك.

الكلمات المفتاحية: تقليد العلامات التجارية – التدابير العقابية – حماية المستهلك – التشريع الجزائري

للعلامات – سياسة الردع – الصحة العامة.

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Introduction:

Algerian trademark law encompasses not only the rules governing the registration, acquisition, preservation, and legal effects of trademarks, but also the mechanisms designed to protect distinctive marks through a structured punitive system aimed at preventing unfair competition. This framework ultimately seeks to safeguard the rights of trademark owners while ensuring the protection of consumers, who represent the most vulnerable party in commercial transactions involving counterfeit products.

The evolution of trade names, trademarks, and service marks—considered essential elements of industrial and commercial property—reflects significant legislative and technological developments. This progression is evident when comparing **Ordinance No. 66-57 of 19 March 1966, amended by Ordinance No. 76-223, with Ordinance No. 03-06 of 19 July 2003 relating to trademarks**. These reforms demonstrate the legislator's intent to harmonize national legislation with global changes, particularly those brought by modern technology, which has facilitated the distortion and replication of trademarks with unprecedented ease, sometimes through a single click.

Despite the abundance of scholarly and institutional definitions, the concept of counterfeiting remains somewhat ambiguous. Nevertheless, most definitions converge on its essential characteristics, particularly the deceptive reproduction of a protected mark. According to the **World Trade Organization (WTO)**, counterfeiting constitutes “the unauthorized representation of a registered trademark on goods that are identical or similar to the trademarked goods, with the intent of deceiving the buyer into believing that they are purchasing the original product.” This definition underscores the centrality of consumer deception, a dimension explicitly addressed in most legal systems—including the Algerian one—which seek to protect consumers through the criminalization of practices that jeopardize their safety, health, and economic interests.

Counterfeit goods frequently mislead consumers by creating confusion between legitimate and illicit products, thereby compromising their security and well-being. This harmful confusion represents a core form of fraudulent competition that distorts market fairness and directly undermines public trust. In light of these considerations, the central problem of this study arises: **does the punitive framework adopted under Algerian trademark law effectively achieve its intended protective function for consumer health and interests, or does the persistence of counterfeiting reveal gaps in deterrence and enforcement mechanisms?**

To address this issue, the study adopts an **analytical and descriptive methodology**, relying on legislative texts, comparative legal insights, and recent socio-economic developments that have intensified the circulation of counterfeit goods. The analysis also considers both the psychological impact of counterfeit products on consumer decision-making and the direct physical risks they pose to public health.

The study is structured around the following two main axes:

Section1: The impact of brand counterfeiting on consumer interests.

Section2: The effectiveness of penalties for trademark counterfeiting crimes.

Section I:

The impact of brand counterfeiting on consumer interests

It is obvious that the trademark's primary purpose is to safeguard the financial interests of its owners and ethical business and consumer practices. As we well know, trademarks serve as a means of differentiating one good or service from another in the marketplace, serving the purpose for which they were created. considering a product's brand is crucial to its success in the market and, consequently, to the satisfaction of its customers. Given that commerce, with all of its benefits, is one of the most significant components of human activity; thus, this behavior may provide solace to individuals with a susceptibility to engage in fraudulent practices, wherein they seek to advance their industries, products, or services by obscuring inherent flaws and misrepresenting their true nature.

These deceptive strategies are used to take advantage of the consumer public's purchasing power by luring them into buying these businesses, goods, or services on the assumption that they have the attributes and advantages claimed for them. While certain sectors' products or services do not live up to expectations¹, Consumers are first disadvantaged by tradition because counterfeit items endanger their security and health, and this is because consumers cannot distinguish between authentic and counterfeit goods.

A) The Impact of Traditional Brand Commercials on Consumer Health and Safety:

The implicit requirements of the consumer, who desires to consume a healthy product without endangering their well-being, must be met by the product's quality. There are actually two different definitions of quality. The first encourages consistency in quality, safety, and health ensuring that it is founded on health rules, the standardization of good practices for food safety, quality assurance, and validation certificates. The second attribute conforms to the quality that incorporates the product's subjective characteristics, such as its sensory qualities, to ensure that a good product is inherently both healthy and authentic².

counterfeiting has negative consequences and causes physical harm to consumers, nations' economies, and organizations that control intellectual and industrial property rights (Sharabi, 2008). We will attempt to draw attention to the danger of counterfeiting operations on the consumer through this element by employing the phenomenon of drug fraud and fraud on cosmetics as an illustration of that. It additionally causes economic and social inequalities, as well as poses a danger to the security and health of consumers by clouding the company's objectives and deceiving it in determining the genuineness of the product.

1- The Risks of Counterfeiting in the Pharmaceutical Industry:

Due to their low prices and appeal to significant numbers of those with limited resources who believe the prices of the original goods to be greatly inflated, counterfeit goods are in high demand in today's market. Alongside the greed of some traders who

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find easy gains without considering the negative effects, they leave behind, especially in relation to electronics, for instance, auto parts, building materials, and medicines, particularly the latter which is considered one of the most dangerous counterfeiting acts that affect the health and safety of the consumer. The reason is that it affects human life and may lead to death directly. While pharmaceutical fraud is difficult for ordinary individuals to recognize, some companies resort to replicating medications given that they are costly to produce and make, and studies have shown that counterfeiting is common in medications that have been approved by the FDA. In contrast, fraud in regular products can be distinguished by sight, nevertheless, pharmaceutical fraud cannot be. It is connected to long-term illnesses, sexual weakness, obesity, and obesity, all of which when utilized can lead to potentially dangerous problems. Despite the issue being immediately evident, it may result in mortality or skin malformations that may require the individual in question to pay a considerable amount of money to fix what was damaged³.

The World Health Organization (WHO) estimates the global prevalence of counterfeit medications at 7%, with rates as high as 30% in Brazil and 60% in Africa. Additionally, counterfeit products may contain extremely dangerous substances in addition to poor-quality products. The chemical composition of the components used to make counterfeit products renders them dangerous. One example is a vaccine for meningitis disease that has killed 2,500 people in Nigeria⁴.

2- Fraud on cosmetics:

Due to their lack of quality components and non-conformity with appropriate specifications, standards, and public safety regulations, counterfeit products put consumers' security and safety at risk and even put their lives in danger when consumed or used. Even while counterfeit products can occasionally be low-cost, the harm they cause to consumers is quite considerable, hence it plays a role in illegitimate monetary theft. Cosmetics that pose dangers to and harm consumers are vulnerable to counterfeiting, and have a negative impact on public health and consumer safety⁵.

B) influencing the consumer's decision-making ability:

A brand represents the satisfying enjoyable, and rewarding sensation a consumer has after utilizing a specific brand's products. The consumer will be motivated to purchase this brand if it has an advantageous impact on them⁶.

The idea that consumer decisions would be influenced by the use of a product or brand, especially how consumers perceive brands, is supported by a number of marketing theories. This viewpoint makes it appear worthwhile to evaluate this effect explicitly in regard to the consumer's perception of the personalities of various brands⁷.

The above could occur when trademarks are created that do not appear exactly identical to the well-known original mark; instead, symbols and graphics are used to cause the consumer to confuse the original brand with the counterfeited one, which could cause the consumer to sign in a contract and commit an essential mistake by assuming the seller is entering into an agreement on the assumption that the product in question bears a well-known trademark, while in fact, it is imitated products and that would influence his

or her decisions in the future. The latter has an effect and a violation of the will of the consumer, as Article 7, Paragraph 8, of the Trademarks Law, states that it is forbidden to register Brands that bear symbols similar to famous ones in Algeria that aim to mislead consumers⁸

C) the increasing financial risks to the consumer:

The risks that the consumer faces when making a purchase are in both their physical and financial dimensions: the financial costs associated with the product's price, ownership or use, maintenance costs, as well as the available financial resources in the consumer's possession. The consumer's character and experience affect how aware he is of the risks, so when the consumer makes a decision, he does so with these factors in mind. When a product poses a risk, the company actively seeks ways to reduce that risk and only decides to proceed if it finds the risk tolerable⁹.

On the contrary, we learn that consumers are more likely to make an unlawful purchase when they are underpricing stress considering counterfeit products, regardless of whether they are of low quality, offer customers significant savings in comparison to the original product. In these circumstances, the importance of the perceived value of counterfeit products will be high for consumers. For those who purchase on a tight budget¹⁰.

Any purchase is accompanied by an expensive price tag and is associated with a large financial or monetary risk. Where the consumer runs the risk of parting with his money for a faulty, useless, or quickly consumable product, which could eventually result in the loss of that product in a short period of time, and consequently the loss of the financial value corresponding to this product, with the difference in the financial value that would have been provided if He had not purchased an original product. This situation is typically the case when the consumer becomes deceived by the counterfeit product and fails to recognize that the product does not deliver what it claims to.

Section II:

The effectiveness of penalties for trademark counterfeiting crimes.

Our focus in the present investigation is on how the Algerian legislature's punitive policy toward trademark counterfeiting manifests itself and the extent to which it affects consumer protection. According to Professor ROUBIER, counterfeiting is "the re-synthesis of the mark in its basic, distinct (fierce), complete, as well as literal aspect of the trademark"¹¹

Punishment, as an instrument of penal policy, is imposed on individuals who violate previously established criminal rules and constitutes a legal consequence of the commission of an offence. The responsibility for ensuring proportionality between the offence and the punishment primarily rests with the legislator through what is known as legislative individualization of punishment. This process requires the legislator to determine the type and range of punishment according to the nature and gravity of the

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offence, thereby establishing an appropriate balance between the seriousness of the criminal conduct and the severity of the prescribed penalty.

Accordingly, proportionality between the offence and punishment constitutes a fundamental requirement of fairness and contributes to ensuring that punishment remains consistent with its intended purposes.

Acts of counterfeiting cause harm, which calls for the imposition of punitive measures tailored to these issues in accordance with the core principles of the legitimacy of crimes and punishments. The impoverishment of liberty sentences must therefore be specifically evaluated in terms of criminal act repression, as these issues are additionally generally expected to be viewed in terms of the imposition of a fine, these two components traditionally constituting the main penalties for any act that needs to be dealt with¹².

The Algerian legislator attempted to establish a punitive policy based on a balance between criminal risk and the response to the crime through Ordinance 66/57 and then Ordinance 03/06, which we will try to emphasize in the following:

A) The penalties original:

Articles 28, 29, as well as 30 of Ordinance No. 66/57 of March 19, 1966, provided that there is only one penalty that can be imposed in cases of retaliation, while the additional penalty cannot be imposed "unless by the misdemeanor court, if it is established that the misdemeanors established in The legislation related to marks, otherwise the civil penalty is the only one that applies"¹³.

While all of the punishments listed in Ordinance No. 66/75 of 1966, in varied degrees, are of a compensatory nature, compensation (dommages et intérêts) is the sanction that best achieves this objective. Future application of the sign"¹⁴.

Referring to Ordinance No. 03-06 pertaining to trademarks, we discover that the Algerian legislator has re-rationalized the punitive policy for the crime of counterfeiting a trademark in accordance with the new necessities in the Algerian market, working to increase the minimum prison sentence from 03 months to 06 months and reduce the penalty.

The financial fine amount was increased, both at its minimum and maximum levels, while the policy of selecting to impose the penalty between a fine or jail was maintained. The maximum penalty now ranged from 3 years to 2 years. Accordingly, we will attempt to highlight the most important provisions of Ordinance 06/03 related to marks in its aspect of the original penalties, which revolve around the penalty of imprisonment and a financial fine, as well as the complementary penalties, which are mainly closed, confiscation, and destruction.

01- Imprisonment penalty:

any individual who commits the criminal act of counterfeiting, whether they are the seller, manufacturer, or service provider, will be penalized for it. This is the approach taken by the Algerian legislator in Article (32) of Ordinance 06/03 related to marks, where imprisonment was considered an original penalty in the case of counterfeiting and could

last anywhere between six (06) months and two years, and Article (33) of the same order provided for an exception to the prison sentence.

The latter ranges from one month to a year, for persons who did not put a mark on their goods or services, or who deliberately sold or offered one or more goods, or provided services that did not bear his mark, and the same penalty for people who put on their products or services a trademark that was not registered or was not requested to be registered, in addition to this penalty, the legislator stipulated the penalty of a financial fine.

The Algerian legislator minimized the period of liberty privation stipulated for the crime of counterfeiting to its maximum extent and raised it to its minimum limit, as he specified a maximum sentence of three months to three years in prison. This is in contrast to the previous situation, where the penalties prescribed for counterfeiting trademarks ranged from three months to three years in prison which is asserted that although the fine was increased, the sentence is now two years rather than three¹⁵.

02 - Financial fine:

It should be noted that the legislator typically decides the fine as the primary punishment for misdemeanors and violations, and may decide it as an exception in felonies, as the fine is the only punishment prescribed for violations. However, for misdemeanors, the fine may be decided alone, and that is for minor misdemeanors. It may also be stipulated in addition to imprisonment as a punishment obligation or permissibility, as may be provided for with imprisonment as a matter of choice¹⁶.

Here, it should be emphasized that the Algerian legislature granted the court discretion to impose a term of imprisonment without a fine or vice versa in accordance with Article 32 of Ordinance 03/06. In Article 32 () of Ordinance 03/06 pertaining to the signing of two million five hundred thousand Algerian dinars (2,500,000 DZD) to ten million Algerian dinars (10,000,000 DZD), the legislature has described it as being established by the legislation. Furthermore, we discover that the legislature made reference to a financial penalty exception, which was contained in Article (32). Under this provision, the financial penalty was reduced by setting a minimum of 500,000 Algerian dinars (DZD) and a maximum of 2,000,000 DZD. The legislator did not address the case of criminal convictions, i.e. the repetition of the offense of counterfeiting a trademark, that we obtain in Ordinance 06/03 related to trademarks. We additionally determine that it increased the value of the fine, which is likely due to the significant profits generated by counterfeiters.

In accordance with the terms of Article 62 of Ordinance 03/07 relating to patents¹⁷, anyone who knowingly conceals one or more counterfeit items, sells them, offers them for sale, or brings them into the country is also accountable for the same punishment as the imitator.

It should be noted that the Algerian legislator used Article 32 of Ordinance 03-06 relating to trademarks to regard the fine in trademark infringement offenses as a voluntary penalty. This is inferred from his use of the phrase "...or one of these two penalties,"

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B) Complementary penalties:

If we proceed back to the order from 1966, we obtain that the Algerian legislator left out any mention of prohibiting the use of the trademark or putting an end to actions that were deemed illegal, but the courts still recognized themselves as having this authority in accordance with the general laws¹⁸.

However, following the publication of Order No. 03/06, he did not choose to legislate The Algerian Punishment of imprisonment and fine just to punish the perpetrator of commercial brand aggression; instead, I indicated Article 32 thereof sanctions complementarily. This is amazing Penalties in shutdown timer or Final to the institution, and confiscation The things and means used, and destroy The things Shop misdemeanor, and there some Laws she added necessity Judgment published in Newspapers or in Places specific. He should shed on aggressor on the Brand commercial.

1- Confiscation of used items and means:

The confiscation penalty was set forth by the Algerian legislator in Article 32 of Ordinance 03-06 as one of the supplemental punishments that the court may determine, as the judge determines the seizure of the goods and instruments that are the subject of the offense. which means that in order for this punishment to be applied, the misdemeanor must have been committed and established, as the situation differs under the existing laws. According to the law, anyone found guilty of the misdemeanor of counterfeiting faces a term in jail, a fine, or both, in addition to having the contraband they used to commit the crime seized.

Observing that Article 15 of the Penal Code states that "Confiscation is the final devolution to the state of a specific sum of money or group of funds, or its equivalent value when necessary," it is important to note that the state is the rightful owner of confiscated assets. As a result, confiscation is If the judge orders it, it is final and irrevocable. This holds true even if the defendant retracts his or her involvement in the counterfeiting crime or pays damages to the aggrieved party.

2- Temporary or final closure of the institution:

The legislator introduces a second complimentary penalty in the form of the institution's temporary or permanent closure. The institution that was employed in committing the misdemeanor will therefore be shut down by the judge if the accused is given a criminal punishment, but the legal text makes no mention of what will happen to the establishment's employees after the decision to shut it down, whether temporarily or permanently, nor does it specify the time limit for the temporary closure¹⁹.

3- Destroying things that are the subject of the misdemeanor:

As stated in Article 32 of Ordinance 03-06, "...or with one of these two penalties only with - Destroying things that are the subject of a violation." it should be noted that the Algerian legislator has added the process of destroying the objects subject of the

misdemeanor in a mandatory manner, meaning it is accompanied by the penalty of a pronouncement of imprisonment or a fine. And it should be noted that when the Algerian lawmaker added, "with the destruction of things that are the subject of a violation," he used the word "violation" rather than "misdemeanor." He adds, "with destroying things that are the scene of the crime or misdemeanor."

4- Publication:

It is important to note that Ordinance 03/06²⁰ did not mention the process of publishing judicial rulings as complementary penalties, however, with reference to Law No. 04/02 which defines the rules applicable to commercial practices, Article 48 of it stipulated the following: "The regionally competent governor, as well as The judge, may order, at the expense of the perpetrator of the violation or the one who is finally sentenced, to publish their decisions in full or a summary thereof in the national press, or to paste them in prominent letters in the places they specify. The verdict of conviction is published either by publicity on storefronts or by publication in newspapers. It is often decided to publicize judgments issued in the economic, social, and commercial fields, by affixing a copy of the verdict or a summary of it to the places specified by the verdict, whether they are storefronts, factories, or Offices or otherwise, at the expense of the convict, and whoever destroys or tears these advertisements will be punished ²¹.

Conclusion:

The analysis of Algerian trademark law reveals that the existing punitive framework, while designed primarily to protect trademark owners, also plays a critical role in safeguarding consumer health and interests. Counterfeit products, particularly in sectors such as pharmaceuticals and cosmetics, create tangible risks to consumer safety and undermine confidence in the market. The evolution of legislative measures, reflecting economic and technological developments, demonstrates the Algerian legislator's awareness of these risks and the attempt to address them through criminal sanctions.

However, the persistence of counterfeit products and their continued circulation indicate that the current punitive measures do not fully achieve their deterrent purpose. Consumers remain vulnerable, and the threat to their health and economic well-being persists, highlighting the necessity of reinforcing both the legal framework and its practical implementation.

General Findings:

1.Consumer health is directly threatened by counterfeit goods, especially in sectors where product safety is critical, such as medicines and personal care products. Counterfeiting in these areas can lead to serious health consequences.

2.Legislative evolution has strengthened the criminalization of trademark counterfeiting, but the existing framework shows gaps in deterrence. The continued presence of counterfeit goods indicates that enforcement mechanisms require improvement.

3. Consumer behavior contributes indirectly to the expansion of counterfeiting, as the desire to access branded products at lower costs encourages demand for imitation products, exacerbating the phenomenon.

4. The current punitive measures are not fully effective in protecting consumer interests, as the combination of legal, economic, and technological factors has allowed counterfeit products to proliferate despite criminal sanctions.

Recommendations:

In light of these findings, and to enhance the effectiveness of Algerian trademark law in protecting consumer health and interests, the following recommendations are proposed:

1. Develop a comprehensive legal framework specifically addressing counterfeiting, integrating criminal provisions into a single statute to clarify obligations and penalties, and encouraging judicial specialization in industrial property law.
2. Strengthen enforcement by combining imprisonment and financial penalties, ensuring that sanctions are cumulative rather than discretionary, thereby enhancing deterrence against offenders.
3. Increase consumer awareness regarding genuine products and brand authenticity, particularly emphasizing the health risks and economic value associated with counterfeits.
4. Enhance market surveillance and inspection procedures, guaranteeing that all potential production and distribution sites of counterfeit goods are under effective supervision by competent authorities.
5. Establish a centralized inter-ministerial body to strategize anti-counterfeiting measures, coordinating legal, economic, and public health policies to combat the phenomenon effectively.
6. Create and maintain an integrated database among enforcement authorities, enabling real-time sharing of intelligence on counterfeit goods and facilitating coordinated investigative and repressive actions.

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