Criminal protection of marks In Algerian law



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Abstract:

I took this Study Criminal protection of marks in accordance with Order No. 03-06 of July 19, 2003 relating to marks The focus was on defining the mark, its importance and the conditions for its protection, then explaining and analyzing the pillars and elements of the crime of imitating marks and the penalty prescribed for it in accordance with Article 32 .

Then we discussed Article 26 through study and analysis, where it became clear that the Algerian legislator established a general rule to criminalize any act that affects the right to monopolize the mark, considering it as similar to imitating the mark.

Then we discussed some of the actions that constitute an attack on the right to monopolize the mark, and we ended with a conclusion followed by results and recommendations.

***Keywords** : Criminal protection; mark Al Taghred; Law Related to marks; forgery; imitation.*

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Introduction:

It addresses the research topic Criminal protection of marks In Algerian law Although the brand has appeared since ancient times, its importance became clear when industrial and commercial competition became intense in Europe and America with the late 19th and 19th centuries 20 This prompted manufacturers and traders to place marks to distinguish their industry and goods from the industry and goods of others. These marks gained great trust and wide fame among consumers. However, some dishonest traders, in order to achieve quick profit, took advantage of the absence of laws regulating this sector, and began to imitate these marks to market their products of lower quality, poor quality, or sometimes harmful to health.

The importance of the research lies in the danger of imitation and its widespread spread, including all sectors, including spare parts, mobile phones, toys, cosmetics, medical equipment, and even food and medicines, which were not spared from imitation. What increased its danger was its connection to organized crime.

Research Problem:

Thus, civilization has produced a new type of crimes that were not known before, and traditional penal laws have not been responsible for combating them, which has made various countries - especially advanced ones - take the initiative to issue laws to protect marks, and rush to conclude treaties and agreements to extend this protection across various countries of the world, which makes the subject of mark protection one of the modern subjects that has received a great deal of research and study?

Sub-Questions:

The research aims to clarify and define the acts criminalized by the Algerian legislator to protect marks and the penalties prescribed for them, and raises the following problem:

1. What is the crime of imitating signs?
2. What are the crimes of monopolizing the mark?
3. What are the penalties prescribed for it?

Structure of the Study:

To answer these questions, we adopted the following plan:

1. **First section**: The crime of imitating a scholar in all its aspects, and the penalties prescribed for it.
2. **Second section:** Crimes of monopolizing the mark.

The Algerian legislator obligated every merchant or industrialist to place a mark that distinguishes his products from the products of other merchants and manufacturers, and provided him with criminal protection in monopolizing the use of his mark alone and not others. He criminalized the imitation of marks as he criminalized any other act that constitutes an assault on marks. Before we discuss the crime of imitation of marks and other crimes of assault on marks, we will first learn about the mark?

First: Definition of the mark.

The sign as known to the Algerian legislator Article 02 of Order No. 03-06 of July 19, 2003 relating to marks They are[Published in the Official Gazette 2003 No 54]: "All symbols capable of linear representation, especially words, including names of persons, letters, numbers, drawings or pictures, distinctive shapes of goods or their arrangement, and colors, alone or in combination, all of which are used to distinguish the goods or services of a natural or legal person from the goods and services of others" [Article 02 of Order No. 03-06 of July 19, 2003] .

As for the Jordanian legislator, he knew it is: "Any apparent sign used or intended to be used by any person to distinguish his goods, products or services from the goods, products or services of others." [Safaa Muhammad Al-Suwailemiyan, and Tala Saud Al-Shawa, 2006, p. 338]

Jurisprudence has known the scholar They are: all the signals that attract customers and allow distinguishing the products or services of any institution Others defined it as: every sign by which an industrialist distinguishes the product he manufactures, and a merchant the goods or product he sells [Pierre Dupont Delestraint,1974, P: 311]

collective mark The Algerian legislator defined it as: "Every mark used to prove the source, components, production, or every common feature of the goods or services of different institutions [Mireille Dalmas-Marty, 1990 P: 405], when these institutions use the mark under the supervision of its owner" [Article 02/2 of Order No. 03-06 of July 19, 2003]

Secondly : Its importance For the brand Of great importance because of it The product's description, source, and distinctive characteristics can be identified from those of other products. Its reputation, quality, and public confidence can also be identified. A trademark is considered a means of legitimate competition and one of the most important guarantees for consumer protection [Safaa Muhammad Al-Suwailemiyan, and Tala Saud Al-Shawa, 2006, 339-340]

And form The mark is an element of intellectual property which belongs To moral rights It is classified as a financial right [Abdel Moneim Farag Al-Sada, pp. 185], And any assault Aliya It falls within the crimes of assault on funds And that's why he did it Algerian legislator By protecting it, but with conditions, what are the conditions for its protection.

Section Two: Brand Protection Terms .

The Algerian legislator has approved criminal protection for various signs With conditions Pre-primary is:

1) The trademark must be registered In Algeria In accordance with Article 26 of Order No. 03-06 What matters is prior registration, as ownership of the mark is proven to the person who registered it first, and registration is proven by a certificate issued by the Algerian National Institute of Industrial Property.

2) Criminal protection also extends to any trademark registered in another country with Algeria agreement To protect marks in both countries, or link them to Algeria agreement Or an international treaty To protect Tags [Fadeli Idris, 2007, p. 291] .

3) To be assaulted Al-Alam Or the attack is detected within the territory of the Algerian state Hasab For principle Regional laws.

4) The right to Protection Penalty according to Article 05 of Order No. 03-06 The registration of marks, once registered and continuing throughout the registration period estimated at 10 years, is effective retroactively from the date of filing the application. Registration may be renewed for successive periods estimated at each period of 10 years. The renewal application shall be submitted with the fees within 6 months preceding the expiry of Registration Or 6 months after the expiry of registration.

5) That the tradition focuses on the same brand and the same product, then I put Registered mark Ali Product Other The product Al-Moein No to her The crime is committed [Article 09 From Order No. 03-06 of July 19, 2003].

Section One: The crime of imitating a sign

The Algerian legislator considered The crime of imitating marks is the most important form of infringement of the right to the mark itself, and we will discuss its elements below:

Section One: The legal pillar.

The act of imitating signs derives its criminal character from the provisions of Article 32 of Order No. 03-06 of July 19, 2003 relating to marks. Which states the following:

" Subject to the transitional provisions of this Order and without prejudice to the provisions of Order No. 66-156 of June 8, 1966, containing the Penal Code, as amended and supplemented, any person who commits imitation shall be punished by imprisonment from six (6) months to two years and a fine from two million five hundred thousand dinars (2,000.00 DZD) to ten million dinars (10,000,000 DZD) or by one of these two penalties only, With:

-Temporary or final closure of the institution.

- Confiscation of the items, means and tools used in the violation,

-Destroying the violated items.

Wala Criminalizing imitation of signs Huwa Protecting the right to a trademark By it self And punish The culprit is once you imitate her, Siwa Make a profit or loss. And equal Kant commodity Or its products Or its services Less or more quality than the goods, merchandise or services that were attacked, And so on Protecting the trust that the consumer public places in This sign （Mamoun Mohamed Salama, 2017, p. 378).

Branch Two : The material element.

The Algerian legislator has never known the act of imitating a scholar like other legislators. Arafa Legal dictionary as : " making something like something by fraud" （Ibrahim Najjar, Ahmed Zaki Badawi, 1983, P 77) And it differed Jurists In defining tradition, some of them knew it Baan Creation and artificiality, which is a form of forgery and changing the truth. Its method is to make a seal, stamp, or mark by making it similar to the original, real seals, stamps, and marks (Sabry Mahmoud Al-Rai, Reda El-Sayed Abdel-Ati, 2009, p. 368) .

And some of them He defined it as: "an imitation that calls for misleading the public due to the similarities between the two correct and imitated signs" (Ibrahim Abdel Khaleq, 2009, p. 24)

And some of them He knew him as: Reproduction or reproduction of another's mark（Pierre Dupont Delestraint, op.cit, P: 311-312).

The judiciary was known for its tradition Al-Alam Registered Baan : Visual and verbal symmetry, which creates confusion for the consumer It makes him not distinguish between the original product and the counterfeit product " (Supreme Court Decision 2014 pp. 413-416).

Some jurists believe that There is a difference Between imitation and forgery, imitation is the fabrication of something false, imitating and mimicking something true, i.e. similar to it in form, whether the imitation is Perfect (Raouf Obaid, 1978 P: 49) or not perfect, all that is required is that it be sufficient to deceive the audience. While forgery is making a change or modification to something that was originally true, adding or subtracting, whether the forgery is elaborate also Or not perfect . And it is installed Tradition Ali Al-Alama It is also installed On the machine that makes the mark itself (Ehab Abdel The Demand, 2018, p. 116).

And from the above It turns out that there are two forms of imitation:

The first image is: simulating the original mark, by cloning it, reproducing it, or creating a mark Similar And similar It has form or pronunciation.

The second image is: an image of forgery or counterfeiting of the mark, which is: tradition The original mark with modifications made to it, whether by addition or subtraction, provided that the original mark does not lose its specificity. If this addition or subtraction makes the original mark lose its specificity, then we are not dealing with an imitation of a mark, but rather we are dealing with a new mark.

In both cases, it is required that the trademark be forged Or imitate it into shading Consumer And his deception He cannot distinguish between it and Original mark.

The lesson in Tradition is not In the face of difference Between the original lama and the imitation sign, But with similarities Between them Deceive the consumer without Requiring that deception actually occur. And she too Not in detail and details And In general appearance （Sabry Mahmoud Al-Rai, Reda El-Sayed Abdel-Ati pp. 122-123), Which makes Precision and mastery in tradition No Importance If It is enough that there are enough similarities between the real sign and the fake sign to deceive And shading ordinary consumer (Rauf Obaid, p. 49).

Tradition has Be Verbally That is, by pronunciation It may be By writing That is, in form the outside view to be either completely identical to the original mark or just similar to it, It doesn't matter Make changes Simple On the original mark, increase or decrease if not Causes That In loss of mark Its essence and specificity The point of similarity and symmetry is fate The consumer is deceived by it. In this case, it is called fraudulent imitation (Pierre Dupont Delestraint, op.cit, P: 313).

However, Discretionary power remains Always For the judge of the matter who decides Alone Whether Tradition Kafia or Not enough to deceive Buyer （Mahmoud Naguib Hosni, 2018, p. 264) The Supreme Court has no control over him or debate his conviction if his ruling is sufficiently reasoned.

If imitation is not enough to deceive the buyer, then Does not constitute Crime and does not constitute because No attempt to imitate signs It may constitute Fraud crime If Kan Tradition Directed to deceive a specific person (Mamoun Mohamed Salama, Page: 382).

Second: The result

Imitation is a crime of danger and not a crime of harm, which makes its criminal result represented by the risk of misleading the consumer so that he cannot distinguish between products bearing the original mark and products bearing the counterfeit mark.

Third: Causal relationship

The causal relationship that links the act and the criminal result in the crime of imitating marks is a direct causal relationship, because the act of imitating the original mark is the direct cause that exposes it to all dangers, and because

imitating the original mark is what opens the door to all other dangers, and because all other attacks result from it, and it is sufficient to prove it by proving the attribution of the act of imitation to the perpetrator.

Branch Two : Moral element To imitate Jurisprudence differed regarding the moral element of a crime Imitation of signs （Amena Samet, 2018, p. 77) Some considered it a crime Deliberate Its establishment requires general criminal intent Special criminal intent (Ehab Abdel The Requirement, p. 118) That is, the perpetrator's will tends to commit the act of imitation while he knows that he is imitating the mark of others, in addition to his intention to mislead and deceive in order to achieve Illegal interest or dishonest to the perpetrator, or harm By the owner of the mark （Mahmoud Naguib Hosni, Page: 266.) But if He imitated the sign Asal In good faith to prove his technical skill or conduct a scientific experiment The crime is gone (Himself, p. 267).

But the prevailing opinion is that it is a crime Imitation of signs A material crime, based on the material element of the crime alone, where the perpetrator is criminally questioned as soon as he commits the criminal act without investigating the perpetrator's intention or intent to commit any crime without error, as the moral element is not required to be present whether the perpetrator committed this act in good faith or in bad faith (Amena Samet, p: 76) Criminal protection is based on the same right to the mark, regardless of the quantity or value of the goods and services on which the imitation is based, whether they are few or many, and whether the offender makes a profit or loss from them （ Linda Boumehrath, 2019 pp. 524-525).

We see that The first opinion is the most likely and closest to the truth, as long as registering the trademark only entitles its owner to the right of ownership over the products and services he assigns to it and not other products Services According to Article 9 of the Order on Marks, which states that the use of Similar to it on another product is a permissible act, which makes the direction of anyone's will to create Similar to the original mark, in order to use it on a product other than the product designated for it, it does not constitute a crime of imitating the mark, and thus the crime of imitating the mark is a crime Deliberate It is only based on the perpetrator's will to commit the act of imitation while he knows that he is imitating the mark of others, in addition to his intention to mislead and cheat in order to achieve Leh Illegal interest or dishonest to the perpetrator, or harm By the owner of the sign, but if He imitated Or artificial In good faith to prove his technical skill or conduct a scientific experiment Or in order to use it on a product other than the product designated for it, the crime of imitating the mark is eliminated.

Imitation of the mark may be considered a mistake Supposedly, as Simple companion Its opposite can be proven By all means That is, the imitator of the mark is considered to have bad intentions until he proves his good intentions by fabricating it to prove his artistic skill. Or conduct a scientific experiment Or use it on a product other than the product designated for it, as it is a substitute Lead to

Transfer of burden of proof From the Public Prosecution to The accused (Ammar Meziani and Abdel Sattar Meziani, P: 105).

Section Four: The penalty prescribed for the crime.

Article 32 of Order No. 03-06 of July 19, 2003 relating to signs of punishment of every person who has committed Misdemeanor of imitation For signs With penalties Asal And supplementary penalties .

First: Original penalties

Original prescribed penalties For the crime of imitation Tags It is represented by:

1) Imprisonment from six (6) months to two years It is a relatively short penalty and is the penalty applicable in comparative law.

2) Fine Al Maliya From two million five hundred thousand dinars (2,500.00 DZD) to ten million dinars (10,000,000 DZD) It is one of the most important and severe penalties imposed on the perpetrator of this type of crime, because the motive for committing it is greed and quick, illegal profit, which makes his financial injury more deterrent to him than penalties that deprive him of his freedom. The judge has the discretion to rule With one of these two penalties only .

Second: Supplementary penalties

Contrary to the general rule that is usually made The ruling With penalties Supplementary The discretionary power of the judge of the case in misdemeanors, but the Algerian legislator Text Article 32 of Order No. 03-06 The judge is obligated, in the event of a conviction, to impose the following supplementary penalties :

1) Temporary or final closure of the institution : He means By temporary or final closure of the institution. Prevent her from practicing The activity that was Practice it Before the ruling Even by another name, either permanently or permanently or Temporarily not exceeding Its duration 05 years An institution means an individual or collective institution, such as a company with a single person, or a company consisting of a group of people, regardless of its form. If it is a natural person, he is in turn prevented from practicing the same profession or activity on the occasion of which the crime was committed for the same period.

2) Confiscation of items, means and tools used in the violation: The final confiscation of a certain amount of money or a group of money by a judicial ruling or its equivalent when necessary to the state, i.e. to the public treasury, is intended The court is also obligated, when ruling on conviction, to confiscate the things, means and tools that were used or would have been used in the crime Confiscation is applied in this case as an intentional security measure Beh Eradicating the causes of the crime And discourage the perpetrator(Mahmoud Mustafa, p. 164) .

3) Destroying the objects in violation : It means destroying the items in violation Get rid of them and eliminate them permanently In any way of destruction, either by burning, destroying, or by any other means Even becomes unusable again. The legislator has approved destruction, unlike confiscation, which leads to the sale of counterfeit goods, which causes harm to the owner of the trademark instead of protecting him. This is inconsistent with the purpose of criminalizing counterfeiting.

The discretionary power of the trial judge always remains in ruling on one or more of the remaining supplementary penalties stipulated in Article 9 of the Penal Code.

Search Second: Crimes of assault on the right to monopolize the trademark

Multiple Crimes of attacking the right to monopolize the mark in various forms of acts that affect this right, including the crime of using the mark, and crimes of possession and sale And show For sale branded products Counterfeit, sold Or offer for sale Coated product With a mark imitator As shown below:

The first branch: the attribute Criminalization

Acts of assault are derived The right to monopolize the mark and its characteristics Criminalization From the provisions of Article 26 of the Order No. 03-06 of July 19, 2003 relating to marks Which states The following :

Subject to Article 10 above, any act that infringes the exclusive rights of a mark carried out by a third party is considered a misdemeanor in violation of the rights of the mark owner.

Imitation is a crime punishable by the penalties specified in Articles 27 to 33 below.

Section Two: Acts of assault on the right to monopolize the mark

Article 26 of the order specifies: No. 03-06 Previously mentioned, under a general rule all acts that affect are considered Investment rights For the brand Criminal acts, and these acts are:

First: Use Al-Alam.

Intended to use a sign Without license Such as using it on commercial papers or saws. Even if It has been used With any Add From additions （Pière Dupont Delestraint, op.cit, P: 312) Or putting it on products, and the crime of use Mark Imitation is a crime independent of the crime of imitating the mark, and therefore it is not required that the user be the same as the imitator or related to him Like someone who buys a counterfeit mark(Ihab Abdel Muttalib, Volume Al Thany , p. 117) and then puts it on his products. However, simply showing it to others without taking it out of his possession does not constitute the use of a counterfeit mark It also does not fall within the use of a counterfeit mark

(Mahmoud Naguib Hosni, S: 265) for a personal purpose because the punishable use is use for a commercial purpose.

Second: Possession or Sell or offer For sale branded products Imitator.

A crime is committed Possession of products Imitation copycat Retention Baha Without a legitimate reason, And a crime also occurs Selling products imitator. Or offer it for sale It doesn't matter If it is done Imitate it from Party of the holder, seller, or offeror for sale or from Before Others, but he must be aware that it is imitative (Pière Dupont Delestraint, op.cit, P: 313) .

Third: Sell Or offer for sale Coated product With a mark imitator

This means that the product owner wraps his goods or products in covers or places them in boxes with bad intentions bearing an original, counterfeit mark, with the aim of deceiving the consumer into believing that the product inside the cover or box is a product of the original mark (Pière Dupont Delestraint, op.cit, P: 312).

Fourth: Criminal intent

Crimes Use Or possession or Sell or offer Products for sale They bear a counterfeit mark, all of which are intentional crimes that require Criminally General, represented by knowledge and will, that is, the tendency of the offender's will to possess or Sell or offer Products for sale It is known that it bears a counterfeit mark, in addition to the special criminal intent of bad faith, meaning that the purpose of all these acts is to mislead the consumer.

Conclusion :

The ring After we discussed the mark through research and study in terms of definition, importance and conditions for its protection, and after analyzing the pillars and elements of the crime of imitating marks in accordance with Article 32 We studied and analyzed Article 26 and reached the following results:

1) The status of the Algerian legislator under the provisions of Article 26 from Order No. 03-06 of July 19, 2003 relating to marks A general rule is considered Kul do Affects exclusive rights For the brand Misdemeanor of imitating a registered trademark.

2) Contrary to the general rule that is usually made The ruling With penalties Supplementary From the discretionary power of the judge of the case in misdemeanors, the Algerian legislator has obligated the judge, in the event of a conviction, to compulsorily rule on supplementary penalties .

The legislator decided on the penalty of imprisonment and a fine for the offender and left the judge with the discretionary power to rule both or With only one of them, although the fine is important in this type of crime, because the motive for committing it is greed And quick profit And illegal, which makes his financial injury more deterrent and effective for him than custodial sentences.

3)Jurisprudence in Algeria has tended to consider the crime of imitation A material crime, which contradicts the provisions of Article 9 of Order No. 03-06 of July 19, 2003, relating to marks .

Recommendations:

1) Given the importance of the fine in this type of crime, the motive for which is greed and the desire for quick and illegal profit, the offender's financial injury is more deterrent and effective than custodial penalties. Therefore, we propose amending Article 32 by stipulating the mandatory fine, leaving the judge's discretionary power to rule imprisonment alongside it or with both.

4) We suggest adding a post And comment on the conviction For mandatory supplementary penalties, as they have an impact on Consider The perpetrator is with his clients on whom he depends in Development His income, and there is nothing harsher for him than for these people to hear about him through the press or comment in public places that he is not a place of trust and credit Whoever does not have the opportunity to know this will find it hanging on the facade Its place or His company Defaming the convict may have a greater impact than the original punishment, the implementation of which may remain hidden from the public with whom he usually deals, and this is what made the Rome Conference It is recommended to introduce it into the Economic Penal Code (Mahmoud Mahmoud Mustafa, p. 176)

Bibliography:

Legislation:

1. Order No. 03-06 of July 19, 2003 relating to marks, published in Official Gazette No. 54 of 08/07/2003.
2. A For order number 66-57 Dated 19 March year 1966 Related With factory marks and Tags Al Taghred.

BOOKS

1. Ammar Meziani and Abdel Sattar Meziani(2020) , Criminal Liability of Natural Persons, Dar Houma, Algeria
2. Fadeli Idris, (2007) Introduction to Intellectual Property, Office of University Publications, Algeria.
3. Ibrahim Abdel Khaleq, (2009) The Practical Encyclopedia of Criminal Offences, Vol. 2, Egypt
4. Ibrahim Abdel Khaleq, (2009) The Practical Encyclopedia of Criminal Offences, Vol. 2, Egypt
5. Ibrahim Najjar, Ahmed Zaki Badawi, Youssef Shalala, (1983). Legal Dictionary, French-Arabic, Lebanon Library, Beirut,

6. Ihab Abdel Muttalib, (2018)The Criminal Encyclopedia in Explaining the Penal Code, Volume Three, National Center for Legal Publications, Cairo, 2018.
7. Mahmoud Naguib Hosni, (2018) , Explanation of the Penal Code, Special Section, 5th ed., Dar Al Nahda Al Arabiya, Cairo
8. Mamoun Mohamed Salama, (2017).Penal Code, Special Section, Part 1, Salama Publishing and Distribution, Egypt.
9. Mireille Dalmas-Marty, (1990) Business Criminal Law, Part 2: Offenses, PUF, Paris
10. Pierre Dupont Delestraint, Business Criminal Law, Dalloz, Paris, 1974
11. Raouf Obeid, (1978) , Crimes of Counterfeiting and Forgery, 3rd ed., Dar Al Fikr Al Arabi, New Renaissance Press, Egypt .
12. Sabry Mahmoud Al-Rai, Reda Al-Sayed Abdel-Ati (2009), Penal Code - Jurisprudence and Judiciary - Volume Three, United Publishers, Dar Misr, Cultural Office, Dar Al-Samah, Egypt .
13. Safaa Muhammad Al-Suwailemin and Tala Saud Al-Shawa, (2006) ,Commercial and Business Legislation, 2nd ed., Wael Publishing House, Amman, Jordan .

Theses

1. Amna Samet, (2018) Criminal Liability in Trademark Crimes, PhD Thesis in Private Law, Faculty of Law and Political Science, Aboubacar Belkaid University, Tlemcen, Algeria

Magazines

1. Linda Boumehrath, (2019) Criminal protection of trademarks and their effectiveness with regard to trademarks traded electronically, magazine Emir Abdelkader University of Islamic Sciences, Volume 23, Issue 47, Year.
2. Supreme Court Decision (2014) No. 0907531 issued on 02/27/2014 Misdemeanor and Violations Chamber, Supreme Court Journal, Legal and Judicial Documents and Studies Department, , Issue 01 .