

The Extent of Legal Protection Granted to the Licensee under the Trademark License Contract in Algerian Law

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Abstract:

The licensee of a registered trademark occupies a legally exposed position under Algerian law: it derives its right to use the mark entirely from a contractual relationship with the proprietor, it bears substantial commercial risk in building and operating a business around that use. This article examines the extent to which Algerian law, principally Ordinance No. 03-06 of 19 July 2003 on Trademarks read together with the general law of contract, protects the licensee against the principal risks it faces: the licensor's failure to maintain or defend the registration, third party infringement of the licensed mark, arbitrary termination, and the consequences of registration formalities. The article argues that, while the licensee benefits from meaningful contractual and administrative safeguards, its protection remains structurally weaker than that of the proprietor itself, and it proposes targeted legislative clarifications capable of narrowing this gap.

Keywords: trademark license; licensee protection; Algerian trademark law; Ordinance 03-06; registration.

1. INTRODUCTION

Trademark licensing allows the proprietor of a registered mark to authorize a third party, the licensee, to use it commercially while retaining ownership. Algerian law has recognized this arrangement since the enactment of Ordinance No. 03-06 of 19 July 2003 on Trademarks, which replaced the more rudimentary framework inherited from earlier legislation and aligned Algerian practice with the licensing mechanisms

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contemplated by the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights.¹

The licensee's legal position, however, differs fundamentally from that of the proprietor. The licensee acquires no ownership interest in the mark; its right to use the sign is entirely derivative, contingent on the continued existence of the underlying registration and on the continued performance of the license contract itself. This derivative and contingent character exposes the licensee to risks that the proprietor does not bear in the same way: the proprietor's own failure to renew or defend the registration, the proprietor's decision to terminate the license, and third-party infringement that the licensee may be poorly positioned to challenge directly given its uncertain standing to sue in its own name.²

This structural vulnerability raises a question of considerable practical importance for an economy increasingly reliant on licensing, franchising, and technology transfer arrangements to expand commercial activity: to what extent does Algerian law actually protect the licensee against these risks, and where do the gaps in that protection lie? Ordinance No. 03-06 addresses licensing only in general terms, leaving many of the licensee's practical protections to be derived from the general law of contract found in the Civil Code, from administrative practice before the national industrial property office, and from careful contractual drafting rather than from any dedicated statutory regime tailored to the licensee's distinctive position.³ This article shows that question in two main parts. Part 2 examines the legal framework that determines the licensee's position, first by clarifying the legal nature of the license and the extent to which the licensee's rights genuinely derive from, and remain dependent on, the proprietor's own conduct, and second by examining how the conditions of formation and registration shape the protection the licensee can claim. Part 3 then turns directly to the mechanisms of protection available to the licensee, distinguishing contractual protection, centered on quality control, remedies, and safeguards against arbitrary termination, from judicial and administrative protection, centered on the licensee's standing to sue infringers and the effect of registration on its position in the face of third parties. Part 4 concludes with an assessment of the overall adequacy of the licensee's protection and proposes targeted reforms.⁴

The methodology adopted is doctrinal and comparative, situating the specific provisions of Ordinance No. 03-06 and its implementing Executive Decree within the broader structure of Algerian civil and commercial law, and drawing on comparative practice in jurisdictions whose statutory models informed the drafting of Algerian industrial property legislation, in order to identify not merely what Algerian law says

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), preamble.

²Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

³Algerian Commercial Code, as amended, general provisions on commercial contracts.

⁴Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), preamble.

about the licensee's position, but where its comparative silence leaves that position weaker than sound commercial practice would prefer.¹

The question addressed here is of more than theoretical interest. Licensing has become one of the principal vehicles through which foreign brands enter the Algerian market and through which Algerian enterprises expand the commercial reach of marks they have built domestically, whether through simple licensing, franchising arrangements incorporating a trademark license as one component, or joint manufacturing ventures conducted under a licensed sign. In each of these configurations, the licensee typically commits substantial capital, and considerable managerial and marketing effort, to building a business around a sign it does not own, a commitment that only makes commercial sense if the legal framework offers a reasonably predictable and secure basis for that investment.² Where that predictability is lacking, whether because the licensee's standing to defend the mark against infringement is uncertain, because termination can occur with little effective notice, or because the consequences of the licensor's own default in maintaining the registration are unclear, licensees face a structural disincentive to invest fully in the licensed business, a disincentive that ultimately works against the interests of proprietors themselves, who depend on licensees willing to make exactly this kind of commitment in order to realize the full commercial value of their marks.³

It should be acknowledged at the outset that the licensee's structurally weaker position relative to the proprietor is not, in itself, an anomaly requiring correction; it flows naturally from the fact that the licensee holds no ownership interest in the mark and cannot reasonably expect to enjoy protections identical to those the proprietor derives from ownership itself. The concern this article raises is narrower and more precise: not that the licensee should be equated with the proprietor, but that certain protective mechanisms, clarifying standing to sue, addressing the consequences of the proprietor's own default, and providing default rules for termination and sub-licensing, could be extended to the licensee without in any way diminishing the proprietor's own rights, closing gaps that appear to be attributable to legislative silence rather than to any deliberate policy choice to leave licensees unprotected in these respects.⁴

This narrower framing also explains the article's choice to focus specifically on the licensee's protection rather than on the license contract's regulation more generally. A wider study of the license contract would need to address in equal depth the proprietor's own interests, royalty structures, and the full range of commercial variants the contract can take; by contrast, isolating the licensee's protection as the organizing question allows this article to examine, in the depth the subject deserves, precisely those features of Algerian trademark law where the balance between the two parties' interests currently

¹Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

²Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), preamble.

³Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

⁴Algerian Commercial Code, as amended, general provisions on commercial contracts.

appears least settled and most in need of clarification.¹ And it is worth noting, that the licensee's position examined in this article should be distinguished from that of a mere authorized distributor or reseller of genuine goods, a distinction of practical importance because commercial actors in the Algerian market not infrequently use the term license loosely to describe arrangements that, on closer legal analysis, do not amount to a trademark license at all. Where a party merely purchases and resells goods already placed on the market by or with the consent of the proprietor, it generally requires no license and therefore falls outside the scope of the protective analysis developed here, which is concerned specifically with parties who have been granted an authorized right to use the mark itself, whether by affixing it to goods they manufacture or package, or by using it in connection with services they themselves provide under the licensed sign.²

2. The legal framework governing the licensee's position

2.1 The Legal Nature of the License and the Dependent Character of the Licensee's Rights

A trademark license contract may be defined as an agreement by which the proprietor of a registered mark authorizes another person to use it in connection with specified goods or services, for a defined territory and duration, while retaining ownership of the underlying right³. This definition already reveals the source of the licensee's structural vulnerability because the license grants only a personal right of use rather than any proprietary interest in the mark itself, the licensee's position is entirely parasitic on the continued existence of the registration and on the proprietor's continued willingness, and legal capacity, to honor the license.⁴

This dependent character distinguishes the license sharply from an assignment of trademark rights, under which the assignee acquires the proprietor's own position, including the capacity to renew the registration and to license the mark further in its own right. A licensee enjoys no such autonomous capacity if the proprietor fails to renew the registration, allows it to lapse, or is deprived of it through a successful third party cancellation action, the licensee's rights fall away entirely, regardless of how faithfully the licensee has itself performed its own obligations under the contract, and regardless of the commercial investment the licensee may have made in building a business around the licensed mark.⁵

The licensee's dependent position is compounded by the fact that Algerian legislation, unlike some comparative systems, does not impose upon the licensor an

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), preamble.

²Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

³Newman, Christopher M. "A License Is Not a Contract Not To Sue": Disentangling Property and Contract in the Law of Copyright Licenses." *Iowa Law Review* 98.2 (2013) p 17.

⁴Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), general provisions on the rights conferred by registration.

⁵Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general provisions on contracts.

express statutory duty to maintain the registration in force for the licensee's benefit; such a duty must instead be inferred from the general contractual duty of good faith performance and from the licensor's own obligation to permit undisturbed use of the mark, an obligation that logically implies maintaining the very registration from which that use derives¹. This reliance on implication rather than express statutory text leaves the licensee's protection in this respect weaker and less certain than it would be under a regime that codified the licensor's maintenance obligations explicitly.² A further dimension of dependency concerns the licensee's exposure to the proprietor's own commercial decisions regarding the mark, including decisions to sell or otherwise transfer the mark to a third party. While recording the license, discussed further below, offers the licensee some protection by rendering the license opposable to a subsequent acquirer, the licensee has no power to prevent the proprietor from transferring the mark in the first place, and must rely on the transferee's obligation to respect a duly recorded license rather than on any independent capacity to block or influence the transfer itself.³

Understanding this dependent legal nature is essential to evaluating the protective mechanisms examined in Part 3, since many of them operate not by giving the licensee an autonomous right equivalent to ownership, but by mitigating, without eliminating, the risks inherent in a position that remains, by its very legal nature, contingent on the conduct and continued good standing of another party.⁴

This dependent legal nature is further illuminated by contrasting the license with neighboring commercial arrangements that are sometimes conflated with it in practice. A simple distribution agreement, under which a distributor resells genuine goods already placed on the market by or with the consent of the proprietor, generally requires no trademark license at all, since the doctrine of exhaustion of rights permits further commercialization of such goods without a separate licensing arrangement a license becomes necessary only once the commercial partner itself manufactures, packages, or affixes the mark to goods, or uses it in its own promotional materials beyond ordinary resale. Licensees whose relationship with the proprietor evolves gradually from simple distribution toward local manufacturing or private label production should, for this reason, ensure that their contractual documentation evolves correspondingly, since a licensee operating in reliance on an informally expanded arrangement that was never properly documented as a license risks discovering, precisely when protection matters most, that its rights rest on an uncertain and potentially unrecorded foundation.⁵

The license must equally be distinguished from franchise arrangements, of which a trademark license typically forms only one component alongside the transfer of know

¹ Bellarou, Kamel. "Protection of industrial property in the context of free competition." *Almufakir journal* 21.1 (2026): p09-27

² Paris Convention for the Protection of Industrial Property, 1883 (as revised), art. 6quater.

³ Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), general provisions on the rights conferred by registration.

⁴ Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general provisions on contracts.

⁵ Paris Convention for the Protection of Industrial Property, 1883 (as revised), art. 6quater.

how and ongoing commercial assistance. Algerian legislation does not yet contain a dedicated statutory framework for franchising, meaning that a franchisee's protection in respect of the trademark element of its relationship with the franchisor is governed by the same license specific analysis developed in this article, even though the franchisee's overall commercial relationship may extend considerably further, a point of some practical confusion in a market where franchising has expanded rapidly without a correspondingly developed body of dedicated legislation or case law to guide the parties.¹

The dependent character of the licensee's position is also reflected in the doctrine, recognized in comparative trademark scholarship though not yet codified in express terms under Algerian legislation, concerning naked licensing, an arrangement in which the licensor exercises no genuine quality control over the licensee's use of the mark. Where a license is naked in this sense, the mark risks losing its capacity to function as a reliable guarantee of consistent origin and quality, potentially exposing the underlying registration itself to challenge on grounds that it has become deceptive or has lost its distinctive character, a risk that ultimately harms the licensee as much as the proprietor, since the licensee's own rights collapse entirely should the registration from which they derive be successfully invalidated.² This risk gives the diligent licensee a genuine, if indirect, interest in monitoring and even encouraging the licensor's exercise of quality control, an unusual dynamic in which the party subject to oversight benefits from the very oversight it might otherwise be tempted to resist, precisely because the alternative, a naked license vulnerable to challenge, threatens the licensee's own continued rights far more directly than it threatens a proprietor who retains the capacity to license the mark afresh to a different, more compliant partner should the registration nonetheless survive a validity challenge. Licensees would accordingly be well advised to view robust quality control clauses not merely as a burden imposed by the licensor but as a structural protection for their own continued legal position.³

The comparative weakness of the licensee's position becomes particularly apparent where multiple licensees operate under licenses of different scope over the same mark, whether through parallel non exclusive licenses covering different classes of goods or different territories, or through a chain of sub licenses granted with the proprietor's consent⁴. In such configurations, a dispute regarding the precise boundary of one licensee's authorized scope can directly affect the commercial position of other licensees operating under the same mark, Also Algerian legislation provides no express mechanism through which one licensee can compel clarification of another's scope, leaving affected licensees dependent on the proprietor's own willingness to police the

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), general provisions on the rights conferred by registration.

²Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general provisions on contracts.

³Paris Convention for the Protection of Industrial Property, 1883 (as revised), art. 6quater.

⁴ Rahmoun, Tahar. "The Role of Sports Marketing in Achieving Development for Professional Clubs According to Algerian Law." *Academic Journal of Legal and Political Research*. 8.1 (2024) p163

boundaries between overlapping licenses, a willingness that cannot always be assumed where the proprietor's own commercial interest lies chiefly in maximizing aggregate royalty income rather than in mediating disputes between its various licensees.¹

A further illustration of the licensee's dependent position concerns the treatment of the license upon the proprietor's insolvency or judicial liquidation. Because the license is a personal right binding the proprietor rather than a proprietary interest in the mark itself, the licensee's position in insolvency proceedings affecting the proprietor is generally that of an ordinary contractual counterparty rather than a secured or preferential creditor, exposing the licensee to the risk that a liquidator or judicial administrator may elect not to continue performing the license, notwithstanding the licensee's own good faith performance and commercial reliance on the arrangement, a vulnerability that Algerian insolvency law does not address with provisions specifically tailored to the trademark licensing context.²

These illustrations collectively demonstrate that the licensee's dependent legal nature is not a single, isolated feature of the license contract but a recurring characteristic that surfaces across a wide range of circumstances, formation, coexistence with other licensees, insolvency, and, as later Parts of this article examine, termination and infringement. Recognizing this recurring dependency as the unifying thread connecting otherwise disparate practical scenarios is essential to understanding why targeted, rather than piecemeal, legislative attention is likely to prove more effective in strengthening the licensee's position than addressing each scenario in isolation.³

2.2 Conditions of Formation and Registration Affecting the Licensee's Protection

As with any contract under Algerian law, the license must satisfy the general conditions of formation set out in the Civil Code: free consent, capacity, a determinate object, and a lawful cause. For the licensee, the precision with which the object of the contract is defined, the specific mark, the classes of goods or services covered, the territory, and the duration, is of particular protective importance, since any ambiguity in these terms becomes a source of vulnerability if the licensor later disputes the scope of what was authorized or attempts to grant inconsistent rights to a competing licensee.⁴

This formality, required by the Ordinance and the Executive Decree implementing the Ordinance, serves a particular importance in protecting the interests of the licensee in that the recording makes the license opposable to a third party, including the buyer of the mark as well as another licensee. Failure on the part of the licensee to effect recorded may mean that the licensee will have his rights under the contract only as

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), general provisions on the rights conferred by registration.

²Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general provisions on contracts.

³Paris Convention for the Protection of Industrial Property, 1883 (as revised), art. 6quater.

⁴Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, provisions on consent, capacity, object and cause.

against the licensor but will lose all practical benefits therefrom in the event the licensor deals with the mark in a manner inconsistent with the contract that has not been recorded.¹ Besides that, recorded ensures that there is adequate documentary evidence on the part of the license holder to prove its legality before any customs official or administrator who needs to distinguish between real licensed merchandise and any fake product, which holds great practical importance considering how difficult it would be for the license holder to establish its legitimacy based merely on the underlying contract.²

On the other hand the very requirement of recordal raises another problem in terms of protection: the fact that recordal is prospective starting from the day of its registration on the register means that the licensee is at risk of having its contract trumped by further deals made by the licensor between the date of signing of the deal and the recordal date due to either negligence or treating recordal simply as a formality. In order to improve the situation in Algeria, it would be beneficial to develop guidelines regarding timely recordal either legislatively or administratively with regard to what the consequences of failure in doing so would be.³

One last issue concerning registrations has to do with licenses of marks that have not yet been completed registered or where the registration process is still pending review. In view of the fact that the rights under a license cannot extend beyond the scope of any actual registration that is issued, premature licensing before such time as the mark is officially registered leaves the licensee vulnerable to the possibility that the subsequent registration might be more limited than expected, or denied outright, or even delayed for an indefinite period of time.⁴

The expenses and bureaucracy of recordal procedures, even though small on an absolute scale, nevertheless constitute yet another factor to be considered by the licensee, especially new licensees who have never been involved in the procedure of license agreement, which may be relatively complicated from a practical perspective. It would be wise to retain local counsel or agent who is familiar with the recordal procedure at the national industrial property office instead of relying upon the mere presence of the license agreement as the sufficient instrument for protecting one's interests, which constitutes a small investment, significantly decreasing the likelihood

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), formal requirements for recordal of contracts affecting trademark rights.

²Executive Decree No. 05-277 of 14 August 2005 implementing Ordinance No. 03-06 on Trademarks, procedural requirements for recordal.

³Institut National Algérien de la Propriété Industrielle (INAPI), Guide on Trademark Registration Procedures.

⁴Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, provisions on consent, capacity, object and cause.

of protection deficiencies pointed out throughout this section, and therefore a step recommended by this article.¹

From an overall perspective, the conditions of formation and registration examined in this Part reveal a recurring pattern Algerian law provides the licensee with genuine, meaningful protective tools, principally recordal and its associated opposability effects, but places the burden of activating those tools squarely on the licensee's own diligence, rather than supplying default protections that operate automatically regardless of the parties' attentiveness to procedural formality. This allocation of responsibility, while consistent with the general spirit of Algerian contract law's emphasis on party autonomy, leaves less sophisticated licensees correspondingly more exposed than the formal existence of these protective mechanisms might otherwise suggest.² And in the case of an internationally registered mark, wherein the protection of the mark derives from an international registration through the Madrid system and where Algeria is a designated contracting party thereof, the protection of the licensee requires the additional step of registering the license both at the national level with the relevant authority of industrial property and internationally with the International Bureau of the World Intellectual Property Organization in connection with the international registration. A licensee who relies only on the national registration without considering the international angle will find its protection wanting in the territories covered by the same international registration but requiring national registration.³

Another aspect to be considered in relation to the protection of the licensing agreement relates to any changes made to the agreement during the time of its life in terms of its prolongation in time, expansion of its scope territorially or in terms of product, or changes in its royalty structure. The reason for this is that since recordal involves recording the terms of the original registration of the license agreement, the licensee will face the risk of his real rights being different from those recorded in the register, and hence prejudice him in comparison with third parties who relied on the contents of the register in good faith.⁴

3. Mechanisms of protection available to the licensee

3.1 Contractual Protection: Quality Control, Remedies and Safeguards against Arbitrary Termination

Because Algerian legislation leaves much of the substantive regulation of the license to the general law of contract, the licensee's most immediate and reliable source

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), formal requirements for recordal of contracts affecting trademark rights.

²Executive Decree No. 05-277 of 14 August 2005 implementing Ordinance No. 03-06 on Trademarks, procedural requirements for recordal.

³Institut National Algérien de la Propriété Industrielle (INAPI), Guide on Trademark Registration Procedures.

⁴Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, provisions on consent, capacity, object and cause.

of protection lies in careful contractual drafting rather than in default statutory rules. Quality control provisions, while primarily understood as safeguarding the trademark's function for the benefit of consumers and the proprietor, also indirectly protect the licensee by clarifying in advance the standards it must meet, reducing the risk that the licensor will later invoke vague or after the fact quality objections as a pretext for terminating the relationship or withholding cooperation.¹

Express contractual remedies further strengthen the licensee's position considerably beyond what general contract law would supply by default. Provisions specifying a notice and cure period before termination for alleged breach, requiring the licensor to provide reasonable advance notice of non renewal, or guaranteeing the licensee a defined wind down period to dispose of lawfully manufactured inventory following termination, all operate to convert what would otherwise be uncertain, judicially determined outcomes into predictable contractual entitlements, a particularly valuable form of protection given the comparative scarcity of published Algerian case law addressing licensing disputes directly.²

Safeguards against arbitrary termination merit particular attention because the licensee, having typically invested significant resources in building a business around the licensed mark, bears a disproportionate share of the loss should the licensor terminate the relationship without adequate justification or notice. Because Algerian law applies the general principles of judicial termination for serious breach, a licensor seeking to terminate must generally be able to demonstrate a genuine and serious failure of performance by the licensee, but the practical burden of establishing this before a court, and the delay inherent in judicial proceedings, means that a licensee whose contract lacks clear, objectively verifiable performance benchmarks is left more exposed to a licensor's unilateral, if legally contestable, decision to cease cooperating in practice long before any court definitively resolves the dispute.³

A further contractual protection of growing importance concerns provisions addressing the consequences of the proprietor's own default, for instance a licensor's failure to renew the registration or its decision to allow the registration to lapse. Because the licensee has no independent legal capacity to renew a registration it does not own, contracts that grant the licensee a contractual right to demand renewal, to receive advance notice of the licensor's intention not to renew, or to renew on the licensor's behalf at the licensee's own expense should the licensor fail to act provide meaningful protection against a risk that the general law of contract, standing alone, addresses only imperfectly through an action for damages after the fact, by which time the underlying

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on the rights conferred by registration.

²Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general law of obligations and their effects.

³Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

commercial relationship, and the value of the licensee's accumulated goodwill, may already have been irreparably damaged.¹

Beyond the remedies already discussed, contractual provisions addressing the growing use of digital platforms and e-commerce channels have become increasingly important protective tools for the licensee. Because a license drafted at a time when online sales were not a significant feature of the licensed business may leave ambiguous whether the licensee is authorized to sell licensed goods to consumers located outside the strictly defined territorial scope of the license,² express provisions clarifying the licensee's rights and obligations regarding online sales channels reduce a source of dispute that general contract law, absent specific stipulation, resolves only uncertainly and after the fact.³

Restrictive clauses limiting the licensee's commercial freedom, territorial restrictions, minimum purchase obligations, and post-termination non use undertakings, cut in the opposite direction from the protections discussed above, and the licensee's protection accordingly depends also on ensuring that such restrictions remain proportionate to the licensor's legitimate interest in protecting the mark's value, since Algerian competition law and the general civil law principle against clauses contrary to public order impose outer limits on obligations that would otherwise unreasonably restrict the licensee's ordinary commercial freedom, particularly restrictions extending for an unreasonably long period after termination or bearing no genuine connection to any continuing risk of confusion with the licensed mark.⁴

The inclusion in the agreement of provisions regarding indemnity and insurance coverage in respect of any claims by third parties relating to consumer liability or product safety, or any claims for infringement made by third parties who have superior title to the trademark, will enable the parties to apportion the risks ahead of time rather than placing the licensee in an open-ended situation, the outcome of which would be well outside its control, especially in situations where the very legitimacy of the registration is subsequently contested by a third party without any failure on the part of the licensee. In cases of licenses involving sublicenses, similar provisions dealing with the situation of the sublicenses in the event of termination of the main license will be just as useful, because in such a case, the validity of the sublicense is normally dependent upon the existence of the main license, and termination of the latter would

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on the rights conferred by registration.

²Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general law of obligations and their effects.

³Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

⁴Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on the rights conferred by registration.

render the former void even if the sublicense were not at all at fault.¹ So resolution clauses should be mentioned separately because they provide the licensee with an additional layer of protection through contracts given the fact that judicial proceedings in Algeria, as well as in most other jurisdictions, are usually accompanied by considerable delays until an effective judgment is delivered, licensees negotiating from a disadvantaged position compared to the proprietor should find it beneficial to agree on certain dispute resolution processes which will be much faster than normal litigation procedures and that will also give them an opportunity to choose who have adequate expertise concerning trademark licensing issues, an expertise that may not always be easily found among judges who do not specialize in this kind of commercial practice.²

A further protective technique, increasingly adopted in sophisticated licensing agreements though not yet standard practice in the Algerian market generally, involves periodic joint review meetings between licensor and licensee to assess quality compliance, market performance, and any emerging disputes before they escalate into formal breach allegations. Such review mechanisms, while contractual rather than legal in character, serve a preventive function that pure remedial provisions cannot replicate, reducing the likelihood that minor compliance issues develop into full disputes triggering the termination and remedial provisions discussed above, and thereby indirectly protecting the licensee's continued enjoyment of the license by reducing the frequency with which its more drastic contractual safeguards need to be invoked at all.³

3.2 Standing to Sue and the Effect of Registration

Apart from the protections provided through contractual rights, the status of the licensee, to a lesser degree, is further strengthened through judicial administrative protection mechanisms outside the scope of the agreement. One such protection mechanism is that of the right of the licensee to sue the third party that uses the trademark or any mark that is confusingly similar to the trademark without the consent of the licensee. In Algeria, the general position of the law is that the first right of action lies with the registered proprietor of the trademark as the proprietor continues to be the owner of the intellectual property.⁴

This dependency is only partially mitigated by the general principles of Algerian civil procedure concerning the standing of parties with a direct and legitimate interest, which suggest that an exclusive licensee should at minimum be entitled to intervene in proceedings brought by the proprietor, and, where the license contract expressly grants such a right, potentially to initiate proceedings in its own name where the proprietor has

¹Algerian Civil Code, Ordinance No. 75-58 of 26 September 1975, as amended, general law of obligations and their effects.

²Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 21.

³Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on the rights conferred by registration.

⁴Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on registration and opposability to third parties.

failed or refused to act despite notification of the infringement. Because this possibility rests on contractual stipulation and general procedural principle rather than on an express statutory entitlement, the licensee's practical protection against infringement remains considerably more secure where the license agreement anticipates the issue directly than where the licensee must rely on inference from general principles alone.¹

Registration itself provides the licensee with an additional, more indirect form of protection: a duly recorded license offers documentary evidence of the licensee's lawful status that proves valuable in administrative proceedings before the national industrial property office, for instance where the licensee wishes to oppose a confusingly similar third party application, and before customs authorities investigating suspected counterfeit goods at the border, where a recorded license can allow the licensee to demonstrate its authorized status considerably more efficiently than reliance on the underlying contract alone.²

Administrative practice before the national industrial property office further offers the licensee a measure of protection through the office's gatekeeping function in verifying, before entering a license on the register, that the party seeking recordal is indeed the registered proprietor or its duly authorized representative, a verification that indirectly protects licensees generally by maintaining the reliability of the register as a source of information regarding who holds authority to grant licenses over a given mark, reducing the risk that a licensee might unknowingly contract with a party lacking genuine authority to do so.³ And together, these judicial and administrative mechanisms supply the licensee with meaningful, if partial, protection considerably narrower than the protection the proprietor itself enjoys as the holder of the primary right of action and the party with direct capacity to maintain and enforce the registration. This asymmetry, more fully addressed in the concluding assessment below, reflects the licensee's inherently derivative legal position rather than any oversight in the drafting of Ordinance No. 03-06, but it nonetheless leaves room for the legislative clarification this article proposes.⁴

The licensee's protection is further shaped by the intersection between trademark licensing and the developing framework of Algerian consumer protection legislation, which imposes obligations concerning product safety, accurate labeling, and truthful advertising on any enterprise placing goods on the market, irrespective of whether that enterprise is the proprietor or the licensee. Because liability for a consumer protection violation is not always clearly allocated between licensor and licensee under Algerian legislation, a licensee that has not addressed this allocation expressly in its contract may find itself exposed to liability, or to reputational harm, arising from circumstances

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on civil and criminal remedies for infringement.

²Institut National Algérien de la Propriété Industrielle (INAPI), Guide on Trademark Registration Procedures.

³Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 39.

⁴Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on registration and opposability to third parties.

substantially outside its own control, for instance defects in specifications supplied by the licensor itself, underscoring once again the importance of contractual foresight in a field where statutory default rules remain comparatively underdeveloped.¹

Comparative practice in reference jurisdictions whose statutory models informed the drafting of Algerian industrial property legislation generally affords licensees more explicit statutory protection than Algerian law currently does, including express default rules on the licensee's standing to sue, on the consequences of the licensor's failure to maintain the registration, and on the treatment of sub licensees and pre-existing inventory upon termination. The relative brevity of the Algerian provisions leaves correspondingly greater scope for contractual stipulation and judicial interpretation to fill these gaps, reinforcing the case, developed throughout this article, for legislative attention to the licensee's distinctive position.²

The issue of enforcement adds another layer of protection for the licensee which should be considered especially where licensees are working in the regional market whereby counterfeit goods bearing the mark of the licensed product are brought into Algeria through neighboring countries. Coordination between Algerian custom officials and those in neighboring countries is not yet at the same level as in other regions where such integration exists; hence the capacity of the licensee to detect counterfeit goods before entry into the local market depends largely on how vigilant the licensee is.³ And it is worth observing that the licensee's practical protection often depends as much on the sophistication of its own compliance and monitoring practices, tracking unauthorized use of the mark in the market, maintaining organized records of its own authorized status, and promptly seeking recorded of the license and any subsequent amendments, as on the formal legal mechanisms examined throughout this article. A licensee that invests in such practices places itself in a considerably stronger position to invoke the protections Algerian law does offer than one that treats the license purely as a private arrangement requiring no further attention once signed, underscoring that legal protection and diligent practical administration operate as complements rather than substitutes for one another.⁴

A further practical dimension concerns the licensee's relationship with the national industrial property office beyond the initial recordal of the license itself. Licensees who maintain an active watch over new trademark applications filed in classes overlapping with the licensed mark, and who promptly notify the proprietor of potentially confusing applications, place themselves in a considerably stronger position to prompt timely opposition proceedings than licensees who leave such monitoring entirely to the

¹Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on civil and criminal remedies for infringement.

²Institut National Algérien de la Propriété Industrielle (INAPI), Guide on Trademark Registration Procedures.

³Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994, art. 39.

⁴Ordinance No. 03-06 of 19 July 2003 on Trademarks (Algeria), provisions on registration and opposability to third parties.

proprietor, particularly where the proprietor's own commercial attention is divided across a wider portfolio of marks and territories than the single licensed relationship at issue. This proactive posture, while not a substitute for the licensee's own uncertain standing to oppose applications directly in every circumstance, meaningfully increases the likelihood that infringing or confusingly similar applications are identified and challenged before they mature into registrations capable of disrupting the licensee's own market position.¹ The overall picture that emerges from this Part is one of asymmetric but not illusory protection. The licensee is not without recourse, contractual drafting, recordal, intervention rights, and administrative vigilance together supply a meaningful, if imperfect, set of protective tools, but the licensee's protection remains structurally narrower than the proprietor's own, rooted in standing and enforcement rights that the licensee holds only derivatively, contingently, or by contractual stipulation rather than as an inherent incident of its position under the Ordinance itself.²

4- Conclusion

In conclusion, it is clear that while Algerian law provides some measure of protection for licensees, this protection is largely indirect, depending on how the licensing agreement is written and the consequences of the registration process, rather than through a statute providing direct protection to the licensee, given their dependent legal position. As a result, there are certain weaknesses in this approach, with licensees being exposed to the lack of clarity about standing to sue in the event of disputes, failure to keep the registration, and arbitrary termination of the agreement. For greater certainty and confidence in business dealings, it will be beneficial for the laws of Algeria to clarify the licensee's enforcement rights, default protections against termination, and consequences of failing to protect the registration. And on a wider scale, for a licensing system of trademarks to be successful, both proprietors and licensees must be assured of their rights. In view of the growth of trademark licensing and franchising in Algeria, specific legislation will contribute to striking the balance between the freedom of contract and legal security.

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