

THE LEGAL DIMENSION OF TRADEMARK PROTECTION IN ALGERIAN LEGISLATION

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Abstract:

The legally established protection of the trademark, whether under Law No. 03-06 on trademarks or under Law No. 04-02 on defining the rules applicable to commercial practices, is sufficient to prevent for their unauthorized use and obtain compensation for the damage by infringement in it's various forms .My research prioritises evaluating the effectiveness of protection measures over dalving into their legal basis. It aims to assess their contribution to sustaining fair market competition and fostering economic growth and welfare. Therefore the legal basis of this protection is not a primary concern.

Keywords: Counterfeiting - Trademark - Algerian Legislation

Introduction:

A trademark is a legally registred symbol, word or phrase that represents a company product or service, distinguishing it from competitors and protecting its identity in the marketplace. It constitutes an important part of the industrial and commercial property elements that increased interest in it with the development of internal and external trade; its role was initially limited to goods and products and then expanded to include services provided in various fields until

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its field moved to e-commerce, which has become the heart of the contemporary trade.

Due to the extensive importance of the trademark in driving the pace of the economic growth, its infringement has become an aspect of the national economy's faltering, which may be in the form of total imitation of the trademark, partial imitation, counterfeiting or translation, each of these practices undermines the integrity of the trademark and can have detrimental effects on economic growth and consumer's welfare. Moreover, it creates confusion between the authentic trademark and the counterfeit products or services.

Trademark infringement poses particularly detrimental effects on the national economy, especially for internationally recognized brands that have established a strong presence in the global market. It weakens the country's reputation for intellectual property and potentially hindering economic growth. Therefore, effective reinforcement measures are necessary to combat this issue and safeguard both consumers and legitimate businesses.

The Algerian legislature initially adopted trademark protection of the situation under the provisions of Ordinance No. 66-57 of 19 March 1966 on factory marks and trademarks however; it was replaced by Ordinance No. 03- 06 of 19 July 2003 on trademarks , The legislator decided several provisions that include the determination of the protection of the trademark from the civil and criminal perspectives, but with the increase and development of the forms of infringement of the trademark and the consequent damage that does not spare the economic agent or the merchant or the national economy as a whole, extending effective protection to the desire to deter the perpetrators of infringement and ensure the necessary safeguards for the entire economy in alignment with the objectives of trademark legislation It is clear from the provisions of the Law on Marks as outlined in by Order No. 03- 06 of 19 July, 2003, the legislative intent to safeguard the trademarks and the economy from forms of infringement has emerged.

As the Algerian legislator acknowledges the right of the owner of a well known trademarks to prevent unauthorized use by others without his consent (2) , and the legislator has guaranteed the right to

transfer the rights conferred on the trademark independently of the total or partial transfer of the The Algerian legislature has also granted the right to transfer the rights conferred by the trademark independently of the total or partial transfer of the commercial premises, as well as the possibility of filing an action for imitation by a person authorised to use the trademark of another trader or economic agent who has used it on the basis of his consent and licence, in addition to the possibility of following public prosecution procedures to demand the criminal protection of the trademark against imitation. This may lead to the issuance of criminal imposing legally prescribed penalties, including the permanent closing down of the business and the confiscation of the objects and means used in the offence, besides ensuring the right of the injured party to seek compensation for all damages resulting from trademark infringement.

It's clear that legislative efforts are aimed at safeguarding and preserving the exploitation of the trademark, which actually extends to foster fair and legitimate competition between traders and economic agents in the market, because the principle of free competition requires that economic agents comply with the provisions and rules regulating the market, including the requirements of the provisions that require the protection of trademarks between these traders and agents, as competition requires that commercial practices take place within the legal framework specified by the legislator without exceeding it. Legal compliance ensures that competition is fortified and guaranteed.

Compliance with the rules governing free competition in the market among economic agents has a primarily positive impact on the economy, because it fosters the economic growth, prosperity and well-being. Therefore, the major obstacles to economic growth begin to appear from the violation of the legal framework of free competition among economic agents.

In the context of trademark protection research and it's contribution to ensuring the maintenance of free competition in the market and steering the national economy towards growth and prosperity, it is worth asking the following questions:

How can the protection of a trademark from unfair competition extend to safeguarding free competition and fostering economic life towards growth and prosperity?

In addressing this issue, the dual relationship between trademark protection and free competition on the one hand (Section I), and between trademark protection and economic growth and prosperity on the other (Section II) is highlighted

The first section

Immunising Free Competition from Trademark Protection

The cornerstone of trade is freedom of competition which ensures the continuity of attracting customers and driving the pace of economic growth (Zeina Ghanem Abdul Jabbar, 2007, p.16), as the practice of trade without restrictions stimulates the creation of effective ways to promote production and services in commercial and industrial life, which contributes to creativity, innovation and improved performance towards consumers, thus increasing profits, but if competition in the commercial and economic market is practiced outside its legal framework and by violating the integrity of commercial and economic activity, this leads to the creation of unfair competition, this practice may begin in the market by infringing on the trademarks of an economic agent or a trader

Thus, in order to highlight the relationship between trademark protection and free competition in the market, it is worthwhile to describe the various forms of trademark infringement (first requirement), and then the nature of the legally prescribed protection of the trademark (second requirement).

The first requirement: Types of trademark infringement

By reviewing the provisions of Ordinance No. 03- 06 concerning trademarks, it is unclear that the Algerian legislator has explicitly specified the forms of infringement of trademarks, but this law is silent on this matter. However, this infringement of trademarks is closely related to practices that affect competition in the market, as

this may constitute confusion in the market and disruption of the pace of economic activity , this infringement often involves the imitation of the distinctive marks of a competing economic agent in its products, services or advertisements in a manner aimed at attracting the customers and clients of their own products , and this can also appear by creating doubts and illusions in the mind of the consumer, whether the imitation is total or partial, with the possibility of infringement by forgery or translation.

Law No. 04-02 on the rules applicable to commercial practices, by extrapolating the provisions of Article 27, indicates that one of the forms of unfair commercial practices is the defamation of the reputation of a competing economic agent by publishing information affecting its person, products or services, or by imitating marks The infringement may occur through the exploitation of the distinctive commercial skills, expertise or technology of a competing economic agent, or the imitation of its products or services, or the advertising it carries out for the purpose of attracting the customers of the competing agent by sowing doubts and illusions in the mind of the consumer, or by exploiting the distinctive commercial skills, expertise or technology of an economic agent without obtaining its license of proper licensing ,or by enticing employees contracting with a competing economic agent in violation of the legislation in force in the field of work.

Trademark counterfeiting presents a barrier to ensuring free competition and constitutes a growing phenomenon targeting goods and services(Nouri Hamad Khater, 2005, p. 335), so that counterfeiting is not limited today to high-quality products, but has extended and expanded even to all goods regardless of their quality, quality or nature through the manufacture of a product identical in form to an original product without surpassing its quality(Wali Abdellatif, Salami Miloud, 2018, p.93).

This leads to misleading the consumer and creating a similarity between the original product and the misleading product so that the consumer cannot distinguish between them, which hinders fair competition because the marketing of misleading products by imitation does not take into account the quality of the original goods

(Ahmed Mahrez, 1995, p. 322) (Al-Qalyubi Samiha, 1998, p.535) (Mohsen Shafiq, 1998, p.255) (Mohamed Hosni Abbas, 1971, p. 232).

Thus, it is clear that the legislator indeed specified in legislative text that the infringement of trademarks through imitation of the mark itself or imitation of the product, service or advertisement carried out by the economic operator would cause a disturbance of free and fair competition in the market. The legislator has taken into account the broad concept of imitation, and recognized its seriousness, the legislator has granted the owner of the trademark or the person authorised to use it legal protection, which involves an imitation lawsuit and requesting the initiation of public proceedings in order to establish criminal liability against the infringer of the trademark.

The second requirement: Protection against trademark infringement

The various forms and forms of trademark infringement and even other forms of unfair competition, which are outlined in Law No. 04/02 on the determination of the rules of commercial practices, cause damage to the rightful economic operator and to the economy as a whole by causing confusion in the market by violating the rules of free and fair competition. The important and serious damage that affects the economic operator is clearly evident in the trademark itself, whether they are marks related to industry or services, as they appear on it in a form different from the original form of the mark belonging to the economic operator, therefore confusing the consumer, affecting its ability to make informed choice. This can have broader economic implications undermining market integrity and trust.

If the injured economic operator can prove the infringement, the damage caused and the causal relationship between them, he has the right to file a civil suit to demand compensation for the damage caused to him and his commercial and economic activity in order to establish legal protection for his trademark and his commercial activity in general, but a part of the jurisprudence has argued that in an unfair competition suit, the injured person is not obliged to prove the current damage but only the existence of the acts of unfair competition (Salami Miloud, 2012, p.183) (Maher Fawzi Hamdan, 1999, p.83). However,

some jurisprudence has argued that in an unfair competition case, the injured party is not obliged to prove the actual damage, but only to prove the existence of the acts of unfair competition.

The aggrieved economic operator (Farha Zawawi Saleh, 2006, p.256) can also file a complaint before the public prosecutor to demand the initiation of public prosecution for the acts of counterfeiting and forgery committed by the competing economic operator and the infringement of the economic operator who owns the infringed trademark, so that the Algerian lawsuit has the basis for determining protection against this infringement, and the aggrieved person is entitled to establish before the court as a civil party to claim compensation for all damages resulting therefrom.

In this context the trademark eligible for trademark protection is the one officially registered with the National Institute of Industrial Property. This registration ends with the delivery of a certificate that legally confirms it, and in disputes regarding the infringement of the trademark; the registration procedure is the deciding factor in the dispute, so that the priority goes to the first to register and not to the first to use the trademark (Salah Zainuddin, 2006, p.247).

The Algerian legislator considers the registration of a trademark compulsory according to Article 03 of Order No. 03-06 mentioned above, and prohibits its use before the completion of the registration procedure according to Article 04 of the same order; this demonstrates a legislative intent to eradicate trademark infringement and ensure the integrity of intellectual property.

It seems that the legislator restricted the use of the trademark by making it compulsory to register it at the National Institute of Industrial Property, and did not make this a mere condition for determining its protection against forms of infringement, which implies a legislative dimension that lies in extending legal protection to the national economy at the local and international levels. Legal protection of the national economy at the local and international levels by eliminating all forms of unfair competition whose main purpose is to mislead the consumer with counterfeit goods, products or services instead of marketing genuine goods, products and services in the market.

The Second Section :The development of a fair economy from trademark protection

The protection of the trademark from all forms of infringement is crucial for safeguarding the rights of the economic agent who owns them from the material and moral damages inflicted upon him in the first place. In addition to that protection imposes the stability of the legal system established by the legislator to uphold the principles of free and fair competition. This system does not hide the aim of protecting the national economy from all unlawful practices, by imposing such an atmosphere. The system generates positive results that propel the pace of economic activity forward.

Indeed, there is a clear correlation between trademark protection and the growth and prosperity of the national economy, as the aim of trademark protection was to ensure market stability by imposing free and fair competition that extends to the promotion of economic growth unhindered by practices contrary to the legal framework , this will be clearly demonstrated by addressing the objectives of free competition behind trademark protection (first requirement) and then showing the way in promoting economic growth (second requirement).

The first requirement: The objectives of free competition through trademark protection.

Competition is a means of achieving economic progress when the conditions for its practice are met. It enhances economic efficiency by providing goods, products and services with the best quality and lowest prices, it represents a balance of advantage for economic stakeholders because it leads to increased productivity and improved competitiveness, thereby driving economic growth and elevating living standards (Kato Mohamed Cherif, 2010, p. 11).

Competition pushes institutions to give and provide their best services and products at optimal prices, and it also achieves fairness in prices for goods and services; which ensures economic balance and the creation of an open economy that nominates these institutions to compete in the international market, it embodies the advancement and

growth of the economy by expanding the activity of institutions (Kato Mohamed Cherif, 2009, p.03). Moreover, the competition intended in Algerian law under Order No. 03-03 on competition is the one that creates the scope for increasing economic efficiency and improving the living conditions of consumers.

Competition contributes to the implementation of national planning objectives and the overall effectiveness of economic and social policy by regulating the market, combating various monopolistic practices and preserving the rights of enterprises and economic agents (Kato Mohamed Cherif, 2010, p. 12).

However, if the objectives of competition emanate from the objectives of economic development, the obstacles that affect the conditions of competition will automatically have a negative impact on the economy, which means that infringing on the trademarks of an economic operator which may cause disruption in the commercial and economic practices of the owner of the infringed trademark, affects his products and services and inflicts material and moral damages that affect his degree of competitiveness in the market, hinders economic development. The protection of the trademark guarantees the freedom, legitimacy and fairness of competition in the market, and this protection also ensures the achievement of the objectives of economic growth.

The legal protection for trademarks focuses on the mark regardless of the material value of the product or service related to it, as the consequences that result from competition against the trademark and affect the value of the product or service have nothing to do with the legal protection.

The legal protection is ensured on safeguarding the integrity of the mark rather than the consequences or impacts that competition may have on the value of the associated product or service. It fights various forms of infringement aimed at misleading consumers preventing them from distinguishing between original and counterfeit products based on quality (Mohsen Shafiq, 1998, p.254).

Pursuant to Article 32 of Ordinance No. 03-06 on trademarks, the legislator penalizes the offence of counterfeiting trademarks with imprisonment from six months to two years and a fine from two

million and five hundred thousand dinars to ten million dinars, it is considered an important guarantee to achieve deterrence against committing acts of trademark infringement and hopes to return positive results to eliminate counterfeit goods in the market and ensure the integrity of commercial practices.

The second requirement: Trademark protection to promote economic growth

Through trademark protection, competition is fortified and monopoly is eliminated. It results in the promotion of economic growth, because monopoly hinders competition and inhibits the innovation and eliminates small traders and small producers and enforces specific marketing methods without seeking improvement. Monopolies often exploit consumers by offering low quality products at high prices capitalizing on their control over market choices. This leads to consumers deception as monopolies prioritize profit over quality and fair pricing.

The protection of trademarks brings transparency in the performance of commercial practices and contributes to expanding the circle of information, condition of sale and other conditions of commercial and economic dealings. It allows the consumer to choose the entity to transact with safety and without deception, and this supports equality in dealing and allows choosing what responds to the needs and desires of the consumer and familiarising him with the distinctive characteristics of products and services, prices and conditions of dealing, it benefits him in rationalising his consumption and benefits the pace of the national market by eliminating inferior products and services, which contributes to the development of a transparent, honest and fair economy (Kato Mohamed Cherif, 2010, p. 17).

The impact of trademark protection on the economy can be estimated by paying attention to the disadvantages of the absence of such protection. Trademark infringement causes damage to the personal and public interests of the owner or licensee of the trademark and society as a whole, as it leads to the waste of efforts taken to improve the product by the entry of a counterfeit product that competes with the original product in the market, and the consumer is

misled by purchasing counterfeit goods instead of the original ones. The product may be marketed at the same price as the original, which does not hide the depression of this commodity through time it loses its value and quality, thus affecting the entire economy significantly in the prevalence of the counterfeit goods undermines the market for authentic goods whose makers incurred significant resources developing and marketing their products without any return on their capital or the benefit of marketing them, leaving the various expenses spent for them as losses that burden the producer (Hamadi Mohamed Reda, Yousfat Ali Hisham, 2018, p.31).

Counterfeit goods inundate the market through various Channels and are sold at prices below the real value of the original goods, creating fierce competition that undermines the value of the original goods, it has a negative impact on the producer and the national economy. Marketing of counterfeit goods involves an obstruction of the market system since they are marketed without proper invoices; it means that the national economy did not benefit from their entry into the market depriving them from potential benefit such as customs taxes. The widening of the circle of this shopping burdens the national economy, because taxation in general is considered a means of reviving and financing the public treasury of the state and is of great importance in the resources of the economy, achieving social justice and regulating the pace of business, whether it is related to national or international trade, and therefore the worsening of the circle of counterfeiting and trademark infringement affects economic growth.

Indeed, the negative effects of trademark infringement on national institutions can lead to the stagnation of their products and the jeopardy of their trade and economic plans .when counterfeit goods invade the market. This leads to the decline of institutions in competition and the fall of their turnover, so that they lose control over the requirements of competition and can lead to reluctance from production and investment, which affects negatively economic growth (Zouani Nadia, 2003, p.73).

Conclusion

The legal protection of the trademark addressed by the Algerian legislation aims to combat various forms of infringement that constitute unfair competition in the market, its purpose is to mislead the consumer making it difficult to distinguish between counterfeits and genuine products certainly the term form of infringement used by the legislation encompasses various acts of unfair competition targeting the trademark in the market without making distinction between actions like usurping or counterfeiting a mark or selling products bearing counterfeit marks.

The protection of trademarks against unfair competition is crucial for fostering free competition and ensuring economic growth, the illegal exploitation of trademarks by third parties can create a monopoly in the market and harm the economy by deceiving the consumer and providing products and services of poor quality, which leads to market distortions.

Trademark infringement can result in significant material and moral damage to the economic operator who owns the infringed trademark, may cause him to hinder the performance of his commercial and economic activity, which constitutes a threat to the economy.

Protecting the trademark from unfair competition pushes organisations to deliver their best products and services at the best prices, which ensures economic balance. This protection also extends to protecting the principle of free competition in the market and eliminates monopoly, therefore pushing the pace of economic life towards growth, because monopoly hinders legitimate competition and leads to the lack of perfection of products and services required by economic growth.

The economic aid that has faltered due to unfair practices is not a dangerous competitor to the economy, but the danger lies in the competitor that has ensnared it.

The Algerian legislator's intervention in establishing the legal protection of the trademark was successful in defining the penalties prescribed for committing the offence of counterfeiting, but not in

detailing the appropriate penalties for other forms of trademark infringement. The problem facing the legislator's position does not only lie in assessing the penalties that deter the commission of trademark infringement offences, but primarily stems from the inadequate role of the bodies and departments in charge of monitoring and taking preventive measures against the various forms of infringement. This has led to the flooding of Algerian markets with counterfeit and non-conforming goods, it confirms that legislative will alone is not sufficient to achieve legal protection of the trademark, but it's imperative to have a competent department in charge of following up and monitoring the marketing of products, goods and services and providing advanced devices and means that allow them to exercise their powers of monitoring and detect counterfeit goods before they flood the market.

Article 32 of Ordinance No. 03- 06 regarding trademarks which grants, the right to pursue criminal prosecution for counterfeiting offences by posting a bond from the injured party is a measure that leaves no legal purpose or dimension, the setting of this bond may exceed the purpose to be achieved by the prosecution itself. It would have been preferable for the legislator to expand the areas of intervention to request judicial protection against forms of trademark infringement rather than relying on this measure, the legislator should have extended the right to intervene to every person who discovers the non conformity of the original product in the market, because that interest at stake is not personal but rather a matter of general interest that poses a threat to the national economy at the local and international levels .The legislator should have removed these legal constraints to ensure that the prescribed protection is both effective and fruitful extending to the elimination of trademark infringement methods and safeguarding the national economy as a whole.

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