



LEGAL PROTECTION OF DESIGNATIONS OF ORIGIN: PROTECTING NATIONAL PRODUCTS AND CONSUMERS

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Send Article Date: 24-10-2025

Date of acceptance of the article: 01-12-2025

Abstract:

Interest in protecting intellectual property elements is growing day by day. Intellectual property has become the most important and valuable form of property in contemporary times, as it is linked to the fruit of the human mind and the innovations and creativity it produces. Perhaps one of the most prominent elements of intellectual property in general, and industrial property in particular, is what is known as "appellations of origin." These elements link various products to their natural or human source, making consumers aware of them and their quality, thus guaranteeing their right to obtain the best goods, confident in their source. In addition, these appellations play a strategic role in enhancing local products and protecting them from counterfeiting and cross-border smuggling, after obtaining national and international protection through registration with the National Institute of Industrial Property and internationally. But is the legislation related to the protection of appellations of origin, in its current form, sufficient to achieve these goals? Or are there numerous amendments to its provisions?

Keywords: Appellations of Origin, National Products, Local Products, Industrial Property, Imitation, Consumer, Smuggling of Goods.

Introduction:

Intellectual property consists of several elements that aim to protect various types of creativity and innovation. It protects inventions, trademarks, and intellectual works in various forms, such as novels and stories, artistic and engineering drawings, computer programs, and databases, etc.

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Appellations of origin are among the most important elements of intellectual property. They aim to protect local products, such as agricultural and farming products, handicrafts and crafts, traditional clothing, and others, by identifying the source of the goods and always linking them to their place of production and the land to which they belong. This ensures that consumers are aware of their quality and distinctive characteristics.

Appellations of origin differ fundamentally from trademarks, although they are similar in their role in distinguishing goods and products from one another. A trademark has no connection to its place of production, nor does it derive its distinctive characteristics or quality from it, as is the case with appellations of origin. A trademark is completely independent of any territory, and the goods it carries can originate in any region or country, without this having the slightest impact on their quality or reputation. This is what we find, for example, with well-known brands that were the subject of franchise agreements. Companies grant investors the privilege of using their trademark and business model in another country or region for a set fee. The franchise package includes technical know-how, the right to use the trademark, and initial and ongoing training. Some of the most famous franchise companies include Nestlé (food products), Coca-Cola (soft drinks), McDonald's (fast food), and others, and their scope is vast.

Meanwhile, designations of origin are closely linked to the land in which they originate, bearing characteristics and attributes derived exclusively from this environment and its various components: its soil, climate, the technical know-how of its inhabitants, etc., giving them a quality for which they are renowned and sought after. When we talk about the famous Blue Mountain coffee as one of the finest coffees in the world, it's because this coffee, produced in the exceptional environment of the Blue Mountains in Jamaica, possesses characteristics unique to other coffees. It derives these characteristics from the Blue

Mountains' rich volcanic soil and cool, humid climate year-round. The coffee beans ripen slowly and possess unique characteristics. These factors, along with the traditional and meticulous cultivation and processing methods mastered by the region's inhabitants, produce a coffee with complex, smooth flavors, low bitterness, and mild acidity. This makes Blue Mountain Coffee an exceptionally high-quality coffee that can only be obtained in this region. The connection between the product and the land in this case is like the connection between a fetus and its mother via the umbilical cord. A close bond connects the product, from which it grows and derives its characteristics and traits. Its names are linked to the land: Deglet Nour Tolga dates, Evian water, Roquefort cheese, etc.

The legislator was quick to enshrine its protection after independence, highlighting its significant role in protecting national products of well-known quality, which the colonizers feared would be appropriated after their withdrawal from Algeria. These include appellations of origin related to grapes and their derivative products, the well-known Mitidja citrus fruit, and the ancient mineral waters, etc.

The importance of this research lies in its examination of the issue of legal protection for appellations of origin, as they are among the most important elements of intellectual property. They play a key role in protecting national products that suffer from counterfeiting and cross-border smuggling, in addition to their significant role in protecting the consumer by guaranteeing the source and quality of goods. Is the protection provided truly sufficient to achieve this goal? This led us to pose the following question:

Is the legal protection of appellations of origin in Algeria sufficient to fulfill its strategic role in protecting national products and consumers?

To answer this problem, our research included two main axes. In the first, we addressed the concept of appellations of origin as stated in national and international texts, in addition to



clarifying the conditions that must be met for them to receive legal protection. In the second axis, we addressed the importance of protecting appellations of origin, both in terms of its impact on protecting national products and preserving them from counterfeiting and cross-border smuggling, and also in protecting the consumer by guiding them to the source of goods and making them aware of their true value and quality before purchasing them. We used the descriptive and analytical approach, which was appropriate for reading international and national texts related to appellations of origin, in addition to analyzing them, deducing the provisions arising from them, and their sufficiency in achieving effective protection for appellations of origin, local products, and the consumer at the same time.

Chapter One: Legal Protection of Appellations of Origin

To discuss the legal protection of appellations of origin, we must first define them according to international and national legislative texts. We will then address the substantive and formal conditions for their legal protection at the domestic and international levels.

Section One: The Concept of Appellations of Origin

The Lisbon Agreement for the International Protection of Appellations of Origin defines them as: "The geographical designation of a country, territory, or locality, used to designate a product originating in that country, territory, or locality, the quality or characteristics of which are due wholly or essentially to the geographical environment of the area, whether in terms of natural or human factors" (Lisbon Agreement, 1958, Article 2).

Article 1 of Decree 76-65 on Appellations of Origin provides almost the same definition, stating that appellations of origin are: "The geographical name of a country, region, or part of a region, a district, or a named place, which designates a product originating therein, and the quality or characteristics of which are attributable solely or primarily to a geographical

environment, including natural and human factors..." (Order No. 76-65, 1976, Article 1).

It is noticeable from both texts that both the Lisbon Agreement and Decree 76-65 on Appellations of Origin agree on the same elements regarding the definition of appellations of origin, which are:

1. The existence of a close relationship between the products and the territory,
2. The quality of these products is linked to the geographical location that allows their production,
3. Many natural and human factors give these products a distinctive character.

Appellations of Origin are a type of geographical indication, denoting a geographical name: a country, region, province, or any other place where the product originates, from which it derives its characteristics and quality, whether due to natural and/or human factors present in that location (Ben Halima, 2023, p. 192).

When we talk about "Darjeeling Tea," the name refers to the finest black tea produced exclusively in the Darjeeling region, high in the Himalayas of India. It is a high-quality Indian black tea, whose sweet taste is given by the towering heights of the Himalayas, along with its distinctive amber color. It is also rich in antioxidants that help it resist cellular aging. If the same plant and seeds were produced in any other region of the world, they would not have the same characteristics and quality, as these are derived exclusively from the unique and distinctive nature of Darjeeling, its soil, climate, etc.

Some of the most famous designations of origin in Algeria are Nagaous apricots, Deglet Nour Tolga, Beni Maouche dried figs, Boufarik oranges, Saida water, and Babar carpets, which are considered among the finest carpets in the country, as they are woven from 100% natural materials, and are woven by the hands of the women of the region, who have mastered the craft that has



been passed down from generation to generation, as a rich cultural and heritage legacy.

Appellations of Origin are classified into three main types based on the factors that contribute to their distinctive characteristics and quality:

1. Appellations of Origin that are linked to purely natural factors, such as Boufarik oranges, Deglet Nour Tolga, and Evian water. These products derive their qualities and quality exclusively from nature, without any human intervention in their craftsmanship or manufacturing process.
2. Appellations of Origin that are linked to purely human factors, such as the famous Persian carpet, the unique and luxurious weaving craftsmanship of which the people of the region in Iran are masters. The textile and carpet industry is an important part of the rich Iranian culture, dating back to ancient Persia.
3. Appellations of origin are linked to both natural and human factors, such as "Roquefort cheese," which is given to blue cheeses produced in the Roquefort region of France. These cheeses derive their unique flavor and high quality from the wet caves in the village, in addition to the expertise of the local people in mastering the techniques of cheese preparation for decades.

Appellations of origin are geographical indications that link a product to its place of origin, they protect the rights of both the consumer and the producer, as they are a symbol of high quality. In this regard, a distinction must be made between appellations of origin and similar terms such as "indications of source" and "geographical indications", these are not synonymous, although they share some commonalities (Franjus-Guigues, 2012, p. 198).

Geographical indications are a general term that encompasses any sign placed on goods that have a specific geographical origin and possess characteristics or reputations that are attributed to that place. An appellation of origin is a special

type of geographical indication, more closely related to the region. In this case, the product must be 100% sourced from the region, both in terms of raw materials and manufacturing processes. This is why we say that every appellation of origin is a geographical indication, but not every geographical indication is an appellation of origin.

The link between the product and the appellation of origin is always stronger than with a geographical indication, where a single factor is sufficient for the product to be attributed to it. Appellations of origin also differ from what are known as specific geographical indications (*générique*), mentioned in Article 24 of the TRIPS Agreement, making them ineligible for protection on the basis of appellations of origin because they have become so familiar and common for certain products that they are now called by these names only, such as "peanuts," "Paris mushrooms," or "Moutard de Dijon" (Ben Ayad & Brini, 2023, p. 1499).

As for "indications of source," they are intended to identify the source of the product, mean the country from which the goods come, without this location being linked to specific characteristics or features of the product. Rather, they merely indicate the country of origin, i.e., the country of export. The fundamental difference between the two lies in the fact that appellations of origin are for products that are strongly linked to the land in which they originated and from which they derive their distinctive characteristics, while indications of source refer only to the location of production, without this strong connection between the place and the products. An example of this is when we say, "Made in China" or "Produced in Turkey" (Derkaoui, 2013, p. 33).

Article 1 of the Paris Convention on Industrial Property mentions both the terms appellations of origin and geographical indications, stating: "The protection of industrial property includes patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations



of origin, as well as the repression of unfair competition." This means that the Paris Convention adopted a broad definition and extended legal protection to all geographical indications of various types (Paris Convention, 1883, Article 1/01/02).

Second Section: Legal conditions for protecting appellations of origin

For appellations of origin to obtain legal protection, a set of conditions must be met. First, they relate to the appellation itself (substantive conditions), in addition to a set of procedures that must be completed before the competent authorities to obtain this protection (formal conditions).

TOPIC 1: Substantive Conditions

An appellation of origin can only be subject to legal protection if it meets the conditions set forth in Article 1 of Order No. 76-65, namely:

- **The appellation must be associated with or refer to a geographical name:** The origin of appellations of origin is the geographical name of a city, province, or town, where the product's name is associated with this geographical name, such as the name of Parmesan cheese, produced in the Italian province of Parma, or the dried figs of Beni Maouch, which are harvested and dried in the municipality of Beni Maouch in the Kabylie region, famous for its fig trees.
- **The product must be physically linked to the geographical area:** The physical link between the product and the region means that it originated and was manufactured there. This strong physical connection between the product and the environment in which it originated and from which it acquired its characteristics and quality is what justifies its use of this name and qualifies it to benefit from the designation of origin system. Examples include Saida mineral water, which must have been collected from the sources of the city of Saida; Persian carpets, which must be woven and knitted in well-known Iranian cities such as Shiraz and Isfahan; and Chashar honey, which is harvested exclusively from the hives

of the high Chashar Mountains in the Aures, known for being among the finest honey in Algeria, and for its great and excellent therapeutic properties, so much so that it has been called the honey of kings (Derkaoui, 2013, p. 22).

- **Products acquire distinctive qualities attributed exclusively or primarily** to the environment in which they originated, as a result of natural factors specific to that region, such as the nature of its climate, the quality of its soil and its components, the nature of its terrain (mountainous, plain, or desert), the types of plants and animals that live there, etc. All of these contribute to giving the product its unique characteristics and distinctive quality. The volcanic soil of the Blue Mountain Mountains and its year-round rainy climate are what gave the famous Blue Mountain coffee its superior characteristics, making it a source of the finest coffee in the world. Human factors also play a significant role in imparting quality to products that have been expertly crafted for centuries. These factors include mastery of the manufacturing methods used, high craftsmanship, and the expertise acquired generation after generation in preparing a particular product. This is the case for the people of Champagne, who master the methods of making the famous Champagne wine; the high-level weavers in Iranian cities famous for weaving fine Persian carpets; and the women of the Aures region, renowned for weaving traditional Babar carpets. This exempts certain names from protection, such as names that violate good morals, decency, or public order; irregular names; or names derived from product types (Order No. 76-65, 1976, Article 4).

TOPIC 2: Formal Requirements

Like all industrial property rights, registration procedures must be completed with the Algerian National Institute of Industrial Property (INAPI) to obtain legal protection for appellations of origin. This is emphasized in Article 3 (03) of Decree 76-65 on Appellations of Origin, which states:



"Protection includes appellations of origin registered with the legally competent authority." Registration generally involves three basic stages:

1. Filing:

First, it should be noted that appellations of origin are created either upon a request from the Ministry of Industry, Trade, or Agriculture, a request from a legally established economic institution, or a request from a natural or legal person engaged in a productive activity in the geographical area concerned by the appellation (Order No. 76-65, 1976, Article 2).

The legislator has distinguished between national appellations of origin and foreign appellations of origin related to a region outside the country and registered by a foreigner. Only citizens may file a registration application for the former, in accordance with Article 5 of the Decree: "National appellations of origin may only be filed for registration by citizens." The second stage may only be registered within the framework of implementing international agreements to which Algeria has acceded, and subject to reciprocity. In this second case, the application must be submitted through a duly authorized Algerian representative residing in Algeria.

Filing for appellations of origin is no different from filing for other industrial property rights. However, the registration application must be submitted in the form of completed forms, including all required information, such as the name and address of the applicant, as well as the relevant appellation, its boundaries, and its characteristics. All of this must be accompanied by supporting documents and payment of fees (Order No. 76-65, 1976, Articles 9 & 11).

2. Registration

Following the filing stage is an equally important stage, namely examination and registration. The National Institute of Industrial Property plays a significant role in this process. Its role with regard to registering appellations of origin is more sensitive and precise than with other elements of industrial property, as the

examination of appellations of origin is more rigorous in verifying that the aforementioned objective conditions are met (Derkaoui, 2013, p. 25).

The Algerian National Institute of Industrial Property also examines the applicant's status, the availability of the required information in the application, and whether the filed denomination is not excluded from legal protection. It also verifies that all required fees have been paid.

3. Publication and Publication

After the registration stage, the denomination is published in the Official Gazette of Industrial Property, specifically in the Register of Appellations of Origin. A certificate is issued to the applicant.

Registered appellations of origin are protected from the date of filing the application for a period of 10 years, renewable. They expire upon expiration of their term, upon a judicial decision ordering their cancellation or modification at the request of any person with a legitimate interest or any competent authority, or upon the registrant's relinquishment upon an express request to the Algerian National Institute of Industrial Property, in accordance with Article Twenty-Seven (27) of Ordinance 76-65 relating to appellations of origin.

CHAPTER Two: The Strategic Role of Protecting Appellations of Origin

Appellations of origin play a significant and prominent role in protecting consumers from counterfeit and falsely sourced products and goods, and anything that could mislead them regarding their quality and value. They also contribute to protecting authentic, reputable local products from counterfeiting and cross-border smuggling, along with the resulting harm to the national economy. This is what we will clarify in the second part of this research paper.



SECTION ONE: Protecting National Products from Counterfeiting and Smuggling

Authentic local products constitute an important heritage for every country, which every state must preserve with all the legal means and mechanisms at its disposal. Appellations of origin—as an element of industrial property—are one of the most important mechanisms for preserving and promoting this popular heritage (Ben Ayad & Brini, 2023, p. 1500).

Appellations of Origin are a means of local development and an expression of each region's identity, its authenticity, and the expertise of its inhabitants in controlling natural resources, from which they have refined, through their professional efforts, the finest products. They have preserved these products from generation to generation, gaining a long-standing reputation and fame, which is linked to the region and its fame, creating a touristic reputation. Tourists often visit Skikda in the spring to enjoy the taste of strawberries, and Tolga in the city of Biskra to taste the finest Algerian dates, "Deglet Nour." Tourists also visit the Roquefort region in southern France to discover the stone caves that produce the world's finest blue cheese. Designations of Origin have great marketing power and greater demand for the goods and products they carry. Therefore, every country must ensure adequate protection for these designations, in the face of the dangers of counterfeiting and cross-border smuggling, as is the case with Algerian Deglet Nour dates, famous for their honeyed taste, golden color, and transparency, which allows the kernel to be seen inside. They also have amazing health benefits, as they are rich in natural sugars and phytochemicals that lower cholesterol and reduce the risk of heart disease, in addition to being rich in antioxidants and anti-inflammatory agents. All of these distinctive characteristics are derived from the Deglet Nour dates' unique environment, the Algerian desert oases of Tolga, located in the state of Biskra. If the same Deglet Nour seedlings were grown anywhere else in the world, they would not have the same quality or nutritional value. This is exactly what happened

in the California deserts, where Deglet Nour palm trees were experimented with, but the results were nothing like the Algerian Deglet Nour dates in their characteristics. This served as conclusive evidence that the environment in which they were grown plays a fundamental role in determining their specifications and features, and protecting them protects the national product, which indisputably represents an integral part of the country's rich cultural heritage (Franjus-Guigues, 2012, p. 14).

The legislature has criminalized the illegal use of a designation of origin, considering it a misdemeanor of counterfeiting. This offense involves using a well-known designation of origin on another product not physically linked to the land, thereby misleading the consumer about the true origin of the product. Articles 28 and following of the decree penalize this offense with imprisonment and a fine. However, the fine is not a deterrent due to its low value, given the antiquity of the legislative text, which dates back to the 1970s (Hamali, 2016, p. 73).

An example of counterfeiting and smuggling of designations of origin is the Deglet Nour Tolga designation of origin, which is smuggled across the eastern border and marketed as Tunisian dates. Deglet Nour is both a designation of origin and a registered trademark. Customs plays a crucial role in protecting the national economy, combating counterfeit designations of origin, and ensuring that goods bearing false and misleading designations do not reach consumers. The Customs Administration has inherent jurisdiction to combat intellectual property counterfeiting crimes, given its authority over the country's territorial borders and its ability to monitor commercial activity through imports and exports. It has several powers to do so, including oversight, inspection and seizure of goods, investigations, etc. It also has the right to confiscate goods bearing counterfeit designations of origin (Law 17/04, 2017, Article 105). Customs also has the right to intervene by force of



law in the event of the seizure of goods bearing counterfeit trademarks or designations of origin, without waiting for a request from the rights holder, provided that the right holder is notified within three days. However, this important exception remains very limited in practice due to its short duration, which we hope the legislature will review to make protection measures more effective (Abu Aqil, 2022, p. 708).

Jurisprudence often tends to consider designations of origin as well-known designations, granting them special and greater protection, as is the case with famous trademarks. This was confirmed by the French Court of Cassation's decision in the "Comité des Professionnels de Champagne" case against a user who used the term "CHAMPAGNE" on various products unrelated to spirits: cigarettes, services, etc. The court ruled in favor of the designation of origin, believing that its use would undermine and weaken the reputation of the name of origin. There are several decisions in comparative law that confirm the principle of the well-known nature of designations of location (Court of Cassation France, 2004).

Section 2: Consumer protection and quality assurance

As mentioned above, designations of origin, along with trademarks, help distinguish similar products. They also highlight their specific geographical and human origin, which ensures their quality and distinctive characteristics. Boufarik oranges, found in the Mitidja plains, are unlike those produced elsewhere, and Deglet Nour Tolga dates are unlike other dates, neither in their taste nor in their high and unique nutritional value. Persian carpets are world-renowned for their exquisite craftsmanship, combining expert craftsmanship with fine materials such as the finest cotton and silk found in the region.

Designations of origin enable consumers to purchase a particular product or commodity with full awareness of its quality, nutritional value, and high craftsmanship, which are always linked to the land where they are produced, giving them the distinctive qualities and quality for which they are known and

renowned. Consumers pay great attention to the geographical location of the products they purchase. Indeed, the place of production may be the primary motivation for choosing one product over another, as long as that location is known for its distinct and unique human and/or natural capabilities, whose characteristics are reflected in the quality of the products produced there. This quality is the reason for this place of manufacture or production to receive the necessary legal protection within the framework of the Appellations of Origin system. Legal protection of appellations of origin, by protecting these registered appellations from counterfeiting in all its forms and manifestations, reassures consumers about the products bearing the appellations (Shabri & Manasriya, 2017).

The law criminalizes the illegal use of appellations of origin and punishes counterfeiters and all those involved in counterfeiting, in addition to anyone who offers for sale or sells products bearing counterfeit appellations of origin (Order No. 76-65, 1976, Articles 28 & 30).

The legislator goes further in enshrining the protection of designations of origin. Article 22 of Order 76/56 stipulates that any "competent authority" or interested person may request the "legally competent department" to undertake quality control of products placed in circulation under registered designations of origin.

This is an important legal mechanism that constitutes "post-registration quality control," which continues as long as the marketed products bear the registered designation of origin. Thus, consumers are permanently guaranteed the quality of goods bearing designations of origin, as long as the competent authorities continuously examine the characteristics and features that earned them the designation.

By "competent authorities", the legislator refers to all the authorities mentioned above in Article 2 of Order 76/56, the ministries to which he has granted the authority to request the registration of the relevant designations of origin, and the bodies



affiliated with them. The legislator also granted the court the power to order the cancellation or modification of the registration of designations of origin, based on the request of any person with a legitimate interest or a competent authority, such as the Ministry of Agriculture, if it deems the circumstances and reasons that previously granted it to have disappeared or changed. Control over products bearing the designation of origin remains in effect even after they have been granted. In the event of any change, the court shall direct the National Institute of Industrial Property to order the cancellation or modification of the designation, such as in the event of a change in the geographical scope of production or in the characteristics and features of the products. All of these procedures ensure that consumers are not misled or deceived when purchasing products whose characteristics have changed and no longer meet the features required by the designation of origin (Order No. 76-65, 1976, Article 23).

From this standpoint, we can say that designations of origin are a guarantee of the quality of the products sought by consumers. They also guarantee the safety and health of consumers, as local products are commonly perceived as natural, healthy products produced according to authentic, long-standing production methods. Harmful to human health and the environment, as is the case with the dried figs of Beni Maouche, which are dried without chemical preservatives, using 100% natural methods, and other local products such as cheese, honey, mineral water, etc. Protecting designations of origin guarantees consumers authentic products, linked to a well-known environment and high expertise. These products are subject to strict specifications set by legal texts and regular inspections and oversight by the authorized authorities (Hamali, 2016, p. 73).

Conclusion

Appellations of origin are an important element of industrial property, representing an exclusive right to its use and exploitation by a specific group of producers collectively. This

right is characterized as an intangible property right resulting from the efforts of producers in the relevant region who excel in exploiting local natural factors to add special features to their products, and/or the years of experience of the region's inhabitants in producing products of unparalleled quality and superior quality. This has given appellations of origin a significant role in enshrining consumer protection, enabling them to obtain the finest goods, first and foremost, with full knowledge of their source, characteristics, and value. The legislature has established several oversight mechanisms for products bearing national appellations of origin, ensuring that they maintain the quality and characteristics required and legally defined throughout their use. This is in addition to the important role they play in protecting the national economy by suppressing the smuggling of local products and preserving their reputation and characteristics. However, protection is still insufficient, especially for a sensitive field such as this, because protecting and promoting appellations of origin promotes local products, supports producers, and promotes their products beyond their province's borders.

Therefore, we present a series of proposals:

- Amend Decree No. 76-65 on appellations of origin.
- Strengthen legal protection for appellations of origin with more deterrent penalties.
- Distinguish between appellations of origin and similar terms, "indications of source," and geographical indications, with clear provisions in the Appellations of Origin Law.
- Strengthen the role of the National Institute of Industrial Property (INAPI) in protecting appellations of origin.
- Raise citizens' awareness of the importance of local products, which represent a national wealth.
- Strengthen the role of customs in protecting appellations of origin, particularly by extending seizure periods in the event of intervention by force of law, so that the procedure is effective in practice.



- Train judges in the field of intellectual property and encourage the peaceful settlement of disputes.
- Enable national judicial precedent and encourage research to reach the best solutions for enshrining national appellations of origin and intellectual property in general.

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