

Acts of unfair competition affecting industrial designs and models.

أعمال المنافسة غير المشروعة على الرسوم والنماذج الصناعية



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Abstract:

Industrial drawings and models are a type of innovation that constitute the subject of industrial property rights. It refers to the external appearance of the commodity and not to its subject matter. How to make it, and in addition, it enters in the intangible elements of the commercial store, its importance increases with the development taking place in the field of trade, as it is one of the components of industrial property. This is because it has become very common in recent years among men unless workers and industrial institutions, so that it became. Every manufacturer or economic operator seeking creating drawings and models that attract as much attention as possible to increase the opportunity to market its products and goods and may. Organized by the Algerian legislator in order No. 86-66 of April 28, 1966 relating to drawings and models Industrial.

Keywords: Industrial property. Fees. Industrial models. tradition;

الملخص:

تعد الرسوم والنماذج الصناعية من الابتكارات التي تندرج ضمن حقوق الملكية الصناعية، وهي تتعلق بالمظهر الخارجي للسلعة وليس بجوهرها أو بطريقة صنعها، وتعتبر من العناصر غير المادية في المحل التجاري، وتزداد أهميتها مع التطور الحاصل في مجال التجارة.

ونظرا لكونها أحد عناصر الملكية الصناعية، فقد أصبحت الرسوم والنماذج الصناعية شائعة بشكل متزايد حيث أصبح كل متعامل اقتصادي يسعى اليوم إلى ابتكار تصاميم تجذب الانتباه قدر الإمكان لسلعه بهدف تعزيز فرص تسويقها ما جعلها عرضة للتقليد من طرف المنافسين الذين يسعون للربح السريع.

وقد قام المشرع الجزائري بتنظيم هذا المجال بموجب الأمر رقم 86/66 المؤرخ في 28 أبريل 1966، المتعلق بالرسوم والنماذج الصناعية.

الكلمات المفتاحية: الملكية الصناعية، الرسوم، النماذج الصناعية، التقليد، حقوق التصميم.

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1. INTRODUCTION

The importance of industrial drawings and models from an industrial standpoint did not increase except during the nineteenth century. Since the outbreak of the Industrial Revolution, manufacturers have been giving importance to the technical functions of products and neglecting their appearance. However, with the increase in industrial development and the intensification of competition between industrial institutions, interest has gradually become in the appearance of the products, in order to its distinction from its counterparts in the market on the one hand, and its impact on the customer on the other hand⁽¹⁾.

From a legal standpoint, the safeguards for protecting designs and models began in the eighteenth century, when the French legislator issued the law of March 18, 1806 regarding industrial designs and models, but it was limited to artistic creations applied to industry. Then it was amended by the 1909 law regarding industrial designs and models. Which was amended by Intellectual Property Law No. 92-597, 1992, and which was amended by the July 2001 law that was issued with the intention of harmonizing French law with European Union law⁽²⁾. As for the international aspect, the Hague Convention regarding the international deposit of industrial designs and designs was signed in 1925. Then the Locarno Agreement Concerning the International Classification of Industrial Designs, which was concluded on October 8, 1968, and entered into force on April 28, 1971.

As for Algerian law, fees and forms are subject to the provisions of Ordinance 66-86⁽³⁾. And Decree No. 66-87⁽⁴⁾. Which includes the implementation of Order No. 66-86, and it is noted that the Algerian legislator adopted the provisions of the French law dated July 14, 1909 mentioned above.

However, competition in the market may exceed its limits, and its peace is disturbed by some acts that distort it and threaten its freedom, which are acts of unfair competition represented by imitation or unlawful use of an industrial

1 - Maalal, F, *Industrial and commercial property*, Dar AFAK Publishing and Distribution House, Casablanca, 2009, P 365.

2 - André R.BERTRAND, *Le Droit Des Marques et Des Signes Distinctifs,. RTD commercial, N 02, Paris, 2000*, P 20.

3 - Order 66-86, of 28April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

4 -Decree No. 66-87 of April 28, 1966 implementing Ordinance No. 66-86 of April 28, 1966 relating to designs and models, p336,

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property right, which harms the producer through his loss in marketing his products.

Which leads us to pose the following problem: What are the most important forms of unfair competition related to industrial designs and models?

To answer this question, we divided it into two parts:

- The first axis: The nature of industrial drawings and models.
- The second axis: attacks on industrial drawings and models.

2. The first axis: The nature of industrial drawings and models

Nowadays, industrial drawings and models have become of great importance, because they give an attractive appearance to industrial products as a means of attracting customers. They distinguish the product from competing products. There are some products in which the external appearance plays a major role in the customer's choice, such as cars, electronic devices...

It is what makes the product attractive and tempting, and therefore it increases the commercial value of the product and increases its marketing opportunities. Therefore, we will begin by defining its concept, the origins of its filing, and how it obtains the right to legal protection.

2.1 First: Definition of industrial drawings and models:

They are innovations of an artistic nature that give products elegance and beauty, and therefore they are related to industrial art. Below we will try to define the concept of drawing and the model.

Dr. Muhammad Hosni Abbas defined it as follows: "Industrial drawing is the placement of lines or colors on products that gives them a new, innovative elegance. The use of colors in the drawings or not using them does not matter, nor does it matter in the way the drawings are placed on the products. They may be placed manually or mechanism⁽¹⁾.

This definition does not distinguish between a drawing and a model. Salah Zein al-Din defined it: "Drawing means images of shapes or decorations used for any material by an industrial process or means, whether mechanical or chemical, separate or combined, which are not desirable or appreciated by the naked eye. This drawing may be represented by an image derived from nature or a horse scene." Beautiful or just lines, decorations or engravings.

¹ - Muhammad Hosni Abbas, *Industrial Legislation*, Arab Renaissance House; Egypt, 1967, P140.

The model is the external template in which the products appear⁽¹⁾.

Similar to French legislation, the Algerian legislator precisely defined industrial designs and models in Article 1 of Order No. 66-86 mentioned above, as follows:

Definition of drawing: Any combination of lines or colors intended to give a special appearance to something industrial or specific to traditional industry is considered a drawing.

Model definition: Any form that can be formed and is composed of colors or without them, or anything industrial or specific to traditional industry, that can be used as an original image for making other units, is considered a model and is distinguished from similar models by its external appearance.

Therefore, what distinguishes a drawing from a model is that the drawing embodies an innovative artistic form, which is represented on a flat area, for example the shapes that appear on fabrics, or textiles with printed drawings, or the colored paper used to cover walls or to wrap goods.

As for the model, it includes a size, that is, a three-dimensional mold that is formed from the materials from which this product is made, such as glass, plastic, or wood.

Therefore Industrial designs are applied to a wide range of industrial and handicraft products: From technical and medical gadgets to handmade watches, jewelry and other luxury goods, It is household tools and Electrical appliances to vehicle and building structures, From textile designs to leisure goods.

However, there is a difference between artistic drawing and industrial drawing, which is the quality of dependency on the commodity, as the function of industrial drawing is limited to adding beauty to the commodity, which leads to an economic benefit, while purely artistic drawing has an independent entity that the artist uses as a tool to highlight his artistic idea.

– Permissibility of subjecting drawings and models to copyright legislation:

Usually, it is not required that the drawings and models be of a high artistic level. Rather, it is sufficient that they add embellishment to the utility of the products. As for the drawings and models that are characterized by high artistic value, they accept double protection. It enjoys the protection stipulated by the Industrial Designs and Models Law whenever it is registered, and it also

1 - Saleh, F.Z, *Al-Kamil in Algerian Commercial Law-Intellectual rights-*, Dar Ibn Khaldoun for Publishing and Distribution, Oran, 2006, P 207.

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enjoys special protection for copyright⁽¹⁾. As stipulated in Order No. 03-05 regarding copyright and related rights⁽²⁾. In Article 3 thereof, it stipulates: “Protection shall be granted regardless of the type of work, its mode of expression, degree of merit, or destination, once the work is deposited...” Likewise, Article 4 of the same order stipulates that works of applied arts are subject to protection.

This meaning was also confirmed by the Hague Treaty regarding the international deposit of industrial designs and models mentioned above, which stipulated in Article 21 that the provisions of the treaty do not prevent the application of the provisions of the Berne Treaty regarding the protection of artistic works and applied art in industry.

This double protection for industrial designs and designs results in them being protected even if they are not registered, as the owner can cling to the protection of copyright, unlike the protection of industrial property rights that require registration. They also enjoy long-term protection as artistic works, to what extent Author's life⁽³⁾.

Second: Conditions of acquisition The right to fees and models

As an industrial property right, industrial designs and models benefit from the protection granted to them under the Order 66-86, their creators in turn enjoy the rights granted to them by this protection, but this protection is conditional on obtaining a certificate of registration of the industrial design or model.

To protect drawings and models, certain objective conditions must be met, in addition to procedures to be followed by the depositor with the competent authority.

a-Objective conditions: It is as follows

- Novelty and innovation
- Industrially applicable
- Not contrary to morals and public order.

1-Novelty and innovation: This is the essential element, as the drawing and model must be new in order to deserve protection. Legal regardless of its artistic value, and for the Algerian legislator stipulated the condition of novelty in the second paragraph of Article 1 of The command 66-86. He said, “...The protection granted under this order includes new original drawings and models

1 - Muhammad Hosni Abbas, Op.cit, P 146.

2 - Order No 03-05, of July 19, 2003, *relating to copyright and related rights*, Official journal, issued on November 5, 2003, No 67.

3 - Muhammad Hosni Abbas, Op.cit, P 148.

only.”

He also defined novelty in the third paragraph of the same article as follows: “Any drawing or model that has not been created before is considered a new drawing...” That is, for a drawing or model to be considered new, it must not be preceded at the level of drawings and models on the one hand, and it must not be disclosed before filing an application for registration, so it shall be made available to the public, whether by publication or any other method.

It is not necessary for the innovation to be novel in all elements. The drawings may be taken from the artistic heritage or common drawings and models, provided that it is distinguished by a special expression⁽¹⁾.

2- Industrial application: The condition for industrial exploitation was explicitly stated by the legislator in the first paragraph of Article 1 of Ordinance 66-86: “Any combination of lines or colors intended to give an appearance specific to traditional industry is considered a drawing, and every shape capable of being formed is considered a model...”

That is, drawings and models should not be abstract, but must be embodied and achievable through manufacture or use.

That is, any drawing or model cannot be used as a model for making an industrial or craft product unless it can be invested or used in the industrial or agricultural field⁽²⁾.

3- Not violating morals and public order: This is an obvious matter, and the legislator clearly stated it in Article 07 of Order 66-86, which states the following: “Every application that includes things that do not contain the character of a drawing or model that conforms to the meaning stated in this order or that violates public morals will be rejected.” It is not permissible for it to embody immoral images or forms, or revolutionary ideas that incite violence or harm religion or the homeland...

B-Formal requirements: These are the procedures that the owner of the drawing and model must follow, which are the procedures for filing, registering, and publishing.

1-Deposit: The deposit plays an important role as a guarantee for the drawings and models, as Article 2 stipulates that: “Ownership of the drawing and model belongs to the first person to deposit it...”

-Deposit Request: The owner of the drawing or model, whether personally

1 - Muhammad Hosni Abbas, Op.cit, P 150.

2 - Muhammad Lafarouji, *Industrial and Commercial Property (its applications and civil and criminal claims)*, Al-Najah New Press, Casablanca, 2002, P 242.

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or through his agent, provided that this agency is hand-signed, requests depositing it with the competent authority.

Deposit is made either by delivering the drawing or form directly or by sending it by mail by registered letter with a request for notification of delivery⁽¹⁾.

Foreigners who want to make a deposit in Algeria must appoint an Algerian agent residing in Algeria on their behalf⁽²⁾.

- **Guaranteed deposit:** In addition to the name, surname and nationality of the depositor, and if he is a legal person, his name and headquarters are mentioned (Order 66-86, 28/04/1966) The deposit request must include, under penalty of invalidation, the following⁽³⁾.

- Four copies of the deposit permit.
- Six identical copies of the drawing representation or two samples of each of the objects or drawings.
- A receipt for payment of the fees to be paid.
- Each drawing may be deposited either in schematic form or a photographer or in sample form.
- Attachments indicating the meanings of the drawings, and deposited in a tightly closed box with a seal and the depositor's signature placed on it, with payment of a tax independent of the fees and forms filed.

2- Recording the deposit: The competent authority shall transfer the declaration to deposit in the fees and forms booklet, mentioning the date of receipt of the envelope containing it, as well as the deposit number. It must also place its stamp and registration number on all delivered documents⁽⁴⁾.

Then it first examines the deposit application to verify that the depositor has fulfilled all the stipulated procedures, and it is not its role to verify the novelty and create the drawing or model. After that, it sends to the depositor or his agent a copy of the declaration, which is considered a registration certificate.

The period of protection granted is 10 years, divided into two parts: the first extends for a period of one year, and the second extends for nine years. The protection ends at the end of the first period if no request is made to extend the

1 - Order 66-86, of 28 April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

2 - Order 66-86, of 28 April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

3 - Order 66-86, of 28 April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

4 - Order 66-86, of 28 April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

protection⁽¹⁾ (Order 66-86, 28/04/1966, p. Art 13).

3- Publishing: Publication may be public or secret. It is confidential in the first year of filing, provided that the person concerned does not request its publication, because industry owners in general refuse to publish their intellectual achievements before promoting their products. Then the confidentiality ends with the end of the first protection period, which is one year, so public publication becomes mandatory⁽²⁾.

As for publication procedures, the creator of the drawing and model directs the petition to publish the deposit to the competent authority, either simultaneously with the filing declaration or during the first protection period, and the institute is committed to publishing annual catalogs and photocopies of the drawing or model that has become public, attached to an appendix. My interpretation is available to the public, but in exchange for paying a certain fee, with a ban on copying to avoid imitation⁽³⁾.

Third: The effects of acquiring ownership of drawings and models

Ownership of the drawings and models that have been deposited for their owner or those entitled to his rights shall entail the right of exclusivity and exploitation, and the right to dispose of them, and the effects of acquiring ownership shall apply from the date of filing.

Exclusive right to exploitation: The certificate of registration of an industrial drawing or model is an industrial property document that gives its owner absolute authority to exploit his drawing or model personally.

Unlike the case with a mark or patent, actual exploitation does not constitute a condition for obtaining protection for an industrial drawing or model of an artistic nature, even after the expiration of the period of the right of exclusivity through exploitation. However, this does not mean depriving it of protection, but rather it continues to enjoy the protection granted to it by the law relating to copyright. And neighboring rights⁽⁴⁾.

The right to dispose: Considering that drawings and models are an industrial property right, they give their owner the right to carry out all legal

1 - Art 16, Order 66-86, of 28April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

2 - Art 16, Order 66-86, of 28April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

3 - Art 17, Order 66-86, of 28April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

4 - Maalal, F, *Op.cit*, P 396.

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actions, which are as follows⁽¹⁾.

-He may waive his rights, whether partially or completely, provided that the waiver is made in writing and registered in the register of drawings and forms. The legislator did not require formality in the contract, which allows the acceptance of a customary contract⁽²⁾.

-It is permissible for him to mortgage, but the Algerian legislator does not regulate the mortgage of drawings and models, which requires referring to the general provisions related to the possessory mortgage of moral rights. It is worth noting that the commercial property mortgage may not include industrial drawings and models unless this is specifically specified in the contract⁽³⁾.

-The creator of the drawing or model or his successor alone has the right to invest in it, sell it, offer it for sale, and commission its sale⁽⁴⁾.

-It is also permissible for him to license, that is, grant a third party the right to exploit it, whether by mutual consent or by force, meaning that the competent authority grants the right to exploit it to every institution that requests it, and this is for the requirements of the public interest⁽⁵⁾. That is, either due to lack of exploitation, or not being exploited sufficiently to serve the national economy.

The second axis: attacks on industrial drawings and models

Acts of unfair competition are not limited to imitating a drawing or model partially or completely, but rather extend to any work in which they are exploited without the consent of the right holder, whether by sale or import into the country.

First: Attacking drawings and models by imitation

Imitation of an industrial drawing or model is achieved either by extracting identical copies of it, and this is called total imitation, or by using a drawing or model similar to it, by imitating the basic components.

It is worth noting that the Algerian legislator merely stated that any violation of the rights of the owner of the drawing or model constitutes a

1 - Art 21, Order 66-86, of 28April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

2 - Samir Jamil Hussein Al-Fatlawi, *Industrial Property According to Algerian Laws*, Office of Algerian Publications, 1988, P 382.

3 - Saleh Farha Zarawi, *Al-Kamil in Algerian Commercial Law-Intellectual right*, Dar Ibn Khaldoun for Publishing and Distribution, Oran, 2006, P 382.

4 - Muhammad Hosni Abbas, *Op.cit*, P 271.

5 - Art 20, Order 66-86, of 28April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

misdeemeanor of counterfeiting⁽¹⁾ He did not discuss its forms and forms.

Total imitation leaves no room for doubt. As for partial imitation, we must follow an important criterion to determine it, which is to estimate the similarities that exist between the two drawings or models. If there are some differences between them, this does not affect the court's decision⁽²⁾.

Therefore, it is sufficient for the misdemeanor of imitation to be committed if there is a general similarity between the two drawings or models that would deceive the consumer or buyer and force him not to distinguish between them and not to draw his attention to the partial differences that exist between them⁽³⁾.

It is noted at this level that French law-Pursuant to the provisions of the European Directive Note of October 13, 1998, it is decided that the assessment of counterfeiting in the case of partial counterfeiting of an industrial drawing or model is based on the impression that the counterfeit drawing or model leaves on the professional. It was mentioned in the article L.513-5 from him: ⁽⁴⁾.

« La protection conférée par l'enregistrement d'un dessin ou modèle s'étend à tout dessin ou modèle qui ne produit pas sur l'observateur averti une impression visuelle d'ensemble différente »

Therefore, assessing the existence of similarity between two industrial drawings or models is usually based on experience by qualified professionals who evaluate the industrial drawing or model accused of counterfeiting based on the general impression it leaves on them after comparing it with the protected drawing or model⁽⁵⁾.

The imitation must also be for industrial and commercial purposes, that is, with the intention of making a profit. Therefore, if the imitation is for non-commercial purposes, such as educational, for example, then this is not considered an infringement on the right to exclusivity.

Counterfeiting is considered valid even if the counterfeit drawings and models are used to distinguish products that are different from those that use the protected drawing or model. This is because drawings and models are artistic creations and therefore it is not permissible for others to use them for the purpose of profit without the knowledge of their owner. An example of this is

1 - Art 21, Order 66-86, of 28 April 1966, *Relating to industrial designs and model*, official journal, 28/04/1966.

2 - Saleh Farha Zarawi, *Op.cit*, P 336.

3 - Kamal Taha Mustafa, *Commercial Law*, University House, Cairo, 1991, P726.

4 - Maalal Fouad, *Op.cit*, P 403.

5 - Maalal Fouad, *Op.cit*, P 404.

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the French judiciary's decision that... Just put in summer t-shirt graphics take a perfume bottle type model "ungaro" and "lancome", this is considered an imitation of the two models.

An example of imitation of a drawing or model in the Algerian judiciary is the decision of the Algerian Judicial Council⁽¹⁾ Supporting the ruling of the "Harrach Court" issued on June 14, 1997, it was stated:

- "Bimo Chocolatery" Limited Liability Company.
- Against the limited liability company "Loregal".

The facts of the dispute are that the company "BIMO" It produces and markets chocolate with the "embassadeur" In a black cover surrounded by a red border, this form was filed and registered with the Algerian Institute for Industrial Standardization and Industrial Property on November 29, 1995, and the company "Regal" which used a similar cover containing the same drawing and model, but with a marking President Deposited after institution deposit Bimo So I filed a company Bimo a lawsuit was filed before the Court of El Harrach, on the basis of imitation, due to the confusion it creates in the mind of the consumer. The court issued a ruling in favor of Bimo Given the precedence of the filing, it was ordered to invalidate the subsequent registration, and to oblige the defendant to stop marketing the product in which the disputed model is used, and to withdraw it from the market and pay compensation.

secondly: Violating fees and models by importing and selling

Importing a counterfeit product, offering it for sale, or selling it is also considered an act of assault on industrial designs and models. However, the Algerian legislator does not clearly stipulate this type of assault.

As for importing, any introduction of products bearing counterfeit designs or models into the country is an assault.

It is required that the import be carried out for commercial or industrial purposes, but if the import is for personal use or conducting scientific experiments, this is not considered an assault⁽²⁾.

The French judiciary has gone⁽³⁾. The attack is considered to have occurred as soon as the product is imported and brought into the homeland, even if it did not occur after it was marketed there, including if it was brought there temporarily within the framework of the temporary transit system. -Transit time - So the purpose of this was not to market it at home. It is also considered an

1 - Decision of the Algerian Judicial Council (Chamber of Commerce), Case No. 4722-97 (issued on April 20, 1998).

2 - Muhammad Lafarouji Op.cit, P 267.

3 - Cassation French, of October 7, 1985, Paris: D.P.I. 1985-N13.

assault to offer an imitation product of a protected drawing or model for sale, or to actually sell it.

As for selling, it is the process of placing the counterfeit product in the hands of the consumer for the purpose of using it, whether this is done by a merchant or an ordinary person, and whether the seller intends to make a profit or not.

The act of offering this product as a prize or as a gift to the buyer on the occasion of his purchasing another non-counterfeit product, as offering a product as a prize or as a gift is done within the framework of a technology. Marketing based on considering the price of the prize or gift as part of the price of the item sold⁽¹⁾.

But the perpetrator of this act is not liable if he was not aware that the product he offered for sale or sold was imitated from another drawing or model, protected by a registration certificate.

Conclusion

From all the above we say that the subject of industrial designs and designs is an industrial property right that has become the subject of interest to economists and jurists, because it has become one of the basic drivers of economic and social development.

Given the importance of this right, it is necessary to establish a legal system that protects it from all forms of infringement. The most important of these forms is acts of unfair competition, which are considered an attack on the efforts and funds of industrial property rights holders. These acts are considered among the greatest obstacles to creativity and innovation, and for this reason the legislator The Algerian government aims to regulate these rights and surround them with legal protection.

The most important infringements that are considered acts of unfair competition that affect industrial property rights are infringement by imitation or abuse by use.

Here we find that the Algerian legislator, in theory, enacted laws as a legal protection for industrial property rights, criminalizing all acts of unfair competition that affect them, but since this is not enough, in practice, he supported them with judicial and administrative mechanisms that work to protect economic aid and the national market.

1 - Muhammad LafaroujiOp.cit, P 269.

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