Conditions for protecting well-known trademarks in Algerian law

شروط حماية العلامة التجارية المشهورة في القانون الجزائري



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Abstract:

The well-known trademark holds great importance from the perspective of jurisprudence, judiciary, and various national and international legislations. This is due to technological, economic, and commercial developments, aiming to protect the economic agent who owns the trademark from imitation and to avoid any deception or misleading of the consumer public regarding the differentiation of goods, products, and services offered in the market.

key words: Trademark; Imitation; The well-known trademark

ملخص:

تحظى العلامة التجارية المشهورة بأهمية كبيرة من جانب الفقه والقضاء والتشريعات المختلفة وطنيا ودوليا وهذا راجع للتطور التكنولوجي والاقتصادي والتجاري وذلك بهدف حماية العون الاقتصادي صاحب العلامة من التقليد وتجنب اي خداع او تضليل لجمهور المستهلكين بشأن تمييز السلع والمنتجات والخدمات المقدمة في السوق.

الكلمات المفتاحية:

العلامة التجارية؛ التقليد؛ العلامة التجارية المشهورة

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Introduction:

The trademark is generally considered one of the most important intellectual and industrial property rights. It is an element of the commercial establishment and also a means of legitimate competition, as the manufacturer or owner presents the product through an organized concept in a certain form or mark. It is closely linked to the consumer, as it is the economic project's means to distinguish its products from those of other similar or identical projects.

As for the use of trademarks, it began before humans knew how to read and write. The first type of marks used were cattle brands, followed by the hieroglyphs that were drawn on the walls of ancient Egyptian temples. However, the use of marks by traders and manufacturers dates back a long time, and the Romans were the first to use trademarks. This practice was not limited to them; the Italians and French adopted it later, starting from the 15th century, after the guild system prevailed, which imposed the use of industrial marks in the Middle Ages to distinguish the goods and products of traders and manufacturers from similar goods and products.

The mark during this period is considered evidence that the guild has inspected this commodity or those products. It is also considered proof of the payment of the fees imposed on them by the other guild. If the goods and products do not bear a specific mark, they are destroyed by the relevant authority.

It is also a means of ensuring the quality of products, as this becomes evident when the consumer compares goods without a trademark to other goods with a specific trademark. Consumers usually prefer the latter because the presence of that trademark suggests trust and guarantees the quality of the products.

A new term has emerged as a result of the globalization of trade and the remarkable development in means of communication, advertising, and promotion, which is known as the famous trademark. This is essentially a high-quality trademark that has gained fame due to several factors such as the quality of the products bearing the trademark, its market value, and the widespread sales in the international market.

- The famous brands proliferated due to the flourishing international trade following the change in the structure of the international trade system in the early 1990s, the technological and scientific advancements in the marketing process, and the development of international goods transportation methods.
- The famous brands proliferated due to the flourishing of international trade following a change in the structure of the international trade system in the early 1990s, the technological and scientific advancements in the marketing process, and the development of international transportation means for goods. These marks have become a tremendous asset in economic activity at both the international and local levels. Therefore, the principles of their

protection have gradually strengthened and firmly established themselves in international agreements in the field of intellectual property, especially the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

intellectual property (TRIPS) and with the establishment of the World Trade Organization (WTO), it became one of the fundamentals of trademark laws for member countries.

Where this type of trademark is protected as an exception to the two established principles in trademark laws, namely the principle of territoriality and specialization, meaning that the protection of the famous trademark in the country where it is to be protected does not rely on the fact of registration or use, but rather stems from a factual reality represented by its speed and global reputation.

If we wanted to understand the famous trademark, we would find that it is nothing more than an ordinary trademark subject to the same conditions as the latter. It has become known in the markets to the extent that it is recognized by most people interested in the world of trade and industry. It is a mark that gains exceptional fame in the country of registration, surpassing other competing marks, transcending regional boundaries, and undergoing a phase of dissemination that positively affects the distribution of products and services.

Given the economic importance that famous trademarks enjoy, they have received special protection both domestically and internationally. Several agreements have been concluded to enshrine this protection. The Paris Convention for the Protection of Industrial Property was the first to establish an international principle for the protection of these trademarks through Article 6bis. Due to the inadequacy of this protection and the increasing number of infringements, the TRIPS Agreement was introduced with additional provisions to enhance that protection, as well as the interest of the World Intellectual Property Organization in this matter.

As for Algerian legislation, Order 57/66 dated March 19, 1966, concerning factory marks, did not include specific provisions for the protection of famous trademarks. However, with the economic shift towards a market economy, it became necessary for the Algerian state to amend its legal system, particularly regarding famous trademarks. Therefore, Order 03/06 dated July 19, 2003, concerning trademarks, was issued to address and fill the existing gap in protecting this type of mark.

The research problem revolves around:

The extensive protection of famous trademarks is widely agreed upon, considering that anyone who benefits from the fame of a well-known trademark owned by others, even if they are not a competitor, is committing an unlawful act. This protection is particularly evident as it has become a cornerstone of international relations and exchanges, and a condition for joining many important organizations.

What are the conditions for protecting a well-known trademark in Algerian law?.

Chapter One: The Concept of a Famous Trademark:

The famous trademark is essentially just an ordinary mark like other marks that have gained fame due to various factors. The famous trademark plays an important role in the lives of the producer and the consumer because it helps the consumer distinguish between the product and the service it represents, thereby avoiding confusion and mix-ups between products. Therefore, to understand the nature of the famous trademark, it is necessary to define the famous trademark in the first section and distinguish it from similar marks in the second section.

The first requirement: Definition of a well-known trademark:

The term "famous trademark" is ambiguous and unclear, which has led to several questions among legal circles. This necessitates defining it from various aspects: doctrinal, legislative, and finally through what international agreements stipulate.

First section: The doctrinal definition of the famous trademark.

Jurists have disagreed on the definition of a famous trademark or a widely known trademark. Some believe it is a mark known to a broad segment of the public, while others see it as a mark that enjoys a good reputation. Another opinion holds that it is a mark that has gained notable reputation and fame in economic activity.

Some legal scholars believe that a well-known trademark is one that has gained significant reputation and fame in economic and commercial activities, and the fame of the trademark is usually determined by the spread of its reputation both locally and internationally[1].

There are those who believe that a famous brand is one that enjoys global recognition and is well-known among a large audience of consumers. Examples of such famous brands include CANON, LG, and BMW[2].

Some have gone so far as to say that a trademark is the economic project's means of distinguishing its products from those of other similar projects. This is

[1] Naeem Jamil Saleh Salama, Unfair Competition in Trademark and the Duty to Protect It, Dar Al-Nahda Al-Arabiya, Cairo, 2015, p. 545.

[2] Sharif Mohamed Ghanam, Protection of Trademarks on the Internet and Their Relation to the Domain Name, Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, 2007, p. 109.

done using distinctive marks and shapes that are associated in the consumer's mind with the goods bearing these trademarks or industrial marks, which are types of industrial property. This is because they do not exist separately from the trust in the goods they represent, and their symbol (the trademark) cannot be separated from them. Each is a visible tool in which trust in the goods is manifested, and they can be sold, purchased, and advertised to the public[1].

Dr. Salah Zain Al-Din believes that the famous brand was originally just an ordinary mark, but then it began to spread in the markets, and it is associated with products or goods or services of distinctive quality from a specific and known source[2].

The jurisprudence has defined a trademark as a mark known to a wide segment of the public, enjoying a prestigious status and a good reputation. Accordingly, the standard by which the fame of the mark is measured consists of three elements: the first is objective, relating to the age of the trademark, the level of advertising and promotion, its attractiveness, and the public's association with it; the second is personal, relating to the public's knowledge of the mark; and the third is geographical, relating to the mark's spread in terms of location[3].

And there are those who know it as that brand which has become known and spread among a wide sector of consumers, enjoying a high reputation and prestigious status at the international level, such that its fame surpasses the occurrence in the original country where it started. It also holds high financial value when evaluating the financial assets of the company that owns the brand. There are many examples of this type of brand, such as the CNN brand, the NESCAFE brand, and the Gucci brand[4].

It is worth noting that these marks have a special form of protection, as they extend beyond the country in which they were made to the rest of the world.

Some jurists view a trademark as any sign that marks goods, commodities, or products, or distinguishes them from those of another trader or manufacturer.

There are those who define it as being nothing more than a trademark, subject in its definition or conditions to the general provisions of trademarks. It must be distinctive and novel in all its fields of use, in addition to not violating public order and good morals[5].

Thus, it has become clear that from a legal perspective, we find different definitions of a famous trademark, but most of these definitions have the same

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[1] Yasar Fawaz Al-Hunaiti, Legal Protection of Famous Trademarks, Dar Wael for Publishing, 1st edition, 2015, p. 31.

[2] Salah al-Din, National and International Trademarks, Dar Al-Thaqafa for Publishing and Distribution, 3rd edition, 2015, p. 79.

[3] Amina Samet, The Substantive Criminal Protection of Trademarks, Dar Al-Fikr Al-Jami'i, 1st edition, Alexandria, 2011, p. 44.

[4] Mustafa Mousa Al-Atyat, E-commerce, Dar Wael Publishing, 1st edition, Amman, 2011, p. 137.

[5] Samiha El-Kiloubi, Industrial Property, Dar Al-Nahda Al-Arabiya, 5th edition, Part 4, 2005, p. 565.

meaning. We have concluded that a famous trademark is one that is known to a large segment of the public and enjoys a good reputation.

Section Two: The definition of a well-known trademark in Algerian legislation

It is essentially a well-known mark, meaning that its protection does not require registration. The Algerian legislator has recognized this type of mark based on Article 07, Paragraph 8 of the Trademark Law. However, it remains silent regarding the definition of a well-known mark, considering it only as a reason to refuse the registration of a similar mark. It should be noted that the fame of the mark is restricted to being well-known in Algeria, which implies that a mark well-known in another country but unknown in Algeria does not qualify as a well-known mark under Algerian law.

As we find it mentioned in Article 09, Paragraph 4, that the owner of a famous trademark in Algeria has the right to prevent others from using his trademark without his consent, we observe from these two texts that Algerian law still adheres to the traditional definition of a famous trademark and does not extend protection to it unless it concerns objective marks on goods or services similar to the famous trademark.

It is noteworthy that a well-known trademark can pertain to goods as well as services. From this perspective, what can be inferred from the Algerian legislator's stance on well-known trademarks seems to be a restriction of well-known trademarks to goods only, excluding services. This can be understood from Article 07, Paragraph 8 of the Trademark Law, reflecting the Algerian legislator's confused and ambiguous position.

Section Three: Types of Famous Trademarks

The types of famous trademarks vary; they can be industrial if the manufacturer places them on their products, or they can be commercial if they are placed by the trader or distributor on the goods they distribute without participating in their production, or they can be service marks that indicate a specific service. The importance of the trademark is highlighted through the functions it provides to the consumer, the economic aid, the manufacturer, and the service provider. We will discuss the types of famous trademarks.

The famous trademark varies with the type of activity practiced by individuals, whether industrial, commercial, or service-oriented, and we will delve into each of them as follows:

First: The industrial mark.

It is the mark that the manufacturer places on goods and products to distinguish them from other similar goods and products. Therefore, it is used to differentiate a specific project's products from those of other projects, such as the "TOYOTA" mark to distinguish a particular type of Japanese car[1].

[1] Mustafa Mousa Al-Atyat, previous reference, p. 130.

The industrial mark indicates the source of production and is mandatory even if the producer does not market their products themselves, as stipulated in the provisions of the first paragraph of Article 2 of Order 03-06 concerning trademarks[1].

The Algerian legislator in Article 2 of Ordinance 03-06 concerning trademarks did not explicitly mention the term "factory trademark" but stated that: "any natural, agricultural, traditional, or industrial product, whether general or manufactured." Factory trademarks indicate and refer to the source of product manufacturing, and these types of trademarks are relied upon by the producer if they are the most common, attractive to consumers, and popular in various national and international markets.

Secondly: The distributive trademark

It is the trademark used by traders to distinguish their goods and products from similar products and goods, regardless of the source of these goods. Traders purchase the goods, place their trademarks on them, and then resell them to consumers and other traders. An example of this is the Auto trade trademark, where the trademark owner imports cars and then resells them[2] .The purpose of the merchant using this label is to attract customers' attention to these products and goods and enable them to know whether the label belongs to a large store or a small one. This label can also serve as a mark of manufacture on the product or goods at the same time.

Thirdly: Service mark:

It is the mark used to distinguish a specific service provided to the public, such as symbols and signs used by companies that offer their services to the public, like transportation, aviation, telecommunications, cleaning, tourism, restaurants, information dissemination, and insurance. There are many examples of this, including DHL for postal and transportation services, KLM for aviation services, MONEYGRAM for money transfer services, ALICO for insurance services, and Sheraton and Hilton for hotel services.

And it is the mark used to distinguish a specific service offered to the consumer audience, such as the symbols and signs used by companies that present their services to the public, like transportation, aviation, communications, cleaning, tourism, restaurants, information dissemination, insurance, and many examples of this, including DHL for postal and transportation services, KLM for aviation services, MONEYGRAM for money transfer services, ALICO for insurance services, and Sheraton and Hilton for hotel services.

As for the Algerian legislator, he defined the service mark in Article 2, paragraph 4 of Ordinance 06-03 and considered it any performance that has economic value. As for the Algerian legislator, he defined the service mark in

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[1] Order No. 03/06, dated 19/07/2003, concerning trademarks, published in Official Gazette No. 4, on 23/07/2003.

[2] Mustafa Mousa Al-Atyat, previous reference, p. 129.

Article 2, paragraph 4 of Ordinance 06-03 and considered it any performance with economic value.

As for the Algerian legislator, he defined the service mark in Article 2, paragraph 4 of Ordinance 06-03 and considered it "any performance that has economic value." The performance that has economic value, as intended by the legislator here, is the effort provided by a natural or legal person to individuals without being in the form of delivering a product. If a product is provided, it is considered a consequence of the effort and performance and a support for it. Therefore, the service mark is the symbol used by the natural or legal person while providing their services to the public, distinguishing their services from those of others, even if the performance and service are the same. The performance that has economic value, as intended by the legislator here, is the effort provided by a natural or legal person to individuals without being in the form of delivering a product. If a product is provided, it is considered a consequence of the effort and performance and support for it. Therefore, the service mark is the symbol used by the natural or legal person while providing their services to the public, distinguishing their services from those of others, even if the performance and service are the same.

The service mark is considered an essential element in a service institution, to the extent that some well-known marks have an economic value higher than the value of the institution's physical elements, especially in hotel brands like Accor, Sheraton, Hilton, and others.

Section Two: Criteria for Determining the Fame of a Trademark:

The issue of defining what is meant by the fame of a trademark has not been addressed, nor have criteria for its assessment been established, neither in the Paris Convention nor in Algerian legislation. This matter has been left to jurisprudence and the judiciary. As a result, defining the meaning of trademark fame remains unclear and ambiguous. The criteria set by the TRIPS Agreement were not sufficient to consider a trademark famous, leading to varying opinions on the definition of fame. Therefore, the World Intellectual Property Organization has made efforts through several meetings, resulting in the issuance of the Joint Recommendation on the Common Principles Concerning Famous Marks. Consequently, we will discuss the international efforts in establishing criteria for assessing trademark fame. In the second section, we will address...

Section One: International Efforts to Establish Standards for Assessing Trademark Fame.

We find that the Paris Convention is the first agreement that addressed the issue of protecting well-known marks. This convention included specific protection provisions in its sixth article; however, it did not establish any criteria for measuring the fame of a mark. Instead, it left that to the competent judicial authorities in each country of the Paris Union, which sparked significant debate

and sharp differences in opinions among those countries regarding whether a mark was well-known or not[1].

The TRIPS Agreement included broader protection for well-known trademarks than that provided in Article 2, Paragraph 16 of the Paris Convention for the Protection of Industrial Property. Article 2, Paragraph 16 of the TRIPS Agreement stipulates that "countries shall take into account the knowledge of the trademark by the relevant public, including its knowledge in the member country as a result of the promotion of the trademark," when assessing whether a trademark is well-known. This criterion was vague and insufficient; therefore, based on the joint recommendation issued following the meeting and agreement of representatives of the World Intellectual Property Organization (WIPO) and the Paris Union for the Protection of Industrial Property, standards for determining the well-known status of a trademark were established, including objective criteria, subjective criteria, and geographical criteria.

First: The objective criterion:

The objective criteria for the fame of a trademark are mentioned in paragraph 01 of article 02 of the joint recommendation to clarify the factors from which the competent authorities can deduce that the trademark is famous, and they are:

- The extent to which the mark is known or recognized in the relevant sector of the public.
- The duration of the benefit from the mark in any form and the extent of that benefit and its geographical scope.
- The duration of the promotion of the mark in any form and the extent of its promotion and its geographical scope, including advertising, publicity, and display in exhibitions and promotional markets for goods and services to which the mark applies.
- And what indicates the success of protecting the rights in the trademark, especially the extent to which the competent authorities recognize it as a well-known trademark.
- The value associated with the mark[2].

The factors mentioned above are not to be used as guidelines by the competent authority when examining whether the mark is well-known; the investigation in this matter depends on the specific circumstances of each case[3].

According to Article 2(3) of the Joint Recommendation, the concerned country should not require as a condition for consideration that the mark be famous, used, or registered, or that an application for its registration has been

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[1] Taleb Braim Suleiman, previous reference, p. 63.

[2] Article 02, paragraph 01 of the Joint Recommendation on the Provisions Concerning the Protection of Well-Known Marks issued by the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) in a joint session during the thirty-fourth series of meetings of the WIPO Member States from September 20 to 29, 1999.

[3] Talib Braim Suleiman, previous reference, p. 69.

submitted in the concerned country where protection is sought. It is noted that this goes beyond the apparent text of Article 16(3) of TRIPS, which indicates that the mark is supposed to be registered in the concerned country where protection is sought. This article also prevents the concerned country from requiring that the mark be famous or registered in any other country[1].

Some legal scholars believe that there is no definitive standard to determine what constitutes a famous mark, as this standard does not only depend on the mark's age. This process has currently been overcome through loud and intensive advertising campaigns, where the public is bombarded and influenced by the advertisements. Additionally, the quality of the goods distinguished by the famous mark is also a crucial factor, as fame is governed by how the product is presented and advertised in the market[2].

The factors recommended by WIPO do not differ much from those suggested for consideration before the recommendation was issued, but the importance of these factors lies in the fact that they are issued by international bodies.

Relevant, as the World Intellectual Property Organization works on coordinating different legislations by establishing common international principles in the field of intellectual property rights.

It is noteworthy that these factors were mentioned in the recommendation as examples, not an exhaustive list, as they are guiding factors. This means that the idea of brand fame is understood without defining this famous mark, as the fame of the mark among the public is nothing more than a magical word that makes a person think of the product distinguished by the famous mark.

Secondly :The personal criterion: Material knowledge of the mark among the relevant audience

This criterion is based on the personal aspect, meaning it relies on the public's knowledge of the famous mark. It must be known to the consumer public sector. This is what the TRIPS Agreement on Intellectual Property referred to in Article (02/16), stating that "when assessing whether a trademark is well-known, member countries consider the extent to which the trademark is known by the relevant public sector[3]..." Paragraph 2 of Article 02 came to clarify the meaning of the relevant sector of the public, including but not limited to the following:

- Actual and potential consumers of the type of goods or services distinguished by the mark.
- The individuals involved in the distribution channels of the type of goods and services distinguished by the brand.

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[1] Kanaan Ahmed (Protection of Well-Known Trademarks, WIPO National Seminar on Intellectual Property for Faculty Members and Law Students at the University of Jordan organized by the World Intellectual Property Organization (WIPO) from April 6 to 8, 2004, Amman.

[2] Abdel Fattah Bayoumi Hijazi, previous reference, p. 186.

[3] Noha Khaled Issa, the famous brand, an article published in the Journal of Babel University, Issue 01, Faculty of Humanities, Jordan, 2003, p. 04.

- The commercial intermediaries that deal in the type of goods and services distinguished by the brand.
- Actual or potential consumers of the type of goods or services distinguished by the brand. Here, it is important to adopt a broad concept of consumers, so it should not be limited to actual consumers of the goods or services. This is due to the changing and varying knowledge of the goods over time and from place to place, which leads to changes in the actual or potential consumers of these goods or services.
- As for the method used to determine the actual or potential consumer groups for this product or service, it relies on criteria such as the groups of buyers of the product or service bearing the mark, or the target groups in the goods and services that benefit from the mark, or the actual consumers of this mark.
- The individuals involved in the distribution channels of the type of goods and services to which the mark applies are affected by the nature of the goods, product, or service that bears the mark.
- Some goods are sold in commercial centers to facilitate their acquisition by consumers, or goods or services are distributed through authorized agents or itinerant sellers to deal with consumers in their homes. Thus, statistical studies have specified the actual consumers at these centers to identify the relevant audience segment[1]. Without including these statistics, other consumers who are dealt with in their homes are not counted.

The commercial intermediaries that deal in goods and services distinguished by the brand include several entities such as importers, wholesalers, licensees, and franchisees who are concerned with the goods and services distinguished by the brand, in addition to individuals who are willing to deal in these goods and services[2].

Regarding the determination of the mark's fame based on its recognition in the relevant public sector, the joint recommendation stipulates that "if it is determined that the mark is very well-known in at least one sector of the relevant public in a member state, the member state must consider the mark to be widely famous[3]." From this, we conclude that if the mark is famous in any of the relevant sectors dealing with the goods or services bearing the mark, it is naturally considered famous in that country.

The expansion of the relevant public standard in both the TRIPS Agreement and its adoption by the World Intellectual Property Organization does not serve the interests of developing or least developed countries, as these famous marks are owned by large, highly active companies. Consequently, they ensure the greatest protection for their marks within the widest geographical scope, resulting

[1] Talib Braim Suleiman, previous reference, p. 74.
[2] Left: Fawaz Al-Hunaiti, the same reference, pp. 101-102.
[3] Taleb Braim Suleiman, the same reference, p. 74.

in their protection in both the countries where they are not registered and those where they are registered.

Thirdly: The geographical criterion

The geographical criterion plays a significant role in determining a well-known trademark due to the extensive protection granted to well-known trademarks.

According to Article 6(2) of the Paris Convention, which stipulates that the fame of the mark must be established in a significant part of the member state where protection is sought as a famous mark, the convention has thus defined the status of fame by focusing on the definition of fame. On the other hand, the TRIPS Agreement also came with this concept, as Article 16(12) includes that the assessment of the mark's fame is determined by the member state where protection is sought, considering it famous even if this fame is a result of promotion and advertising for the mark[1].

The joint recommendations did not indicate more than what the Paris and TRIPS Agreements mentioned regarding the concept of the geographical scope of trademark fame. The rules included provisions suggesting the necessity of acquiring fame for the trademark within the borders of the country or countries where protection is sought, without mentioning fame in any way. Among these rules are: "If it is determined that the trademark is very well known in at least one relevant sector of the public in a major country, the member state must consider the trademark as a well-known mark," and also "if it is determined that the trademark is known in at least one relevant sector of the public in a member state, the member state may consider the trademark as a well-known mark[2]."

The Supreme Court of Tokyo, Japan, ruled on April 24, 1973, that the Swiss watch brand OMEGA is a well-known mark in Japan, which is covered by this mark that is sold in Japan in large quantities compared to locally manufactured products of the same type[3].

Section Two: The Criteria Adopted by Algerian Jurisprudence in Assessing the Fame of a Trademark.

We find that the Algerian legislator did not define the famous trademark but recognized the fame of a trademark that enjoys a good reputation and fame among consumers in Algeria. Therefore, it prohibited the registration of any trademark similar or identical to a trademark or trade name that is distinguished by fame in Algeria. Thus, for a famous trademark to be protected, it must be famous in Algeria. The Algerian legislator did not address the necessity for this trademark to be famous in other countries.

We also find that Algerian judicial practice, despite its rarity, requires a significant similarity between the imitated mark and the famous mark, and that it pertains to the same type of products that could confuse the buyer. As stated in

[1] Left: Fawaz Al-Hunaiti, previous reference, p. 106.
[2] Taleb Braim Suleiman, previous reference, p. 84.
[3] Abdel Fattah Bayoumi Hijazi, op. cit., p. 196.

one of its decisions, ".... it is evident from the contested decision that it annulled the 'Dakar' mark and destroyed all its models and similar ones based on Article 6, Section 2 of the Paris Convention, to which Algeria has acceded, concerning the protection of industrial property."

According to its third paragraph, no deadline may be set for requesting the cancellation of the trademark or prohibiting the use of trademarks that were registered or used in bad faith, which is evident from the significant similarity between the two trademarks that pertain to the same type of products, causing the buyer to be in a state of certain confusion. The judiciary has not highlighted the technical elements it considered to determine the significant similarity between the two trademarks and the acknowledgment of the overwhelming bad faith to mislead the buyer into a state of certain confusion.

The Algerian judiciary still links the protection of famous trademarks to the presence of bad faith, which is manifested through the similarity between it and the imitated trademark, in addition to the matter being related to the same type of products or goods. This is something that has been surpassed by most Arab legislations and judicial practices, especially after the conclusion of the Marrakech Agreement in 1994, which established the protection of famous trademarks without the condition of bad faith, sufficing with harming the interests of the trademark owner and without the condition of being related to the same type of products and services, which is known as the principle of specialization[1].

It must be noted that the criterion of fame is unclear and not well understood in Algeria, despite being mentioned in Article 7, which states, "The registration of symbols similar or resembling a mark distinguished by fame in Algeria shall be refused," and Article 9, which states that the owner of a famous mark has the right to prevent others from using his mark without his consent.

Both texts fail to explain the criterion of fame, and neither jurisprudence nor the judiciary in Algeria has filled this gap and deficiency. Previously, fame was granted to old or ancient marks that were known from one generation to another. However, in the present time, with the rapid economic, production, and industrial development, a new and modern mark can gain fame in a very short time or as soon as it is released to the public[2].

Chapter Two: Conditions for Protecting Famous Trademarks and Their Content in Algerian Legislation

The Industrial Property Law has recently taken on a new form, which is the protection of famous trademarks from infringements that were not anticipated in the Trademark Law. Although trademarks have been addressed in various foreign

[1] Salami Miloud, the famous trademark in Algerian law, Journal of Political and Legal Notebooks, Issue 4, University of Batna, Algeria, 2011, p. 169.

[2] Ben Jadid Fathi, Protection of Famous Trademarks in International Agreements and Comparative Laws, an article published in the Journal of Legal and Social Sciences, Ziane Achour University of Djelfa, Issue No. 10, Institute of Law and Political Science, Ahmed Zabana University Center of Relizane, 2018, p. 429.

laws as well as in the Paris Convention of 1883 concerning the protection of industrial property and in the Hague Conference of 1925, they remained unknown in Algeria until the recent Ordinance 57/66, which regulates trademarks and addresses them through its legal texts. Given the fame and reputation of these trademarks, they should enjoy and benefit from a special protective regime. Undoubtedly, famous trademarks are exposed to a particular risk due to their use by others without authorization, even if those users are not competitors. Therefore, the issue of their protection has strongly imposed itself, whether they are registered or unregistered.

It has been addressed in various foreign laws as well as in the first Paris Convention of 1983 concerning the protection of industrial property and in the Hague Conference of 1925. However, in Algeria, it remained unknown in the recent Order 57/66 regulating trademarks, which addressed and referred to it through the existing legal texts. Given the fame and reputation of the latter, it should enjoy and benefit from a special protective system. Undoubtedly, the famous trademark is exposed to a specific risk due to its use by others without authorization, even if they are not competitors. Therefore, the issue of its protection has strongly imposed itself, whether it is registered or unregistered.

We find that the Algerian legislator has introduced provisions that reject and annul registration, as well as prohibit the use of any symbols that match, resemble, or constitute a translation of a mark renowned in Algeria. This applies to placing such symbols on products or services similar to or resembling the products or services that have gained fame, which may cause confusion with the renowned mark, or using them for goods and services other than those that have gained fame, in a manner that harms the registered mark's owner.

Section One: Conditions for Protecting Famous Trademarks

The Algerian legislator distinguished the scope of protection between the unregistered famous trademark, where he limited its protection to similar and identical products and services, and recognized encyclopedic protection for the registered trademark.

First branch: Conditions for protecting the unregistered famous trademark

We find that protection is subject to the principle of specialization, as the mark is protected only for the products and services for which it was deposited. The mark cannot enjoy protection unless it is registered according to the legal methods in the country where protection is sought. However, as an exception, the famous mark, even if not registered, enjoys protection, and this is what the Algerian legislator has adopted[1]. After defining in Article 09, paragraphs 01, 02, 03, of Order 03/06 dated July 19, 2003, concerning trademarks, the rights granted

[1] Sofalo Amal, Sofalo Amal, Protection of Famous Trademarks between Algerian Legislation and International Agreements, Master's Thesis, Law and Administrative Sciences, Faculty of Law and Administrative Sciences, Ben Aknoun, Algeria, 2005, p. 87.

by trademark registration, considering that registration is the legal system through which the right to the trademark is acquired in Algeria.

We find that he has exempted the well-known trademark in Algeria from registration, as it is stated: "The owner of a well-known trademark in Algeria has the right to prevent others from using his trademark without his consent, in accordance with the conditions stipulated in Article 07, paragraph 08 of Order 03-06."

It can be concluded that the owner of a well-known trademark in Algeria has the right to prevent others from using it, even if the trademark is not registered. Naturally, this exception applies only to well-known trademarks and not to other trademarks. This is an exception to the general rule that the registration of a trademark grants the right to ownership.

As stated by the Algerian legislator in Article 08/07, "symbols similar or identical to a trademark or a trade name that is well-known in Algeria and has been used for similar or identical goods belonging to another entity to the extent of causing confusion between them are exempt from registration."

The Algerian legislator has prohibited and rejected the registration of any signs identical or similar to a famous trademark or a famous name, which leads to confusion and deception among the public. However, this is contingent upon the fulfillment of a set of conditions that must be met, as follows:

First: The trademark must be distinguished by its fame in Algeria.

The Algerian legislator added the condition for a well-known mark, which is that it must be well-known in Algeria in particular. It is not enough for it to be internationally well-known, nor should it be used in Algeria; it must be well-known without being used by Algerians. As for its fame, it is subject to the discretionary authority of the National Institute of Industrial Property[1].

The condition of the mark's fame is a logical requirement, as it is inconceivable to ask a state to protect a mark that is unknown to it, because its use by others in this case does not lead to confusion or mix-up among consumers regarding the source of the goods bearing the mark, due to their lack of knowledge of the claimed famous mark. Therefore, the famous mark enjoys protection without the requirement of registration, as the mark is linked to fame if the owner of the famous mark enjoys all the rights associated with the registered mark.

The Algerian legislator did not stop at the mark that is distinguished by fame in Algeria, but extended its protection to the famous commercial name that is distinguished by fame in Algeria. Perhaps the reason for this is the possibility of mixing the commercial name with the mark, and it may replace it. Therefore, protection was extended to those famous commercial names. It is worth noting that in the past, extended protection was not granted to the famous mark unless it simultaneously constituted the commercial name of the institution owning the

[1] Ben Jdid Fathi, the previous reference, p. 429.

famous mark, meaning that the mark was registered as a mark on one hand and as a commercial name on the other[1].

Secondly: It concerns similar and comparable products and services.

It is well-known that a trademark is used to distinguish the product or service it bears from other similar or identical products or services of the same kind. Therefore, it is not permissible for others to use the famous trademark on the same type of product or service. If we refer to Article 7, it discusses the similar trademark on similar goods without mentioning the similar trademark on dissimilar goods, meaning the use of a similar trademark on goods that are different from those on which the famous trademark is used.

And this is what the Algerian legislator overlooked, because using a similar mark on dissimilar goods constitutes an infringement on the rights of the famous mark, leading to consumer confusion and misleading, as well as harming the reputation of this famous mark[2].

Thirdly: Confusion or deception.

Placing a mark that is identical or similar to a famous mark on similar or identical products may lead to significant confusion among the public, who might mistakenly believe that such marks on those products or services are the same and choose them instead. This could cause considerable damage to the mark's owner and the consumer.

The use of some famous trademarks on other products can cause confusion among consumers because their function goes beyond the classical role of distinguishing and identifying the origin of the product; they have become symbols of quality. Thus, the use of such trademarks by others weakens their distinctive character, as their rarity is the source of their strength[3].

Section Two: Conditions for Protecting Registered Famous Trademarks

The Algerian legislator emphasized the process of trademark registration in Article 2 of Executive Decree No. 05/277 by stating that goods and services are designated when filing trademarks according to the international classification of goods and services for the purpose of registering trademarks specified under the TRIPS Agreement[4].

Article 7, paragraph 8 of Order 03-06 states the following: "The registration excludes... symbols that are identical or similar to a trademark or a trade name that is distinguished by fame in Algeria and has been used for similar and identical goods belonging to another entity to create confusion between them, or symbols that serve as translations of the trademark or trade name."

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[1] Sofalo Amal, op. cit., p. 89.

[2] Ben Jadid Fathi, previous reference, p. 429.

[3] Mohamed Mahboub, The Legal System of Trademarks in Light of Moroccan Legislation on Industrial Property Rights and International Agreements, Dar Abi Raqaq for Printing and Publishing, 2nd edition, Rabat, 2011, p. 206.

[4] Ben Jdid Fathi, previous reference, p. 427.

The provisions of this paragraph apply with the necessary modifications to goods or services that are not considered identical or similar for which the trademark registration was requested, provided that the use of this trademark for identical goods and services indicates a connection between these goods and services and the owner of the registered trademark in this case, and it is required that such use is likely to harm the interests of the registered trademark owner.

From this, we conclude that the Algerian legislator has granted extensive protection to the famous trademark registered in Algeria and was explicit in Article 07, paragraph 08, regarding the registration of the trademark. However, he added other conditions for registration, which are:

First: The use of a famous mark on goods or services that are not similar indicates a connection between the owner of the famous mark and the different goods and services. The use of the famous mark by others on products or services different from those covered by the famous mark may lead the public to believe there is a connection between them, resulting in public deception. It is noted that in this case, the risk of confusion is not required, but the connection that arises in the public's mind from that use is required.[1]

As we mentioned above, the fame of the trademark negates such a feeling. The public often imagines that the owner of the trademark is a strong institution with a very large economic presence, and thus capable of expanding its activities. This confusion that the consumer experiences in the presence of these products can cause significant damage to the legitimate owner of the trademark, especially if its fame is due to good quality and a good reputation. The wisdom behind this condition is that outside of confusion, no damage can be imagined to the trademark and consequently to its owner[2].

Secondly: That this use may cause harm to the interests of the registered famous trademark owner.

Thirdly: This risk mainly lies in weakening the distinctive ability of the brand, as placing it on different products leads to the loss of its exceptional character. Additionally, it affects its reputation since the brand's fame is primarily linked to the quality of its products. If it is placed on lower-quality products, it will lose its good reputation among consumers.

The second requirement: The content of the protection of famous trademarks in Order 03/06

The Algerian legislator has expanded the scope of protection for famous trademarks and has also addressed actions that could constitute an infringement on these marks.

Section One: Prohibited Actions

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[1] Rachidi Saida, The Academic Journal of Legal Research, The Comprehensive Protection of Famous Marks, Issue 01, 2016, Department of Business Law, Faculty of Law and Political Science, Abderrahmane Mira University, Algeria, p. 198.

[2] Sofalo Amal, op. cit., p. 91.

The Algerian legislator has defined the actions that could affect the famous trademark, such as imitating the trademark or its relative and translation.

First: Imitating the famous trademark:

The Algerian legislator did not provide a definition of imitation, but jurisprudence and the judiciary define it as the creation of a mark that is identical to the original mark or the creation of a mark that resembles the real mark to the extent that the new mark can mislead the consumer[1]. And the difficulty in distinguishing between each of them in a way that leads to confusion and mixing between them remains for the consumer audience. Consequently, the actor transfers the entire original mark but is keen on making some modifications to it while retaining its overall appearance, either by changing the color or size of the letters or by placing similar letters, numbers, names, or images. This makes the mark resemble the registered mark in its entirety and come close to it in a way that may mislead the audience and cause confusion and mixing[2].

The Algerian legislator has stipulated the prohibition of imitating famous trademarks in Article 08/7 of Ordinance 03/06 dated July 19, 2003, concerning trademarks, by rejecting the registration of any signs similar to the famous trademark, regardless of the nature of the products on which they are placed.

The essence of imitation lies in the similarities, not the differences, such that it is likely to mislead the public regarding the marks without the requirement that the deception has actually occurred. It is sufficient that there is enough similarity between the imitated and original marks to be acceptable in trade[3].

It may happen that a case of unfair competition and a case of trademark imitation are brought before two different courts, but there is a connection between them. Since acts of imitation are simultaneously an element of unfair competition, the ruling in one case may affect the ruling in the other. This necessitates the proper administration of justice and avoiding the possibility of conflicting judgments by consolidating them before a single court to rule on both cases together, by referring one of them[4].

Secondly: The resemblance of the famous mark:

Economic aid may not resort to a literal and complete transfer of the famous mark, but rather introduce modifications or additional elements. The transfer may be limited to merely transferring the essential elements or some of them with some modifications, in addition to adding something, with the aim of obtaining a mark

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[1] Hamadi Zoubeir, Legal Protection of Trademarks, First Edition, Halabi Legal Publications, 2012, p. 187.

[2] Amin Mustafa Muhammad, Criminal Protection of Industrial Property Rights in Light of International Agreements and National Laws, PhD, Dar Al-Jami'a Al-Jadida, Alexandria, 2010, p. 108.

[3] Moawad Abdel Nawab, Crimes of Fraud, Deception, and Trademark Counterfeiting, Distribution by the World of Thought and Law, 2005, p. 391.

[4] Khaled Mamdouh Ibrahim, Crimes of Intellectual Property Rights Infringement, University Press, Volume 3, 1st Edition, Alexandria, 2010, p. 268.

that is approximately similar to the original mark. Here, we are not facing imitation of the mark, but rather a resemblance to it[1].

And imitation refers to any creation of a mark that is approximately similar to the original mark in order to deceive the consumer. The aim of imitating a well-known mark is to deceive and mislead the public and benefit from its fame. The Algerian legislator has prohibited the registration or use of such marks, as it has exempted from registration symbols that are similar or resemble a mark that is famous in Algeria... This is to avoid the imminent danger to the consumer public on one hand and the owner of the famous mark on the other hand.

Thirdly: Translation of the famous sign:

Translating a trademark into another language is considered an imitation of it, and the Algerian legislator has expanded the scope of protection for these trademarks. We find that it extends to those actions and infringements based on translation, as stated in Article 07, paragraph 08, which mentions that "symbols that serve as translations of the trademark or trade name are exempt from registration[2]." Translating the mark into a foreign language may cause confusion and thus imitation if the translated mark is placed on goods or products intended for sale in a country where its citizens speak the mentioned language or if the language can be understood by consumers. However, this does not mean that every translation necessarily leads to the rejection or cancellation of registration; it must be capable of causing confusion[3]. And the assessment of whether there is confusion or not here is often very precise, and therefore the criterion used, which seems almost constant in most judicial rulings, necessitates focusing on the average consumer level to determine if the translation can be understood and thus prove the similarity between the two marks.

Section Two: Penalties Imposed on Prohibited Actions

The fame that some well-known trademarks possess and their distinctive character have led to them being surrounded by special protective provisions, allowing for the protection of the well-known trademark even outside the country where it was registered, and without the owner having to register it in the country where protection is sought, and even for products different from those for which it was deposited. To provide protection and address the violations, damages, and actions that harm the owner, the Algerian legislator has established penalties for its protection as follows:

First: Refusal of registration

And this is what the provisions of Articles 07-08 of Ordinance 03-06 stipulate, where we find that the competent authority is obligated to refuse the registration of any signs that constitute imitation, resemblance, or translation of a mark that it considers to be renowned in Algeria. Accordingly, if someone else

[1] Sofalo Amal, previous reference, p. 95.
[2] Khaled Mamdouh Ibrahim, previous reference, p. 512.
[3] Sofalo Amal, previous reference, p. 95.

submits an application for the registration of such marks, the competent authority will automatically refuse it.

The registration of a trademark that matches, resembles, or constitutes a translation of a famous trademark is not permitted if it is likely to cause confusion with the famous trademark, potentially harming the interests of the owner of the famous trademark. Additionally, this registration would deceive the public due to the similarity between the two trademarks, which necessitates the rejection of the registration[1].

Secondly: Request for annulment

A third party may be able to register a well-known trademark, and in this case, according to Article 20 of Order 03-06 mentioned above, which states the following: **"The competent judicial authority can annul the registration of the trademark retroactively from the date of deposit at the request of the competent authority or the interested party when it is found that the trademark should not have been registered for one of the reasons mentioned in paragraphs 1 to 9 of Article 07 of this Order 03-06."** Legal annulment can be pursued by filing an annulment lawsuit before the competent judicial authority based on a request submitted by the competent body, namely the Algerian National Institute of Industrial Property, or by the owner of the well-known trademark[2].

It is a condition for accepting his claim that he proves the following:

He must prove that he is the owner of the trademark in the country of origin and that his trademark has become famous to the extent that its fame has surpassed the country of origin where it was initially registered, and that it has become known to the relevant public. He must also prove that the defendant uses this trademark on his similar or dissimilar products or services without his consent or legal justification. He can prove the material and moral damage he has suffered as a result of the use if the products using this trademark are dissimilar. However, if the products and services using this trademark are identical[3]. What is clear to us in this case is that proving harm is presumed.

Conclusion:

In conclusion, we point out that a trademark is any sign or symbol that takes on a distinctive form used or intended to be used by a trader, manufacturer, or service provider to distinguish their goods, products, or services from others. This trademark may become famous due to several factors, including the products it covers, the duration of its use, its market value, the spread of its sales in the international market, and the extent of its advertising and promotion. If the relationship with these factors continues, the fame may extend beyond the

[1] Mahmoud Ali Al-Rashdan, The Trademark, First Edition, Dar Al-Maseera for Publishing, Distribution, and Printing, Amman, 2009, p. 163.

[2] Sofalo Amal, op. cit., p. 97.

[3] Mahmoud Ali Al-Rashdan, previous reference, p. 163.

registration area and become widely recognized. Therefore, when a trademark possesses such characteristics, it is susceptible to infringement by others, as most of them are unregistered. Hence, we have reached the following conclusions and recommendations:

First, the results:

They are as follows:

• It is difficult to provide a comprehensive and definitive definition of a famous trademark, as opinions differ and questions abound regarding its definition. Therefore, in order to be considered famous, a trademark must be well-known among a wide segment of the public, enjoy a good reputation, possess high quality, and have significant commercial value.

• The famous trademark has become ingrained in the minds of consumers, and this consumer now reaches out

• Unconsciously to any product bearing that well-established mark in his mind and memory, which its owner promotes around the clock in all media and communication channels.

• Considering the increasing and escalating phenomenon of assaults on this type of trademarks, the imitation of these trademarks has rapidly increased, reflecting the consumer's desire for products bearing a famous mark.

• Counterfeiting has not stopped at goods bearing famous brands such as leather, glasses, perfumes, shoes, and clothing, but has extended to medicines, which is a serious matter. Therefore, special protection regulations for them are necessary.

• Those who imitate trademarks, whether they are competitors or non-competitors, seek to benefit from their fame by placing them on similar products or even completely different ones from those the public is accustomed to seeing them on. This results in damage to the trademark on one hand and to its owner on the other, causing confusion among the public who mistakenly believe it to be the original trademark.

• The Algerian legislator resorted to including special provisions for famous trademarks in Ordinance 03/06 dated July 19, 2003, and recognized them with special protection commensurate with their economic importance, unlike Ordinance 57.66 dated March 19, 1966, which did not address this matter.

• The famous trademark enjoys two types of protection: civil protection through an unfair competition lawsuit, and criminal protection provided the trademark is registered in the country where protection is sought and used on similar goods or services.

• The famous trademark has received ample international protection under the Paris Convention for the Protection of Industrial Property, which was the first to establish an international principle for the protection of these trademarks since 1925. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994 expanded the protection of famous trademarks to include

services and products that are entirely different from those for which they were registered. The World Intellectual Property Organization (WIPO) also decided to protect famous trademarks in its texts.

Secondly, the suggestions:

They are as follows:

• The Algerian legislator should enhance the legal mechanisms and frameworks that ensure protection for owners of famous trademarks by granting broader powers to the National Institute of Industrial Property.

• Considering that the protection of intellectual property rights is one of the guarantees for encouraging foreign investment, the Algerian legislator should update the legal framework for protecting elements of industrial property, with a focus on trademarks due to their significant economic role.

• The Algerian legislator must regulate the rules of famous trademarks with more extensive provisions to match their economic importance and high commercial value that famous trademarks enjoy.

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