

The Role of International Agreements to Which Algeria Is Party in Combating Industrial Property Counterfeiting

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Abstract :

International agreements to which Algeria is party particularly the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement play a decisive role in combating industrial-property counterfeiting. These treaties require member states to establish unified legal standards for protecting trademarks, industrial designs, and trade names, while ensuring effective judicial and border-control mechanisms against counterfeit goods. They also oblige Algeria to protect well-known marks, prevent the registration of imitated trademarks, and enforce civil and criminal sanctions against infringement. This international framework strengthens Algeria's capacity to fight counterfeiting by aligning its national legislation with global standards.

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1. Introduction:

Effective and comprehensive protection of industrial property rights cannot be confined to domestic legislation alone, given their critical role in international trade and their connection to the industrial and commercial development objectives of states and individuals—often extending beyond national borders. Consequently, international efforts have culminated in the establishment of unified legal frameworks, most notably the Paris Convention for the Protection of Industrial Property and its related agreements. These frameworks govern various aspects of industrial property, including procedural rules for acquiring rights at the international level and the classification of goods for protection purposes.

Since 1967, the World Intellectual Property Organization (WIPO) has supervised and administered these frameworks, with a mandate to:

- Encourage and safeguard innovation worldwide.
- Promote the development of the intellectual property sector.
- Collect and disseminate relevant information.
- Conduct and publish research and studies.
- Provide technical assistance to all member states.

The foregoing analysis raises a fundamental question: To what extent have the international conventions ratified by Algeria established a balanced framework of substantive protection for industrial property rights, reconciling the interests of rights holders with those of sovereign states? Moreover, what mechanisms exist to implement these substantive protections as set forth in the relevant instruments?

2. Fundamental International Legal Principles for the Suppression of Counterfeiting

Industrial property rights are characterized by their intangible nature, which confers upon their use a global character. Consequently, restricting their protection to domestic legislation contradicts both their intangible nature and their international character, necessitating the establishment of international principles, thereby enhancing the effectiveness of measures aimed at suppressing counterfeiting.

2.1. The Principle of Equating Union Nationals with Citizens

The international use of industrial property may render it susceptible to counterfeiting, as its exercise occurs beyond the territory of the state of origin. Consequently, it must be safeguarded through a set of protective measures, among which the most effective is the adoption of the principle of equal treatment between Union nationals and citizens within the member states of the Paris Convention.

a) The Substance of the Principle of Equating Union Nationals with Citizens

Typically, industrial property rights are subject to a specific protection regime in their country of origin, which does not extend to foreign states. Consequently, if exercised abroad, they do not enjoy

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the protection afforded in their home country, thereby placing them in a vulnerable position and rendering them susceptible to counterfeiting. Accordingly, the Paris Convention established the principle that Union nationals are entitled to treatment equal to that accorded to citizens in their own countries. This is embodied in Article 2, which stipulates: ‘Nationals of any country of the Union shall, in all other countries of the Union, with regard to the protection of industrial property, enjoy the advantages that their respective laws now grant, or may hereafter grant, to their own citizens, without prejudice to the rights specially provided for by this Convention.

This provision clarifies that the Paris Convention establishes the principle of equal treatment between Union nationals and citizens, thereby ensuring that foreign holders of industrial property benefit from the application of national legal provisions protecting such rights. (Al-Fatlawi, 1988, p. 444)

This principle obliges Union member states to establish an appropriate framework by ensuring that industrial property protection is applied equally to citizens and Union nationals. The principle neither requires the adoption of uniform rules nor mandates specific domestic regulations. Instead, it grants states the discretion to formulate rules governing procedures for obtaining patents, industrial designs, or trademarks, along with related administrative procedures, including filing and the resulting legal effects. These domestic rules must be applied equally to the state’s own citizens and Union nationals, thereby ensuring that Union nationals enjoy all rights and advantages accorded to citizens whether relating to administrative procedures or judicial measures, including the right of access to justice and the right to appeal.

These provisions also guarantee Union nationals the right to lodge administrative appeals before all competent administrative authorities, on an equal footing with citizens.

This principle establishes equality between nationals and foreigners while simultaneously respecting the sovereign authority of states and the principle of non-intervention in their domestic legal systems. The Paris Convention’s scope of intervention is narrowly defined, encompassing only fundamental substantive rules that address the core aspects of industrial property protection. These rules are binding upon Union member states, while leaving them full discretion to elaborate implementing regulations in a manner they consider most effective for safeguarding industrial property rights. (Zirouti, 2004, p. 47)

Consequently, the rules applicable in this domain are domestic laws, unless they conflict with the provisions of the Convention. In the event of any inconsistency between a domestic legal provision and a provision of the Convention concerning a specific matter, the Convention’s stipulations shall prevail over domestic legislation to the extent of the inconsistency, unless the state has entered a formal reservation to that provision upon ratification, in which case domestic law shall apply. (Al-Fatlawi, 1988, p. 445)

The Convention carves out an exception for procedural rules from the principle of equal treatment, thereby allowing each Member State to apply its own procedural regulations whether judicial or administrative in recognition of the distinct jurisdictional characteristics inherent to each state, particularly with regard to the formal appointment of a legal representative or the designation of the chosen domicile. (Lorad, 2008, p. 60)

It is noteworthy that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) similarly embodies the principle of equal treatment between Union nationals and citizens.

Nevertheless, it does not exempt judicial and administrative procedures from the principle of national treatment, except where such derogations are indispensable to ensure compliance with

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domestic regulations that are consistent with this Agreement, provided that they do not constitute a disguised restriction on international trade. (Al-Qalyoubi, 2005, p. 27)

Consequently, this Agreement does not embody the principle of equal treatment in the sphere of administrative and judicial proceedings. The principle of national treatment assumes particular significance in bilateral agreements, which are fundamentally grounded in the doctrine of reciprocity. A core implication of implementing this principle is that nationals of the Contracting Parties are to receive identical treatment, whether foreign or domestic, with this standard applying reciprocally between the states concerned.

Pursuant to the preceding analysis, it may be contended that this principle is fundamentally incompatible with the objectives of Union law, given that the Union's essential purpose lies in achieving alignment between Member States' legislation and the Union *acquis*. The principle of equality grants Member States plenary autonomy in enacting industrial property regulations, while limiting them solely in its implementation through the requirement of equal treatment. This framework may give rise to normative conflicts and substantive contradictions between domestic legislation and Union instruments, thereby contravening the cooperative ethos at the foundation of the Union. (Lorad, 2008, p. 61)

Conversely, the Paris Convention was designed to forestall conflicts between domestic legal systems and the Convention's normative framework, while safeguarding the legislative autonomy of Contracting States in establishing industrial property regimes, by imposing a positive obligation to ensure that domestic regulations remain consistent with the Convention's fundamental provisions.

A comparative examination with the TRIPS Agreement, which likewise incorporates the principle of national treatment, demonstrates its clear stipulation that any advantage, favour, privilege, or immunity granted by a Member State to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Member States.

A distinctive feature of Algerian industrial property law is its equal treatment of foreign and domestic applicants in licensing procedures and related processes, with the sole requirement that non-resident foreign entities be represented by an agent possessing Algerian nationality.

b) Juridical Framework Governing the Implementation of the Principle of National Treatment for Union Nationals:

The Paris Convention established a fundamental prerequisite for obtaining protection within Member States, requiring the completion of all necessary formalities to enjoy the rights accorded to nationals in industrial property matters, while explicitly precluding any obligation for claimants to establish residence or maintain a designated domicile within the jurisdiction conferring such industrial property privileges.

In this legal context, the French Court of Cassation rendered a landmark decision in the *Omega* case, concerning a dispute involving a Swiss company's trademark filing with the competent French authorities. The central legal question concerned the permissibility of such filing by an entity with no physical establishment in France, and whether registration was restricted solely to Switzerland or to jurisdictions where its operational facilities are located. The Court held that French statutory provisions apply, given the territorial nature of the filing conducted within France. (Lorad, 2008, p. 61)

The Paris Convention establishes nationality as the exclusive criterion for invoking the principle of national treatment. Accordingly, any national of a Union Member State is entitled to equal protection without the requirement to establish residence in the territory where industrial property rights are claimed. (Rachdi, 2002, p. 128)

A key doctrinal distinction in the Paris Convention is its use of the term ‘nationals of the Union Member States,’ a juridical concept significantly broader than ‘Union citizens.’ This framework encompasses all legal and natural persons and, exceptionally, extends to foreign entities without Union nationality that operate substantive industrial or commercial enterprises within Union territories, provided they maintain a genuine domicile rather than a temporary residence within a Member State.

2.2. Normative Framework Governing International Registration of Industrial Property Rights

The normative frameworks governing industrial property rights derive their authority from domestic legal systems; consequently, the legal force of these rights is confined to the territory of the state enacting them. The following analysis will examine these regulatory provisions systematically according to the categories outlined below:

a) Right of Priority in Registration :

Article 4 of the Paris Convention provides that an applicant is entitled to exercise a right of priority when completing registration and filing formalities in other Union Member States, provided that a lawful initial filing has been made in any Union country to secure protection for an industrial design, trademark, or patent. The Convention stipulates that subsequent filings must be made within twelve months of the initial filing for patents and utility models, and within six months for industrial designs and trademarks. (Lorad, 2008, p. 64)

The exercise of the right of priority is contingent upon the initial filing’s compliance with the domestic legislation of the state where it is made, or, alternatively, with any applicable bilateral or multilateral agreements within the Union’s legal framework. The filing must be dated in order to be procedurally valid and to entitle the applicant to claim the right of priority.

As well as completing the requisite formalities, which consist in submitting a declaration indicating the date of that filing and the State in which it was made, accompanied by a copy of the earlier application where the State in which priority is claimed so requires. This is provided for in the Algerian laws governing trademarks, industrial designs and models, and patents. The submitted data shall be published in the official bulletins issued by the competent state authority. (Rachdi, 2002, p. 129)

In patent law, the right of priority cannot be denied on the grounds that the priority application filed in the country of origin omits certain elements of the invention for which protection is sought. However, the subsequent application must be drafted to explicitly incorporate such elements.

In the field of patents, the right of priority cannot be refused merely because the application filed in the country of origin does not include certain elements of the invention for which priority is claimed. The application documents must be drafted to explicitly include these elements. Moreover, if the patent application encompasses multiple inventions, the applicant may divide it into divisional applications, each retaining the date of the initial filing and the corresponding right of priority.

A principal consequence of the priority right is that it precludes third parties from challenging an applicant asserting this right in any Member State. Such a third party is consequently barred

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from relying on its own subsequent filing even if identical in form or pertaining to the same rights provided it was made within the stipulated priority period. As a result, such later filing shall be deemed null and void. (Maghbaghab, 2003, p. 274)

The critical function of the priority right is particularly evident in Member States where novelty constitutes a mandatory requirement. This right safeguard novelty for applicants pursuing protection for multiple inventions, as the sequential filings prevent rejection based on lack of novelty arising from the applicant's own prior disclosures.

The application shall not be refused for lack of novelty on the grounds of the invention's initial filing, prior publication, or prior exploitation. The same legal principle governs industrial designs and models, which are subject to identical protective provisions and mechanisms concerning novelty that is, the priority element in registration applicable to the same or other products. (Farha, 2001, p. 195)

Consequently, in patent law, the right holder is precluded from exploiting the invention within the activities of their establishments that is, through personal exercise of the patent right where the date of such entitlement postdates a Union national's patent application in their country of origin. However, where the holder's right predates such registration by another national, the holder may continue to utilize and benefit from the patent, without prejudice to the rights of the prior user. (Lalanne-Gobet, 1998, p. 300)

Such registration of industrial property in all its forms ensures that the title obtained in one country remains independent of the titles granted in other countries. Consequently, any penalty, nullity, lapse, or other effect affecting the title in one jurisdiction has no impact in the Member States of the Union. Moreover, any judicial proceedings related thereto must be conducted as separate and independent actions. (Salah, 2000, p. 174)

b) Rules for the Registration and International Filing of Industrial Property Rights

The Madrid Agreement of 14 April 1891, amended by the Stockholm Protocol of 14 July 1967, established several rules, the most important of which is the system for benefiting from the international registration of trademarks. This system applies to nationals of the Contracting Parties, whether natural or legal persons who are domiciled in those countries or who carry out commercial or industrial activities therein. For procedural validity, the trademark must first be registered in the country of origin, and based on this registration, the right to international registration is conferred by the Office of the country of origin and effected at the level of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. (Al-Wali, 1983, p. 74)

This gives rise to a number of legal consequences, the most important of which is that the trademark remains connected to its country of origin for a period of five years from the date of registration, with this effect extending uninterruptedly for a period of twenty years. Consequently, the national registration and the international registration are linked with regard to lapses and nullity.

The procedures for the filing of industrial designs and models are administered by the International Bureau of the World Intellectual Property Organization (WIPO) in Geneva. The Bureau carries out the filing, registration, and publication in its periodic bulletins, while transmitting them to the intellectual property offices of all Contracting States, in accordance with the provisions of the London Act of 2 June 1934. (Salah, 2000, p. 196)

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This entails that, upon international filing, the design or model is considered registered, and its owner enjoys ownership vis-à-vis all Contracting States to the Agreement. However, such ownership is a rebuttable presumption, as the validity of the filing procedures is contingent upon compliance with the national legislation of the Member States in this field.

The protection granted under this Agreement extends for a period of fifteen full years from the date of filing, divided by the Agreement into two distinct stages: the first stage lasting five years, and the second stage lasting ten years, conditional upon the payment of fees and the submission of a request for renewal. (Lorad, 2008, p. 68)

With regard to the designation of origin, the procedures for international registration thereof are set out in the provisions of the Lisbon Agreement of 31 October 1958. Under this Agreement, the right to protection must enjoy adequate protection in the country of origin for the designation of origin to be registered internationally, in addition to being recognised by the country of origin. The registration procedure at the International Bureau for the Protection of Industrial Property in Geneva follows subsequently. This procedure falls within the competence of any international filing, carried out by the administration of the Special Union, and is a right guaranteed to persons entitled to a designation of origin under national legislation, a right enjoyed by all persons regardless of their status, whether natural or legal. (Al-Fatlawi, 1988, p. 381)

The Member States of the Union have the right to refuse protection of a designation of origin, based on a reasoned report specifying the grounds for refusal. There may be several reasons for refusal, such as the absence of the necessary conditions for protection in the designation of origin, or that it pertains to place names located within the State. The State exercises this authority within one year from notification of the registration.

The process of domestic recognition is subject to the State's obligation to provide adequate protection for the designation of origin relating to all products originating from any Member State of the Union, safeguarding them from piracy, misappropriation, or duplication of the designation, even if expressed in different languages. (Al-Qalyoubi, 2005, p. 727)

This obligation must be incorporated into the State's national legislation for the registration to be considered procedurally complete.

In the field of patents, and with the aim of promoting cooperation in registration and filing procedures relating to patents, the Washington Treaty was concluded on 19 June 1970. This Treaty established a unified system for patent filing procedures, consisting of a series of steps beginning with the filing of an application at the office of the State party to the Treaty, which retains a copy, sends another copy to the International Bureau, and transmits a third copy to the authorities responsible for the international search. (Farha, 2001, p. 343)

International filing, in accordance with the above procedures, takes the place of national filing and produces the same legal effects, as the international search process requires the preparation of a detailed report aimed at technical analysis and assessing the extent of public knowledge.

To obtain a patent, a copy of the report, together with a copy of the international application, must be sent to the countries where protection is sought, so that each country can determine the entitlement to a patent under its domestic laws, provided that the patent is not granted before twenty months have elapsed from the priority date. (Lalanne-Gobet, 1998, p. 108)

Finally, unlike the mandatory nature of international filing, the preliminary international examination is optional. Contracting States may choose not to adopt this procedure, and the result of the preliminary examination does not bind or constrain the State in granting or refusing

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protection. This examination is optional for the applicant and serves as a precautionary measure, aimed at assessing the patentability of the invention, as well as examining the novelty and inventive step.

3. Rules and Principles for Harmonizing National Legislations in the Field of Counterfeiting

The importance of the principle of treating Union nationals as domestic citizens lies in providing the necessary protection to the citizens of each State, and consequently ensuring adequate protection for the nationals of other Union States. To this end, the Paris Convention established a set of procedures and mechanisms specifically designed and reinforced by the domestic laws of the Contracting States in various areas, particularly those relating to counterfeiting, which will be addressed in this section.

3.1. Common Principles Governing Industrial Property Rights

The Paris Convention contains a set of rules aimed at curbing acts affecting industrial property. These rules comprise a series of measures: the first involves the seizure of counterfeit goods by customs authorities, and the second concerns the fight against unfair competition through strict and more effective mechanisms and procedures.

a) Seizure of Counterfeit Imported Goods and Products

• Identification and Delimitation of Industrial Property Rights Subject to Seizure Procedures upon Importation

The Paris Convention established specific procedures for the protection of trademarks, appellations of origin, and rights relating to trade names. These procedures are entrusted to customs authorities, which immediately seize goods and products deemed to infringe industrial property protection rules. This constitutes an administrative sanction imposed on any producer holding a trademark in one of the Union countries that has been pirated or that uses counterfeit trademarks or trade names in any of the Union States. (Lorad, 2008, p. 71)

The Madrid Agreement focuses in this area on the protection of appellations of origin and reinforces seizure procedures against the use of false indications concerning the source of goods, as well as false or counterfeit information provided by persons or traders, whether directly or indirectly, given that the appellation of origin is considered one of the principal elements in the field of industrial property protection.

This Treaty differs from the Paris Convention regarding criminal intent, i.e., the intent to deceive, since any violation of the aforementioned data exposes the products to seizure even in the absence of criminal intent. By contrast, the Paris Convention includes provisions for protection against fraud through seizure but requires proof of deception on the part of the manufacturer or trader. (Lorad, 2008, p. 72)

The Paris Convention also differs from the Madrid Agreement with respect to the organization of seizure procedures, as it leaves the details of these procedures to domestic laws, although it specifies the authority entitled to request seizure, whether the public prosecutor, the interested party, or the competent administrative authorities in this field. These procedures may apply to both citizens and foreigners who are Union nationals. In accordance with the Paris Convention, the

principle of equality between nationals and foreigners must be applied with respect to seizure procedures and appeals against seizure, in addition to the non-application of seizure to goods in transit or part of transit trade.

- **Import Seizure Procedures under Algerian Law**

The importation of goods and products into Algeria constitutes a fertile ground for counterfeiting, which is understandable given that Algeria relies heavily on imports. Accordingly, Algerian legislators have implemented various mechanisms to curb this phenomenon, as mere criminalization would not be effective in economically combating it. (Maghbaghab, 2003, p. 235)

Consequently, a set of rules and procedures related to imports has been established, notably customs seizure of counterfeit products, aimed at effectively monitoring and controlling goods entering from abroad. The customs seizure process in Algeria involves the confiscation of all goods suspected of being counterfeit, and the legislator has granted customs authorities broad powers to trace the source and hold responsible parties accountable.

This constitutes a preventive seizure aligned with the unique nature of intellectual property, which is inherently intangible. What distinguishes this procedure under Algerian law is that customs authorities are entitled to seize all goods infringing intellectual property rights, unlike French legislation, which limits seizure to industrial designs, drawings, and trademarks.

Under Algerian law, seizure applies to any violation of industrial property rules in all their forms, whether relating to trademarks, appellations of origin, industrial designs, or patents, and additionally extends to all machinery and tools intended for manufacturing such products.

The seizure procedure is established to protect holders of exploitation licenses and those registered with the competent authorities. Accordingly, to benefit from this procedure, the right holder claiming infringement of their industrial property must submit a written request to the customs authorities at the port or airport where the counterfeit goods are located in order to have them seized. The request must include sufficient information to prove ownership of the right and provide the necessary details to identify the products in question, specifying the type of goods, information about the importer, the storage location, and the source or intended destination of the goods.

Conversely, to prevent abuse of the seizure procedure by customs and to protect the importer from damage to the goods, Algerian law obliges customs authorities to suspend seizure procedures and release the goods after three days if the interested party has not submitted a seizure request.

The right holder must provide a security deposit, as determined by customs authorities, to guarantee the intervention. This is intended to protect importers from abuse by industrial property owners, ensure prompt action after seizure, and cover expenses related to the seizure procedures.

Furthermore, the legislator requires customs authorities to notify both the importer and the applicant of the seizure. After notification, the applicant must file a lawsuit to resolve the dispute

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concerning industrial property and inform the customs authorities within ten days from the date of filing; otherwise, the goods will be released. (Salah, 2000, p. 197)

The law allows the customs administration to depart from the principle of professional secrecy, granting the industrial property owner access to necessary information about the holder of the goods, including name and address, as well as the ability to inspect and examine the seized goods, provided that the owner proves that a lawsuit has been filed within the statutory ten-day period.

Conversely, the importer of the seized goods may request their release if the seizure procedures are not followed within the same period, with the obligation remaining to provide an adequate security deposit to protect the interests of the patent holder or the beneficiary of the design or model.

b) Effective Measures for Combating Unfair Competition

Article 1 of the Paris Convention provides that industrial property encompasses matters relating to patents, designs and models, as well as the protection of trademarks, and the combating and suppression of fraud and unfair competition. What are the mechanisms and tools that ensure such protection?

In addition to the principle of equality, the Paris Convention imposes a set of rules obliging Member States to adopt and enforce stringent legislation ensuring adequate protection against unfair competition. These rules specify acts considered to constitute unfair competition, namely: acts that contravene honest practices in industrial or commercial matters, particularly those inherently likely to create confusion with a competitor's establishment, products, or industrial activity; false claims in the conduct of trade that undermine confidence in a competitor's business or products; and statements or representations in commerce likely to mislead the public regarding the nature, manufacture, characteristics, suitability for use, or quantity of goods. (Farha, 2001, p. 352)

The purpose of enacting these substantive rules is to prevent obstacles encountered by some Member States due to the absence of such provisions in their domestic legislation regulating protection against unfair competition, which would otherwise conflict with the principle of national treatment.

Notably, Article 10 of the Paris Convention, in defining acts contrary to fair competition, does not provide an exhaustive list, thereby easing the legislative burden on domestic lawmakers and granting them broader discretion in determining what constitutes acts of unfair competition

The Paris Convention also obliges Member States to combat unfair competition by adopting effective legal proceedings, granting interested parties the right to access the courts through straightforward procedures, and respecting the principles underpinning the judiciary, including the right to appeal in two instances. Moreover, the Convention broadens access to judicial recourse, allowing all parties involved in combating unfair competition such as trade unions and associations of traders and producers to bring claims when unfair competition is identified.

The Paris Convention is not the sole international instrument regulating the rules against unfair competition. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which aims to integrate intellectual property rights into the new global trading system, requires contracting states to take all necessary legal measures to implement the procedures provided therein against infringements of industrial property rights. These measures must be fair, equitable, simple, cost-effective, and free from undue delays or unjustified procrastination. In addition, Member States are required to enforce stringent rules that may extend to criminal sanctions in cases of deliberate counterfeiting of registered trademarks for commercial purposes, thereby ensuring the effectiveness of measures to combat unfair competition.

3.2. Rules for the Protection of Trademarks and Trade Names

The Paris Convention establishes provisions for the protection of trade names and trademarks as essential components of industrial property rights. These provisions encompass core principles, including the national treatment of Union nationals, the suppression of unfair competition, and the imposition of border measures against counterfeit imports. Furthermore, the Convention provides specific measures, such as the prohibition on registering counterfeit trademarks and the protection of trade names throughout all Union countries without any requirement for registration.

a) Protection of trade names in Union countries without the obligation to register them

The protection of a trade name is often linked, in some countries, to its registration with the competent authorities. In other countries, no formalities are required, and ownership of the trade name is determined by prior use. This raises the question of whether international protection of a trade name requires its registration. (Zirouti, 2004, p. 239)

The Paris Convention obliges Union countries to ensure protection of trade names within their territories, as inferred from its Article 8, which provides that member states must safeguard trade names without being required to impose filing or registration. This raises a further question regarding the application of this provision in countries that have no rules on trade name protection, while still combating acts considered unfair competition.

In this context, it can be said that the Paris Convention does not mandate registration. Although the Convention combats unfair competition under Article 10, the rules governing trade names do not fully align with unfair competition provisions. Trade names are afforded protection similar to that provided for trademarks against counterfeiting, because the elements constituting a trade name are essentially the same as those forming a trademark.

Moreover, Article 10 does not define what constitutes a trade name, leaving this to domestic law. Doctrine defines it as “the name used by a trader for their commercial establishment to distinguish it from other similar establishments.” This includes the trade name of an individual trader, which may consist of their personal or family name, or a pseudonym represented by a symbol. For legal persons, such as commercial companies, the trade name varies according to the type of company. In partnerships (e.g., general partnerships), the trade name may comprise the names of all partners, or one or two of them followed by “and partners,” reflecting the personal nature of such companies. In capital companies, the trade name must include the company type and capital value, and may include the company’s purpose. Logos, however, do not constitute trade names and therefore cannot be protected under the Paris Convention except within the framework of provisions combating unfair competition. (Al-Fatlawi, 1988, p. 428)

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b) Prevention of the registration and use of counterfeit trademarks in Union countries

Preventing the registration and use of counterfeit trademarks in Union countries is a fundamental obligation that the Paris Convention has diligently sought to enforce, given its serious impact on the rights of Union nationals. This prohibition is implemented through exceptions to the principle of registering foreign trademarks. (Ilyas, 1985, p. 168)

Among the mechanisms established by the Paris Convention to prevent conflicts between national laws is the obligation for Union countries to accept the filing of any trademark registered in its country of origin according to legal procedures. This ensures that the trademark is legally protected against counterfeiting within Union countries and preserves the legal value acquired in its country of origin.

Exceptions to this rule occur when some countries do not conduct *ex officio* examination of trademarks. This may allow registration of marks lacking distinctive character, potentially affecting third-party rights, and consequently leading to refusal of registration in other Union countries.

These exceptions specifically include prohibiting the registration of counterfeit trademarks in countries where the interested party has applied for protection, as well as preventing registration of marks whose registration would harm fair competition in any Union country. (Lorad, 2008, p. 73)

Trademark counterfeiting includes any act of copying, any sign likely to cause confusion with a well-known trademark, explicit imitation of such trademark for the same products, or partial imitation of its essential characteristics, provided it leads to confusion. If a well-known trademark is registered, the owner may seek cancellation of the infringing trademark within five years from its registration. In cases of bad-faith imitation, this time limit does not apply, and the right holder may seek cancellation even after it expires. (Rachdi, 2002, p. 142)

The TRIPS Agreement applies these provisions to contracting parties, referring to Article 6 of the Paris Convention for the protection of service marks and requiring its rules to be applied to all goods associated with the trademark owner.

These rules play a crucial role in eliminating fraudulent and deceptive practices employed by individuals seeking to exploit well-known trademarks that are either unregistered or unused in their national territory. A person wishing to use a trademark can verify its availability by consulting the records of previously registered trademarks, which underscores the importance of the procedures for acquiring protection through registration. If the mark is unregistered but widely known, its public renown can serve as a substitute for formal registration. (Al-Qalyoubi, 2005, p. 783)

However, this principle raises several issues, chiefly the absence of a precise and uniform definition of “renown,” which is a shortcoming of the Paris Convention, as it does not establish a standard binding on all Union countries. Algerian legal doctrine notes that “renown is a factual condition that may vary over time and place, and therefore cannot be rigidly defined by law. (Ilyas, 1985, p. 178)

According to the TRIPS Agreement, a trademark is considered well-known if it is “recognized by the relevant sector of the public, including knowledge acquired through promotional activities within the member state.” Algerian trademark law, similar to French law, includes provisions regarding well-known trademarks but does not provide a formal definition. Doctrinal interpretations

in both jurisdictions define a well-known mark as “a mark recognized by a substantial segment of the public, not merely by specialists. (Farha, 2001, p. 225)

Technological advancements and modern communication channels, particularly advertising, have accelerated the process by which a trademark gains renown. Geographical scope is also a critical factor, particularly for internationally recognized or globally famous marks. For example, Egyptian law defines a well-known trademark as “a mark known internationally and within the Arab Republic of Egypt.” Marketing, packaging, and promotional strategies, as well as the quality and standard of the product, play a significant role in establishing renown. (Salah, 2000, p. 327)

Finally, Algerian law grants the National Institute of Industrial Property (INAPI) the authority to conduct both formal and substantive examination of trademark applications, following the French model. Under these provisions, registration is refused for “signs that conflict with previously registered marks, or identical to well-known marks in Algeria when used on identical goods in a way likely to cause confusion,” and all signs prohibited by national law or international agreements to which Algeria is a party are excluded. International trademark registrations designating Algeria are also carefully monitored to ensure that they do not fall outside the scope of protection.

4. Conclusion :

The primary purpose of these provisions is to eliminate fraudulent practices whereby individuals attempt to exploit well-known trademarks that are unregistered or not commercially utilized within their national territory. Prospective users of a trademark can verify its availability by consulting trademark registers, underscoring the critical importance of registration mechanisms in securing legal protection. When an unregistered mark has gained substantial public recognition, such renown may serve as an effective substitute for formal registration.

Nevertheless, this framework presents notable conceptual challenges, chiefly due to the lack of a precise, universally applicable definition of “renown” a significant gap in the Paris Convention, which does not establish a binding transnational standard. Algerian jurisprudence reflects this by recognizing that “renown constitutes a factual reality that varies across time and space, and therefore cannot be rigidly codified in law.

The TRIPS Agreement defines a well-known mark as one “recognized by the relevant segment of the public, including through promotional activities conducted within the member state.” Algerian trademark law, following the French model, incorporates provisions for well-known marks without providing a formal definition. Legal doctrine in both jurisdictions generally interprets such marks as those recognized by a substantial portion of the general public, beyond specialized commercial circles.

Advances in technology and communication channels, particularly digital advertising platforms, have significantly accelerated the process by which trademarks acquire renown. Geographical scope remains a key factor, particularly for marks with international recognition. For instance, Egyptian law defines a well-known mark as “one recognized internationally and within the Arab Republic of Egypt.

The Role of International Agreements to Which Algeria Is Party in Combating Industrial Property Counterfeiting

Branding strategies, packaging solutions, and promotional methods play a crucial role in enhancing the visibility and distinctiveness of a trademark, further reinforced by substantial investment in advertising and high product quality standards.

Algerian legislation grants the National Institute of Industrial Property (INAPI) authority to conduct comprehensive formal and substantive examination of trademark applications, in line with French practice. Implementing regulations require refusal of “signs conflicting with prior registered rights, or identical to well-known marks in Algeria when used on identical goods in a manner likely to cause consumer confusion,” and also prohibit signs that contravene national law or binding international agreements. International registrations designating Algeria are subject to rigorous review to ensure compliance with established protection criteria.

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