# Mechanisms for combating trademark counterfeiting (Lawsuits as an example)

**Boudaoud Khelifa [1*] Hamidi Radhwane[2]**
[1] University of M'Sila (Algeria), khelifa.boudaoud@univ-msila.dz
[2] University of M'Sila (Algeria), radhwane.hamidi@univ-msila.dz

**Received**: 7/12/2025 **Accepted**: 3/31/2026 **Published**: 4/23/2026

**Abstract**

This research paper aims to examine the role played by the trademark as one of the most significant intangible assets of a business and a key factor in the success of a commercial venture, by analysing the efforts of the Algerian legislature—in line with comparative legislation—to protect trademarks, particularly in light of the increasing incidence of trademark infringement, which has become a serious and significant phenomenon capable of harming both trademark owners and consumers alike. This is achieved through successive laws relating to trademarks, ranging from Decree 66-57 on trademarks and trademarks, to Decree 03-06 on trademarks.

The study concluded that the Algerian legislature has not merely established civil liability for acts of piracy and trademark infringement by defining the forms of infringement and trademark violation, whether in a contractual context or under the provisions governing unfair competition, as well as the elements of compensation pursuant to Article 124 of the Algerian Civil Code, but also by reinforcing this with criminal provisions through the imposition of deterrent penalties against trademark infringers.

**Keywords**: trademark, commercial establishment, imitation, civil protection, criminal protection.
**JEL Classification Codes**: K

## 1. INTRODUCTION

* : ***Boudaoud Khelifa.***

 ISSN 2623-2602/ EISSN: 2716-8891

Industrial property rights are of such importance that they have attracted considerable attention from both economists and lawyers. They comprise two main sections. The first section relates to the substantive aspect, as it concerns new innovations such as patents, designs and industrial models. The second part relates to the formal aspect, as it aims to distinguish products and goods from one another, such as designations of origin and trademarks. The latter have become an important commercial asset, with some global brands reaching millions of dollars in value internationally. Given the extreme importance and role of trademarks for both producers and consumers, this has led to multiple forms of infringement. Perhaps the most significant form of trademark infringement is trademark counterfeiting, as it is the most widespread at the national and international levels, on the one hand, and the most influential at various levels, on the other.

Particularly given that Algeria has, on numerous occasions, expressed its desire to join the World Trade Organisation, and the subsequent serious measures it has taken in accordance with the TRIPS Agreement in an effort to bring its legislation into line with that agreement, as evidenced by its recent ratification of numerous international agreements relating to industrial property and copyright. However, the strength of counterfeiters and their distribution at national, and even internationally, as well as the fact that they change their strategy from time to time by targeting regions and countries characterised by weak protection of trade-related intellectual property rights, have prevented the control of this illegal parallel market due to the incentives it offers consumers, particularly in terms of price and availability.

Although Algeria has not yet formally acceded to the TRIPS Agreement as a direct party, as it has not yet completed the procedures for accession to the World Trade Organisation (WTO). Nevertheless, Algeria has adapted and updated its national legislation on intellectual property and patents to bring it into line with the standards of this international agreement as part of its ongoing negotiations to join the Organisation.

It is also important to note the difference between the terms ‘counterfeiting’ and ‘imitation’ in the field of trademarks. Counterfeiting involves the exact replication of an original trademark and its use on non-genuine products to deceive the consumer, whereas imitation is the creation of a ‘resemblance’ in form, name or colour without complete identity, thereby causing confusion amongst the public; both cases constitute an infringement of intellectual property rights. The Algerian legislator has adopted the comprehensive concept of imitation in Decree No. 06-03 on trademarks, stipulating in Article 26 of the same law that any infringement of the exclusive rights of the trademark owner constitutes an infringement, thereby classifying all infringements of the trade mark under the term ‘imitation’.

This has led to international and national efforts to combat trademark counterfeiting as part of the fight against industrial property rights infringement through preventive and enforcement mechanisms, which vary between administrative, judicial

and legal mechanisms. The Algerian legislature has enshrined the latter in Order No. 03/06 on trademarks (Order No. 03/06, 2003), Through numerous preventive and remedial actions, the former consisted of civil cancellation and invalidation actions as means of enforcing the trademark legal system, while the latter varied between civil and criminal actions to counter trademark infringements, including trademark imitation in its broadest sense (the subject of our study), and clarifying the economic effects of this type of trademark infringement, which leads us to pose the following question:

**How has the Algerian legislature regulated litigation as a mechanism to combat trademark counterfeiting? What impact does counterfeiting have on the economy?**

To answer this question, we have divided this paper into the following main sections:

**First section: Civil proceedings as a means of protecting trademarks from counterfeiting**

**Second Section: Criminal proceedings as a means of protecting trademarks from counterfeiting.**

**Third axis: The impact of trademark infringement through counterfeiting on the economy**

## 2. Civil proceedings as a means of protecting trademarks from counterfeiting

Civil lawsuits generally aim to stop the violation of protected rights and enable the owner of those rights to receive compensation. The legal basis for this can be found in Article 124 of the Civil Code (Order No. 75/58, 1975), which states: ***"Any act committed by a person through their own fault that causes harm to others shall require the person responsible for causing it to pay compensation ".***

Since trademark rights are like other rights, which are protected by various civil laws, Therefore, anyone whose trademark has been infringed upon by imitation may file a civil lawsuit against the infringer, demanding compensation and the cessation of the imitation, as established by the Algerian legislature through Order 03/06 on trademarks and Law 04/02 on the rules applicable to commercial practices (Law No. 04/02, 2004).

We will address compensation claims, or what some refer to as civil imitation claims, followed by unfair competition claims.

### 2.1. Compensation claim for trademark infringement

The general rule is that there are two ways to file a compensation claim. The first is an original claim, whereby the owner of the infringed trademark can file a claim before the commercial court to demand that the infringement of the trademark be stopped and compensation be paid. The second is to go before the criminal court and submit the aforementioned requests, which is known as a civil claim by implication. Therefore, we will attempt to clarify the legal basis for compensation claims and their conditions, and then review the most important consequences of filing such claims.

 ISSN 2623-2602/ EISSN: 2716-8891

### 2.1.1. Legal basis for the compensation claim and its conditions

This claim is based on the provisions of Articles 28 and 29 of Order 03/06 on trademarks, Article 28 of which states that: " **The proprietor of the registered trade mark shall have the right to take legal action against any person who has committed or is committing an infringement of the registered trade mark; he shall have the same right against any person who has done or is doing anything which makes it likely that an infringement will be committed..**", The first paragraph of Article 29 also stipulates that **" Where the proprietor of the trade mark registration proves that infringement has been or is being committed, the competent court shall award civil damages, order the cessation of the infringing acts, or make such proceedings conditional upon the provision of guarantees to ensure compensation for the proprietor of the trade mark or the beneficiary of an exclusive right of exploitation.... "** (Order No. 03/06, 2003).

This means that the claim for compensation is based on the act of imitation, and that in order to file a claim for compensation, the trademark to be protected must have been registered with the competent authority (Samah, 2016, pp. 73-75), Because Algerian lawmakers did not grant the right to file a claim for compensation in the event of infringement of an unregistered trademark, and prohibited the use of unregistered trademarks throughout the national territory or those for which no application for registration has been filed, pursuant to Article 04 of Order 03/06. It went even further by making the use of unregistered trademarks a criminal offence punishable by law, pursuant to Article 33 of Order 03/06. The Algerian legislator considers registration to be the origin of trademark ownership and not a disclosure thereof (Hamadi Zoubir, 2012, p. 163).

However, there is an exception to the aforementioned rule, whereby the Algerian legislator, through the last paragraph of Article 09 of the aforementioned Order 03/06, has granted protection to well-known trademarks without requiring them to be registered (Order No. 03/06, 2003)**.**

This is what the French legislator has done, despite distinguishing between two types of well-known marks in the context of trademark protection under Article 713/5 of French Intellectual Property Law No. 92/597 of 1992. The first paragraph of the above article provides for the protection of ‘well-known marks,’ which is a mark that is well known in France, registered there and enjoys a special power of attraction, which gives it an impact on the public even if it is used to distinguish products and services other than those mentioned in the trademark register. Therefore, its use by others to distinguish different products and services is considered a diversion of its function in attracting and advertising goods or services. The type is a ‘well-known’ mark, as defined in Article 6bis of the Paris Convention, which is stipulated by French law in the second paragraph of Article 731/5 of the Intellectual Property Code of 1992. This mark is well known in France, but it is not registered, which means that others may use it to distinguish similar

products or services, constituting an infringement of the mark, which requires protection. The French legislature has granted an exception to this protection for this type of mark from the rule of trademark ownership by registration, which is known as the principle of territoriality of the mark, although jurisprudence considers this to be merely a difference in wording that has no effect in reality. Therefore, according to French law, a well-known mark is a registered mark, and a widely known mark is an unregistered mark, but it must be protected according to (Article 06/02) of the Paris Convention for the Protection of Industrial Property (Mamdouh, 2020, p. 83).

### 2.1.2. The consequences of filing a compensation claim

The purpose of a compensation claim is to stop all acts of infringement against the trademark, regardless of their form, whether they involve acts of counterfeiting, imitation, usurpation or similarity (Saleh, 2008, p. 257).

Furthermore, the request by the judicial authority does not require the trademark owner to prove that he has actually suffered damage because of this infringement; it is sufficient that his right to the trademark has been infringed. The existence and extent of the damage are only taken into account in relation to the percentage of compensation and the amount of compensation awarded (Salami, 2012, pp. 189-190).

The right to a trademark entitles its owner to prevent others from infringing upon it, including imitation, regardless of whether damage has been caused or not. As for compensation, the judge rules on it once the act of imitation is proven, provided that the compensation is subject to the actual damage and the economic value of the trademark, which is difficult for the judge to determine as it is a technical matter that requires the expertise and specialization of others. It should also be noted that the judge may increase the amount of compensation if he is convinced of the perpetrator's bad faith (Nouri Hamad Khater, 2005, p. 335).

The compensation awarded by the court may include the loss of earnings and other losses incurred by the owner of the trademark. In addition to compensation, the judge may also rule to invalidate or cancel the registration of the counterfeit trademark, as provided for in Article 29, which states: **"...The competent court may, where appropriate, order any other measure provided for in Article 30 below..."**

The measures referred to in Article 30 are the cancellation or invalidation of the registration of the mark (Fadila, 2016, pp. 184-185).

### 2.2 Unfair Competition Lawsuit

Both the law and the judiciary allow economic agents harmed by unfair competition to resort to the courts and file a civil lawsuit, known in legal terms as an unfair competition lawsuit, before the competent court to seek compensation for the damage caused to them by acts of unfair competition, taking into account the elements of negligence against the economic agent who committed one of the acts of unfair competition in accordance with the general rules (Daghish, 2017, p. 13).

Law 04/02 (Law No. 04/02, 2004), also defines the rules applicable to commercial

 ISSN 2623-2602/ EISSN: 2716-8891

practices and identifies unfair commercial practices, or what is known as unlawful competition. Therefore, we will attempt to examine the extent to which this law covers trademark imitation as a form of unfair competition, referring to the definition of the latter in the first section, and then addressing the conditions for unfair competition claims as a form of trademark protection in the second section.

### 2.2.1. Definition of unfair competition claims and their legal basis

We will discuss the definition of unfair competition and its legal basis.

#### 2.2.1.1. Definition of unfair competition

Competition refers to the rivalry between merchants or manufacturers to promote their products and services by attracting the largest number of customers, based on the freedom of competition between them and the freedom of choice for consumers. If competition is achieved in accordance with the provisions of the law, commercial customs, and contracts, this leads to numerous economic benefits, whereas if it deviates from those limits and provisions, it is considered unfair competition (Suweidat, 2012, pp. 101-102), Unfair competition is defined as competition that uses methods contrary to customs, traditions, and commercial laws, harms the interests of competitors, damages the reputation of others, raises doubts about their products, undermines confidence in their establishments, and provides false information about goods, thereby misleading the public (Ali, 2018, p. 403), Therefore, an unfair competition lawsuit is one of the means recognized by law for the trademark owner to protect himself from others who have committed acts contrary to commercial customs and practices, causing him harm (Jabbar, 2002, p. 122), The aforementioned works include trademark imitation.

#### 2.2.1.2. Legal basis for unfair competition claims

Algerian lawmakers have not regulated unfair competition claims or specified their conditions or legal basis, but have merely listed certain practices that they consider to be unfair. In the context of trademarks, the legislator stated that imitating the distinctive marks of a competing economic operator, imitating its products or services, or imitating its advertising, with the intention of winning over that operator's customers by sowing doubts and illusions in the minds of consumers, constitutes unfair competition, as provided for in Article 27 of Law 04/02 (Law No. 04/02, 2004).

### 2.2.2. The scope of unfair competition claims to protect trademarks from imitation and their conditions

We will address the specific scope within which unfair competition claims can be brought to protect trademarks from imitation, and then we will address their conditions.

#### 2.2.2.1. The scope of unfair competition claims to protect trademarks from imitation

In principle, the filing of an unfair competition lawsuit is not limited to the owner of the registered trademark, as long as the law grants him the right to protect his

trademark by resorting to a civil lawsuit based on the provisions of Order 03/06, and the legislator is satisfied with the mere possibility of damage to the trademark owner. Therefore, an unfair competition lawsuit can be filed by anyone who has suffered damage because of unfair competition, whether they are the producer or distributor of the trademark. Consumers can also file such a lawsuit to seek compensation for the damage they have suffered (Miloud, Unfair competition claims as a form of civil protection for trademarks in Algerian law; op. cit, 2012, pp. 180-181), On the one hand, if the Algerian legislator does not allow compensation for imitation of a trademark except to the owner of the registered trademark in accordance with the compensation claim under Order 03/06, as we mentioned earlier, when considering the imitation of distinctive trademarks in Article 27 of Law 04/02 as unfair competition, it did not refer either directly or indirectly to the issue of whether or not the trademark was registered. This has led some to say that an unfair competition claim can be brought even if the trademark is not.

However, this argument is invalid according to others, because the text of Article 27 of Law 04/02, which broadened the scope of protection, conflicts with the text of Article 04 of Decree 03/06, which prohibits the use of unregistered trademarks throughout the national territory or those for which no application for registration has been filed, as well as Article 33 of Order 03/06, which makes the use of unregistered trademarks a punishable offense. This limits the scope of unfair competition claims to the protection of registered trademarks, this is what the Jordanian and Lebanese legislators have adopted, granting the owner of an unregistered trademark the right to protect his trademark through an unfair competition lawsuit (Abdelkader, 2017, p. 80).

### 2.2.2.2. Conditions for an unfair competition lawsuit

In order to file an unfair competition lawsuit due to trademark imitation, there must be commercial competition in addition to the elements required by law for liability, which are as follows:

#### 2.2.2.2.1. The existence of unfair competition acts

For an act to be unlawful, it must have been committed by one trader against another trader engaged in the same or at least a similar type of activity. If these conditions are not met, there is no element of fault, as it cannot be assumed that there was competition between two traders, one of whom competed with the other in an activity different from that of the other (Ali, 2018, p. 408), However, we note that the error occurs in the case of unfair competition, whether it is intentional or merely negligent and imprudent, i.e., whether the competitor had the intention to harm others and acted in bad faith, or whether the error was unintentional and caused by the competitor's negligence (Zine al-Din, 2000, p. 387).

Referring to Article 27 of Law 04/02, we find that it defines the concept or cases of unfair competition. It is noted from its text that the Algerian legislator mentioned the act of imitation carried out by third parties to harm the owner of the trademark, for example, but not limited to, which is understood from the phrase “in particular.” This

 ISSN 2623-2602/ EISSN: 2716-8891

leaves the door open for judicial discretion to include other examples of acts that constitute unfair competition against trademarks and other intellectual property rights (Samah, 2016, p. 87).

It should also be noted that Law 04/02 raises issues regarding unfair competition in relation to trademarks and its reference to the imitation of trademarks in Article 27, because Order 03/06 uses the same term "imitation of trademarks" which has led to a divergence of opinions between those who believe that unregistered trademarks fall within the scope of unfair competition claims and those who believe the opposite. Therefore, some believe that the legislator should avoid the term "imitation of trademarks" in Article 27 and suffice with the phrase “infringement of the distinctive marks of a competing economic entity or infringement of its products or services” and establish protection for unregistered trademarks through unfair competition claims (Miloud, Unfair competition claims as a form of civil protection for trademarks in Algerian law; op. cit, 2012, pp. 182-183).

### 2.2.2.2.2. Existence of damage resulting from acts of unfair competition

Civil liability proceedings aim to compensate the injured party for the damage suffered. However, there is a tendency to argue that unfair competition does not depend on the existence of damage, as judges may be asked to remove, prevent, or stop actions that cause confusion between two similar businesses belonging to competing traders in the same field, without this depending on proof that damage has been has been caused. It may be that the competitive activities cause disruption in the market, harming merchants who trade in the same goods, without attracting customers to a particular store. Therefore, every merchant has the right to file an unfair competition lawsuit to compel the competitor to cease activities that constitute unfair competition without proving any damage. Some have therefore argued that it is sufficient for the damage to be likely to occur.

Thus, an unfair competition lawsuit has a preventive function in addition to its original function of compensating for damage. Therefore, a ruling may be issued to cease the unlawful activities, but a lawsuit for compensation based on unfair competition may not be filed unless it is proven that damage has been caused and to the extent necessary to compensate for the damage (Suweidat, 2012, pp. 124-125).

The damage to be proven in an unfair competition lawsuit is the diversion of customers away from the plaintiff's products or goods because of the imitation of the trademark, in accordance with paragraph 02 of Article 27 of Law 04/ 02 The burden of proving damage lies with the claimant in accordance with general rules, but it is difficult to prove in cases of unfair competition. Therefore, court rulings do not require proof of actual damage but are based on facts that would cause damage to the claimant. The assessment of damage is often carried out with the help of experts (Fadila, 2016, pp. 154-185).

### 2.2.2.2.3. The causal link between acts of unfair competition and damage

A claim for compensation by the injured party because of unfair competition requires a causal link between the acts of unfair competition committed by the trademark infringer and the damage suffered by the owner of the infringed trademark. If the trademark owner cannot prove this relationship between the act of counterfeiting and the damage incurred, he cannot benefit from compensation for the damage. According to Law 04/02, compensation can only be claimed after the damage has occurred and the injured party has proven the causal relationship between the acts of competition and the damage incurred. It is also necessary to prove actual damage, not potential damage (Miloud, Unfair competition claims as a form of civil protection for trademarks in Algerian law; op. cit, 2012, p. 184).

## 3. Criminal proceedings as a means of protecting trademarks from counterfeiting

A registered trademark enjoys dual legal protection, civil and criminal, the latter granting its owner the right to prosecute anyone who counterfeits the trademark and to seek criminal penalties against them, it also grants the owner the right to seek civil damages for harm caused by the counterfeiting of the trademark. Although Algerian legislation 03/06 specifies the acts that constitute trademark infringement, which in turn constitute crimes punishable by law in general, and sets out the penalties for such acts, this section will focus on criminal protection only in relation to crimes associated with trademark counterfeiting, excluding crimes not associated with trademark counterfeiting.

### 3.1. Criminal Protection against Trademark Counterfeiting

When discussing criminal protection, we must first clarify the conditions that must be met in order to grant such protection to a trademark, and then the crimes associated with trademark counterfeiting.

#### 3.1.1. Conditions for Bringing Criminal Proceedings to Protect a Trademark against Counterfeiting

The Algerian legislator has stipulated that criminal proceedings aimed at protecting a trademark from counterfeiting can only be brought by the owner of the trademark, in accordance with Article 28 of Order 03/06, which states that **" The holder of the trademark registration has the right to take legal action against any person who has committed or is committing an infringement of the registered trademark... ",** It also gives the licensee the right to use the trademark when the conditions set out in Article 31 of Order 03/06, which states that the licensee of the trademark may bring criminal proceedings to protect the trademark he uses if the owner of the trademark does not exercise his right to bring proceedings himself, provided that the license agreement does not stipulate that the licensee may not bring proceedings against the infringer of the trademark (Order No. 03/06, 2003)**.**

Returning to the text of Article 28 of Order 03/06, we find that the legislator requires that the trademark be registered in order for its owner to be able to bring

 ISSN 2623-2602/ EISSN: 2716-8891

criminal proceedings against the infringer, i.e. the trademark owner must have taken all the necessary legal steps to register his trademark with the Algerian National Institute of Industrial Property. Therefore, the owner of the trademark cannot file a criminal lawsuit before initiating or completing the registration procedures, or even after the registration period has expired without renewing it in accordance with the legal period stipulated, considering that the act of infringement does not constitute a crime in this case (Rachdi, 2012, p. 235).

Article 27 of Order 03/06 also stipulates that acts prior to the publication of the trademark registration cannot be considered an infringement of the trademark owner's rights, as the registration is only valid against third parties from the date of its publication. However, Algerian law protects well-known trademarks even if they are not registered, in order to prevent the registration of similar or identical trademarks that could mislead or confuse consumers. In order for criminal protection to apply, the trademark must meet certain objective conditions, as failure to meet any of these conditions would prevent criminal proceedings from being brought.

It should also be noted that criminal protection applies to products covered by the registered trademark in accordance with the principle of trademark specificity. The same trademark cannot be used to distinguish products and services other than those for which it was registered, and protection cannot be sought if it is infringed, because there is no infringement of the right to the trademark in this case, as the Algerian legislator stipulates in the first paragraph of Article 09 that: **"Trademark registration confers on its owner a property right over the goods and services it designates..."**, This means that the owner enjoys an exclusive right over these goods and services, which means that the use of the trademark by third parties on different products and services does not constitute imitation under Order 03/06, but may be considered harmful according to the rules of liability (Samah, 2016, pp. 124-125).

### 3.1.2. Crimes related to trademark counterfeiting

Contrary to Order 66/57, which has been repealed (Order No. 66/57 , 1966), Which includes images of infringement of the trademark in Articles 28 to 30, Order 03/ 06 did not include those images, but Article 26 thereof made any act that infringes on the exclusive rights of a registered trademark by a third party a misdemeanor of imitation, which confirms that this text has covered all acts that may constitute an infringement of the registered trademark without specifying them, This is what led us to talk about the misdemeanor of trademark counterfeiting, referring only to other types of misdemeanors related to trademark counterfeiting without going into detail.

The offence of trademark infringement presupposes the existence of an original registered trademark that distinguishes certain goods or products and that someone infringes upon it by imitating it. Imitation occurs indirectly when there is a similarity in the overall appearance between the original registered trademark and the other trademark, leading to the possibility of confusion between them (Bali & Nouri , 2007, pp.

40-41).

The Algerian legislator defined trademark infringement in Article 26 of Order 03/06 as follows: **"…any act infringing the exclusive rights to the trademark committed by third parties in violation of the rights of the trademark owner..."**, The legislator adopted a broad concept of imitation, considering any unlawful use of the trademark by a third party to constitute an offence of imitation (Wali & Salami, 2018, p. 94), The following elements must be present for trademark infringement to be established:

**- Legal basis**

With regard to trademarks, Algerian law explicitly criminalises trademark counterfeiting in Article 26, which states: **"Subject to the provisions of Article 10 above, any act infringing the exclusive rights to the trademark committed by third parties in violation of the rights of the trademark owner constitutes an offence of trademark infringement.**

**La contrefaçon est une infraction sanctionnée des peines prévues par les articles 27 à 33 ci-dessous. "** (Hamadi & Youssefet, 2018, p. 33)**.**

**- The material element**

The material element in the offence of trademark imitation is the creation of a mark that is identical, identical or similar to the registered mark in whole or in part, which is likely to cause confusion among the public between the two marks when there is similarity between them in their overall appearance, or what is known as deceptive similarity. It should be noted that it is established in jurisprudence and case law that the fact of imitation or not is considered an objective matter that falls within the jurisdiction of the trial judge without supervision, provided that the reasons on which it is based are valid (Bali & Nouri , 2007, p. 41).

To determine whether imitation has occurred, the following shall be taken into consideration:

- It is not permissible to decide on imitation based on the original and imitated marks side by side and searching for differences between them, It is sufficient to consider the general similarity between the two marks, even if they differ in minor details, because what catches the eye of the average consumer is the overall appearance of the mark without scrutinising its details. Therefore, the mark must be considered as a whole, not as the sum of its parts. The lesson is in the general image that is imprinted in the mind of the average consumer of that mark and the way it stands out, even if the whole word is pronounced audibly.
- When assessing the similarity between the two marks, the criterion should be the assessment of the average person or consumer of average care and attention, not the astute and vigilant consumer who exaggerates in examining and scrutinising the goods before purchasing them, nor the careless consumer who purchases without conducting any examination or scrutiny (Bali & Nouri , 2007, pp. 41-42).

 ISSN 2623-2602/ EISSN: 2716-8891

The similarity between trademarks lies in the type of goods or services that bear that trademark. A trademark is not considered counterfeit if it relates to goods and items that are different from those for which the original trademark is intended, such as when the original trademark relates to tires and the other relates to medical drugs (Fadila, 2016, p. 215).

**- The moral element**

The moral element in the crime of trademark counterfeiting is the intent to defraud, as it requires that the perpetrator have the intent to defraud, especially since this crime has two objectives:

- Infringement of trademark rights.
-Deceiving and misleading consumers, whether the deception is confirmed or proven.

The Algerian legislator has assumed bad faith on the part of the perpetrator of the crime of imitation and assumed that they were aware that the original trademark was registered and cannot claim ignorance of it, and therefore cannot claim good faith.

This intent can be inferred from a number of indications, as a person is considered to be counterfeiting a trademark if they manufacture that trademark or any other similar trademark in a way that leads to deception and without the consent of its owner. Furthermore, imitation cannot be considered a mere coincidence or innocent agreement, and therefore a legal presumption of bad faith on the part of the accused of imitation is established, but it is a simple legal presumption that can be rebutted, i.e., the crime can be denied by establishing evidence of one of two things:

First, that the act was done with the consent of the owner of the mark, and second, that the act did not lead to deception and misrepresentation of the public However, in practice, the moral element can be assumed and does not need to be proven, because the Algerian National Institute of Industrial Property publishes all registered trademarks in the official gazette, and therefore there is no excuse for ignorance of the law, as this gazette serves as a means of informing the public, preventing those concerned from claiming ignorance (Basma, 2015, p. 41), Especially since the criminal text of the misdemeanor of imitation in Article 26 of Order 03/06 did not include any phrase implying intent or deliberation, unlike the text of Article 33 of Order 03/06, which stipulated the phrase ‘intentionally,’ which means that when the legislator required criminal intent in the aforementioned Article 33, it included the phrase ‘intentionally,’ which means that it did not require it in the aforementioned Article 26.

Finally, it should be noted that there are other offences relating to trademark counterfeiting that are not mentioned by the Algerian legislator in Order 03/06, unlike the repealed Order 66/57 which was repealed in 2003, These include: the offence of trademark forgery, the offence of using a counterfeit trademark, the offence of selling or offering products or services bearing an identical or similar trademark, and the offence of affixing a trademark owned by another party.

## 3.2. Penalties for offences related to trademark counterfeiting

These penalties include two types of penalties: primary and supplementary penalties. Therefore, the original penalties for crimes related to trademark counterfeiting will be addressed first, followed by the supplementary and accessory penalties for crimes related to trademark counterfeiting, in order to determine the extent to which criminal protection is provided for trademarks through penalties, as follows:

### 3.2.1. Original penalties for crimes related to trademark counterfeiting

The original penalties for crimes related to trademark counterfeiting, as determined by Order 03/ 06 include imprisonment and fines. The Algerian legislator, in Article 32 of the aforementioned Order, stipulated this penalty as an original penalty, setting the term of imprisonment at six months to two years and combining it with a fine of two million five hundred thousand dinars (2.500.000) DA to ten million dinars (10.000.000) DA. In the same article, the Algerian legislator also authorised the judge to impose both penalties together (Ben Jdid, 2017, p. 47).

### 3.2.2. Additional penalties

In addition to the aforementioned original penalties stipulated by the legislator in Article 32 of Order 03/06, supplementary penalties have also been stipulated to provide greater protection for trademarks and put an end to the crime of counterfeiting. The judge must impose these penalties in the event of a conviction for counterfeiting. They are mainly as follows:

#### 3.2.2.1. Confiscation

In Article 32 of Order 03/06, the Algerian legislator stipulated confiscation as one of the supplementary penalties that the court may impose, whereby the judge orders the confiscation of the products and tools that are the subject of the offence. In order to apply this penalty, the offence must have been committed and proven. In the previous legislation, the judge was not obliged to order confiscation, as it was optional. due to the use of the phrase ‘may’ in the legal text, the situation is different in the current provisions, which state that the perpetrator of the offence of counterfeiting shall be punished by imprisonment and a fine or by one of these two penalties, with the confiscation of the objects, means and tools used in committing the offence. Confiscation can only be pronounced in the case of a criminal penalty (Wali & Salami, 2018, pp. 112-113).

#### 3.2.2.2. Destruction

Article 32 of Order 03/06 on trademarks stipulates that, in the event of a conviction for trademark counterfeiting and the imposition of a prison sentence or fine, the items used in the counterfeiting must be destroyed. This is mandatory and not subject to the discretion of the court. The court may order the destruction of all stamps, trademark samples, advertisements, packaging materials, and signs used to commit the offence, i.e. all items used in the trademark infringement. This order is mandatory and not optional, and is justified by the aforementioned considerations of confiscation, the value of the trademark, and the need to protect it and save its reputation (Wali & Salami,

 ISSN 2623-2602/ EISSN: 2716-8891

2018, p. 114).

### 3.2.2.3. Temporary or permanent closure of the establishment

The Algerian legislator included this penalty in the aforementioned Article 32, unlike the repealed Order 66/57, which did not refer to this type of supplementary penalty. In addition to the imprisonment and fine imposed on the perpetrator of the offence of counterfeiting, the court hearing the case shall order the temporary or permanent closure of the establishment. It is clear from the wording of Article 32 that the court hearing the case is obliged to apply the penalty of closure, after imposing imprisonment and/or fines, and it is solely up to the court to decide whether to impose a temporary or permanent closure. Furthermore, the legislator has not specified the maximum duration of the temporary closure of the establishment, and therefore the matter is left to the discretion of the court (Ben Jdid, 2017, p. 48).

It is worth noting that previous Algerian legislation provided for the penalty of publication, whereby the court could order the text of the judgment to be posted in places it specified and published in full or in summary in newspapers it designated, all at the expense of the convicted person. However, the current provisions do not mention the publication of the judgment as an additional penalty.

Furthermore, the court cannot order the publication of the judgment in full or in part in a newspaper or its posting in specific places except in cases specified by law.

In this regard, we believe that there should be a penalty for publishing the judgment issued in trademark crimes, given its benefits, the most important of which is exposing the accused to the public and warning them against dealing with the perpetrator of the crime. Publication also provides moral compensation to the trademark owner for the moral damage caused to the reputation of the trademark. We therefore propose that the Algerian legislature include this penalty in the text of Article 32, all in order to achieve the highest degree of criminal protection for trademarks (Ben Jdid, 2017, p. 114).

Furthermore, the court cannot order the publication of the judgment in full or in part in a newspaper or its posting in specific places except in cases specified by law.

In this regard, we believe that there should be a penalty for publishing the judgment issued in trademark crimes, given its benefits, the most important of which is exposing the accused to the public and warning them against dealing with the perpetrator of the crime. Publication also provides moral compensation to the trademark owner for the moral damage caused to the reputation of the trademark. We therefore propose that the Algerian legislature include this penalty in the text of Article 32, all in order to achieve the highest degree of criminal protection for trademarks.

## 4. The impact of trademark infringement through counterfeiting on the economy

Commercial fraud, counterfeiting and piracy, particularly in the field of trademarks, are major issues that concern all countries and the companies involved, given their negative impact on consumers, traders and the national economy alike.

Indeed, the damage extends to foreign investment in particular and technological progress in general.

Therefore, combating commercial fraud, counterfeiting and intellectual property rights violations requires redoubled efforts by governments, regions and countries through joint cooperation to protect consumers and the rights of creators and owners of original products in order to preserve society and facilitate fair international trade, given the global impact of this phenomenon on all countries of the world. The economic costs borne by society vary and multiply depending on the different forms and manifestations of this phenomenon. In this section, we will attempt to examine the effects of trademark infringement and the costs it entails, including those borne by the state and affecting the national economy, those affecting consumers, and those affecting trademark owners. However, before addressing these negative effects of trademark infringement, we will discuss the economic importance of trademarks in the following sections:

## 4.1. The economic importance of trademarks

Consumers' focus on the quality of the product or service they purchase has led traders to use marks to distinguish their products and services from other similar products and services. This highlights the role of trademarks in protecting consumers against any fraud or deception regarding the origin and quality of goods. It aims to improve industrial function and protect the national economy by ensuring the quality of goods, identifying the true source of the product, and protecting it against unfair competition. Therefore, the economic importance of the trademark stems from the functions it performs for the manufacturer, the trader, the service provider, and the consumer. The most important of these functions are as follows:

### 4.1.1. The trademark as an identifier of the source of products, goods and services

This is done by identifying the producer and the regional source of production, which makes it easier for consumers to distinguish between products or goods similar to the intended brand, as the brand name on the product is sufficient to attract consumers without the need to describe or characterise the item to be purchased. This is because the trademark derives its strength from the quality of the products it symbolises, which motivates consumers to prefer it over others in the commercial field and drives the trademark owner to develop and improve their products and services in order to maintain the reputation of their trademark and the trust of their customers (Khashroum, 2008, p. 145).

### 4.1.2. Trademarks are a means of legitimate competition

The trademark is one of the important means of economic project success, through its dual function of serving the interests of the merchant or manufacturer by distinguishing their goods or merchandise from other goods and merchandise, which naturally facilitates access to consumers for these merchants or producers on the one hand. On the other hand, trademarks serve consumers by enabling them to identify the

 ISSN 2623-2602/ EISSN: 2716-8891

goods, merchandise or services they prefer and find more acceptable than others Therefore, the existence of trademarks is fundamental to protecting consumers from fraud and deception. The economic function of trademarks is also evident in the significant contribution that products or services make to the economy and development, which has led to the expansion and spread of companies across the world after acquiring a distinctive trademark and becoming highly competitive in terms of their products, Not to mention the role of customs control in facilitating the customs clearance of goods for economic operators and contributing to reducing congestion in ports and airports, turning them into transit areas rather than storage areas. Customs control also contributes to protecting trademarks and industrial brands from all illegal exploitation and provides them with the appropriate legal and economic climate to carry out their legitimate functions, which further contributes to economic growth (Mohamed Mostafa Zerbani, 2019, pp. 224-225).

## 4.2. Economic consequences of trademark infringement

It has been said that the diversity and multiplicity of forms and types of trademark infringement can have negative consequences, some of which are borne by the state and affect the national economy, some of which affect consumers, and others which affect trademark owners. We will therefore break this down as follows:

### 4.2.1. The economic impact of counterfeiting and trademark infringement on the state

Counterfeiting and trademark infringement cause serious economic damage to the state, particularly in relation to the reluctance of trademark owners to invest in countries where counterfeiting and infringement are widespread, which affects investment and consumption patterns. There are also economic costs borne by the national economy, either due to the presence of poor-quality counterfeit goods on the market that attract low-income consumers, or as a result of importing medicines from abroad to treat diseases caused by malnutrition resulting from commercial and industrial fraud, or the state resorting to importing important goods in the event of a domestic production deficit, which results in damage to the state due to damage to the national economy, as imports are made in hard currency (Mohamed, 2021, p. 213).

Statistical data on the costs of counterfeiting, as reported by the Organisation for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) indicate that trade in counterfeit goods has grown significantly, accounting for approximately 3.3% of global trade in 2019, equivalent to $509 billion. This trade encompasses a wide range of goods, from consumer goods (clothing, footwear) to industrial goods, affecting various economic sectors.

As for the World Intellectual Property Organization (WIPO) affirms in its studies that intellectual property rights, if not protected, will cause economic “distortions,” particularly in developing countries, where imitation reduces incentives for innovation and investment. This is achieved by seeking to strike a balance between protecting

intellectual property rights and facilitating international trade, especially since imitation affects overall economic development.

In Algeria, counterfeiting is considered a serious phenomenon that affects the country's commercial reputation, contributes to the loss of tax revenue, and threatens the safety of Algerian consumers. Studies have shown that counterfeiting affects a wide range of sectors, as evidenced by seizures of counterfeit goods originating from countries such as Japan and the United Arab Emirates. Algerian customs authorities intervene directly to limit the entry of these goods, particularly industrial products and consumer goods. Algerian researchers also note that counterfeiting, as a crime punishable by law, imposes high economic costs on innovative and productive companies (Al-Ammar, 2022).

### 4.2.2. The economic impact of counterfeiting and trademark infringement on consumers

One of the negative economic effects of trademark fraud and counterfeiting on consumers is the loss of money due to the purchase of counterfeit goods, which are of poor quality, if not outright unsuitable, and sold at lower prices. This threatens consumer health and undermines confidence in the market due to the availability of products that do not meet the required standards. This may even lead to economic costs resulting from medical treatment for illnesses caused by counterfeit goods or the use of low-quality counterfeit medicines (Mohamed, 2021, p. 214), The World Health Organization (OMS) estimates that counterfeit medicines account for 7% of the global market, 30% in Brazil, and 60% in Africa. Moreover, counterfeiting does not only involve products of poor quality but also includes products with highly dangerous compositions, such as motor oils or industrial machinery, which can lead to serious accidents that particularly endanger their users (Sharabi & Farouj , 2008, p. 230).

### 4.2.3. The economic impact of trademark counterfeiting and imitation on trademark owners

Trademark owners are not exempt from the negative economic effects of counterfeiting and imitation, as this is clearly evident in their loss of markets where they promote their goods, through the loss of consumer confidence in their products, especially national ones, which weakens the competitive position of these products and thus negatively affects the national economy. This damage may go beyond weakening the competitive position of domestic products compared to foreign products (Mohamed, 2021, p. 213).

## 5. CONCLUSION

Finally, it can be said that the Algerian legislator sought to regulate the provisions of guaranteed actions to combat trademark counterfeiting, given that they varied in nature and degree of protection. It guaranteed civil actions to stop counterfeiting and

 ISSN 2623-2602/ EISSN: 2716-8891

compensate for the resulting damage, these mainly consist of compensation claims based on Order 03/06 on trademarks and unfair competition claims based on Law 04/02 on the rules applicable to commercial practices. It also guarantees those who can prove imitation a criminal action that provides greater protection due to its deterrent effect in the form of original and supplementary penalties, despite the fact that the legislator has not specified the criteria for assessing imitation between the original and imitation marks, leaving this to the discretion of the judge hearing the case. This is because an effective trademark protection system contributes to economic development in both the industrial and commercial sectors and suppresses unfair competition, which creates an investment climate that encourages economic growth, especially in developing countries.

However, it should be noted that there are issues that Algerian legislators must address, particularly with regard to the following:

-Expanding the scope of unfair competition claims to include unregistered trademarks by amending the relevant provisions of Decree 03/06 and Law 04/02.

-The need to include specific regulations protecting commercial and industrial secrets presented to the Competition Council in cases of unfair competition, Following the example of the French Competition Council, which in 2001 established an amendable list containing several types of trade secrets that the Council is obliged not to disclose, particularly those relating to the profitability of the company and its customers, its commercial practices and other important matters.

-The need to include a penalty for publishing the conviction for trademark counterfeiting offences, given the benefits mentioned in the study.

-The legislator must specify the maximum period for the temporary closure of the establishment, rather than leaving the matter to the discretion of the court, especially since this type of penalty includes another unannounced penalty, which is the unjustified dismissal and layoff of workers, particularly in the case of the permanent closure of an establishment that has committed a trademark infringement offence. The Algerian legislator should have stipulated that dismissed workers must be compensated in the event of a final closure ruling.

-Activate the role of consumer protection associations and empower them in relation to markets and products, and why not grant them the authority to bring criminal proceedings.

-Raise awareness of the importance and economic value of trademarks by activating the media and advertising role in spreading a culture of awareness among consumers, traders and producers and raising awareness of the health and economic risks of counterfeiting.

## 6. Bibliography List

Abdelkader, S. (2017). *Trademark Imitation in Algerian Law and Comparative Law.* Algeria: University of Algiers 01.

Al-Ammar, I. A. (2022, Out 03). *elaph 'The Reality of the Counterfeit Goods Market', an article published on the website, accessed on* . Retrieved 24 March 2026, from https://elaph.com: https://elaph.com/Web/NewsPapers/2022/08/1481996.html

Ali, A. S. (2018). Legal Protection of Trademarks. *Voice of Law Magazine, 05*(02).

Bali, S. F., & Nouri , H. (2007). *Scientific Encyclopedia of Commercial Energy Marks, Geographical Indications, Designs and Industrial Models: A Comparative Study.* Beirut: Al-Hali Legal Publications.

Basma, B. (2015). *Legal Protection of Trademarks.* Setif, Algeria : University of Mohamed Lamine Debaghine – Setif 2.

Ben Jdid, F. (2017). Criminal Protection of Trademarks as a Form of Legal Protection in Commercial Law. *Law Magazine, 06*(02).

Daghish, A. (2017). Unfair Commercial Competition in Algerian Legislation. *Al-Manar for Legal and Political Studies and Research, 01*(03).

dated 20 Ramadan 1395, c. t. (1975, September 26). Decree No. 75/58. Alger: Algerian Official Gazette, No. 78.

Fadila, A.-W. (2016). *The Role of the Judiciary in Trademark Protection.* Batna1, Algeria: University of Batna1.

Hamadi Zoubir, ,. F. (2012). *Legal Protection of Trademarks.* Beirut: Halabi Legal Publications.

Hamadi, M. R., & Youssefet, A. (2018). Criminal Protection of Trademarks Against Imitation on the Internet in Algerian Law. *Al-Haqiqa Magazine, 17*(04).

Jabbar, Z. G. (2002). *Unfair Competition in Industrial Property, A Comparative Study.* Amman: Dar Al-Hamed Publishing and Distribution.

Khashroum, A. H. (2008). *A Concise Guide to Industrial and Commercial Property Rights.* Jordan: Dar Wael Publishing House.

Law No. 04/02. (2004, June 23). Algeria: Algerian Official Gazette.

Mamdouh, I. K. (2020). *Legal Protection of Trademarks in Civil and Criminal Law.* Alexandria, Egypt: Dar Al-Fikr Al-Jami'i.

marks., S. A. (n.d.). Article 9 of Order 03/06.

Miloud, S. (2012). *The Legal System of Trademarks in Algerian Law and International Agreements.* Batna, Algeria: University of El Hadj Lakhdar.

Miloud, S. (2012). Unfair competition claims as a form of civil protection for trademarks in Algerian law; op. cit. *Policy and Law Notebooks, 04*(06).

Mohamed Mostafa Zerbani, ,. ,. (2019). The Role of Branding in Achieving Economic Development. *Al-Wahat Journal for Research and Studies, 12*(02), pp. 224–225.

 ISSN 2623-2602/ EISSN: 2716-8891

Mohamed, M. A. (2021). The Impact of Legal Protection of Trademarks on Economic Growth. *Afaq Journal for Political and Legal Research, 04*(02).

Nouri Hamad Khater, ,. F. (2005). *Explanation of Intellectual Property Rules – Industrial Property.* Amman: Dar Wael Publishing and Distribution.

Order No. 03/06. (2003, July 19). Alger: relating to trademarks Algerian Official Gazette.

Order No. 03/06. (2003, July 19). Algeria: Algerian Official Gazette.

Order No. 66/57 . (1966, March 19). Algeria: Algerian Official Gazette repealed in 2003 by Decree 03/06.

Order No. 75/58. (1975, September 26). Algeria: Algerian Official Gazette.

Rachdi, S. (2012). Protection of Trademarks from Counterfeiting in Algerian Law. *Academic Journal for Legal Research, 03*(01).

Salami, M. (2012). *The Legal System of Trademarks in Algerian Law and International Agreements.* Batna, Algeria: University of El Hadj Lakhdar.

Saleh, F. Z. (2008). *Complete Guide to Commercial Law: Intellectual Property Rights, Industrial and Commercial Property Rightsand Literary and Artistic Property Rights.* Dar Ibn Khaldoun Publishing and Distribution.

Samah, M. (2016). *Legal Protection of Trademarks: A Comparative Study: op.cit.* Batna: University of Batna 01.

Sharabi, A., & Farouj , M. (2008). , 'The Phenomenon of Imitation: Risks and Ways to Combat It' . (U. o. 2, Ed.) *Journal of Economics and Society*(5), 230.

Suweidat, I. a.-D. (2012). *Civil Protection of Trademarks* (Vol. 05). Amman: Dar al-Hamid Publishing and Distribution.

Wali, A., & Salami, M. (2018). Trademark Protection in Algerian Law. *Legal and Political Studies Journal, 04*(01).

Zine al-Din, S. (2000). *Industrial and Commercial Property.* Amman, Jordan: Dar al-Thaqafa Publishing and Distribution.