



Trademark Registration in Algerian Law

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Abstract:

A trademark is a tool to distinguish specific products or services from other similar ones and is considered one of the most important rights in the industrial and commercial sector, whether for consumers or for merchants and owners of crafts and services. The ownership of the trademark is acquired as a result of fulfilling a set of formal and substantive conditions; thus, no person can claim rights over a mark if it is used without being legally registered. Once registration is complete, it produces several legal effects, the essence of which lies in establishing the ownership of the trademark for the person who registered it and allowing various legal operations upon it, such as monopolizing its exploitation or disposing of it, in addition to granting full legal protection against any infringement.

Keywords: Trademark; Monopoly; License; Unfair Competition; Imitation.

Enregistrement des marques dans le droit algérien

Résumé :

Une marque est un outil permettant de distinguer des produits ou services spécifiques d'autres produits ou services similaires. Elle est considérée comme l'un des droits les plus importants dans le secteur industriel et commercial, tant pour les consommateurs que pour les commerçants et les propriétaires d'artisanat et de services. La propriété de la marque s'acquiert après avoir rempli un ensemble de conditions formelles et substantielles ; ainsi, nul ne peut revendiquer des droits sur une marque si celle-ci est utilisée sans être légalement

enregistrée. Une fois l'enregistrement effectué, celui-ci produit plusieurs effets juridiques, dont l'essentiel consiste à établir la propriété de la marque pour la personne qui l'a enregistrée et à permettre diverses opérations juridiques sur celle-ci, telles que la monopolisation de son exploitation ou sa cession, en plus d'accorder une protection juridique complète contre toute contrefaçon.

Mots clés : *Marque ; Monopole ; Licence ; Concurrence déloyale ; Imitation.*



Introduction

Industrial property rights in general are a set of rights that protect human thought and creativity, and these rights pertain to an intangible asset that has financial value. In this sense, they allow their holder to monopolize and benefit from their exploitation in various ways.

The trademark plays an important role in the economic and commercial field and is among the most important rights, whether for consumers or for merchants and service providers. Therefore, various countries have established specific provisions for trademarks and dedicated protection for them in their internal legislations. The Algerian legislator adopted this approach through Ordinance No. 03-06 related to trademarks.

The Algerian legislator defined a trademark as any symbols capable of graphic representation, in particular words, including personal names, letters, numbers, drawings or images, distinctive shapes of goods or their packaging, and colors alone or in combination, all of which are used to distinguish the goods or services of a natural or legal person from those of others. It is worth noting that the legislator mentioned the elements, forms, and shapes that may constitute a trademark by way of example, not limitation.

The trademark is acquired through a set of substantive conditions—namely that the mark must be distinctive, new, and lawful—along with formal conditions such as submitting a registration application to the Algerian National Institute of Industrial Property, issuing the

registration decision, recording the mark in a special register, and publishing and announcing it in the Official Bulletin of Industrial Property.

The registration of a trademark entails important legal effects for its owner, granting him exclusive rights over it, in addition to the legal protection established for it due to its importance in competition within the market. Since it is exposed to various forms of infringement, our research question revolves around: **What are the legal effects that the Algerian legislator has established for the registration of a trademark?**

To answer this question, the topic is divided into two sections as follows:

- **Section One:** Acquisition of the Trademark.
- **Section Two:** Legal Protection of the Trademark.

1. Acquisition of the Trademark

Trademark registration establishes ownership for the person who registered it and grants him the right to benefit from it in various ways, including the **right to monopolize its exploitation** (Subsection One) and the **right to dispose of it** (Subsection Two).

1.1. The Right to Monopolize Exploitation of the Trademark

Generally, industrial property grants a person authority over an intangible asset, enabling him to exclusively and financially benefit from it. Once a person registers his mark with the competent authorities, he becomes its owner and has the exclusive right to use it on the goods and services designated for it. The right of exploitation is thus relative and limited to a specific product or service—except in the



Soumission : 04/02/2025 Acceptation : 11/07/2025 Publication : 15/08/2025

case of a well-known mark—and is valid for ten years, renewable for successive periods, as stated in Article 5 of Ordinance No. 03-06 on trademarks. The right to monopolize the mark is temporary, not permanent, and it lapses if not renewed. The owner must ensure serious use of the mark on the goods, packaging, or services associated with it and continue renewing it to maintain his rights.

This right allows the owner to prevent others from using, selling, or distributing products distinguished by his mark without authorization. This exclusivity also enables the owner to preserve his customers and protect himself from unfair competition, as it is a legitimate monopoly derived from law, constituting an exception to the principle of freedom of trade and industry. The Algerian legislator, like the French legislator, did not specify the detailed content of the right of exclusive exploitation; according to Article 9 of Ordinance No. 03-06, the person who registers the mark is granted ownership rights over the goods and services for which it was registered.

1.2. The Right to Dispose of the Trademark

The trademark, as an intangible movable asset of financial value, is part of the positive assets of its owner's estate and can therefore be the subject of legal transactions. Once registered, the owner has the right to use and exploit it and also to dispose of it—through assignment, pledge, or licensing.

1.2.1. Transfer of the Trademark (Assignment)

The Algerian legislator provided for the assignment contract of all industrial property rights, including trademarks. According to Article 14, paragraph 1, of Ordinance No. 03-06: "Independently of the total or partial transfer of the enterprise, the rights conferred by the application for registration or by the registration of the mark may be transferred wholly or partially, or pledged." This means the owner may sell the mark entirely or partially. For the transfer of trademark rights, the legislator requires, in addition to the general conditions of consent, subject matter, and cause, that the contract be in writing and signed by the parties under penalty of nullity. The transfer must also be recorded in the trademark register at the Algerian National Institute of Industrial Property, and it only becomes enforceable against third parties from the date of registration.

1.2.2. Pledge of the Trademark

The rights arising from a trademark registration or application may be transferred wholly or partially and may also be pledged as security for a debt. For example, in the case of pledging a commercial business, the mark, being one of its elements, must be explicitly mentioned in the list of pledged items. This is provided for in Article 119 of the Algerian Commercial Code. The trademark may also be pledged independently of the commercial business, provided the contract is written and registered, in addition to meeting general conditions. The pledge of a trademark does not entail the transfer of ownership or exploitation rights to the creditor; the debtor (pledger) remains



Soumission : 04/02/2025 Acceptation : 11/07/2025 Publication : 15/08/2025

responsible for maintaining the value of the mark and protecting it from unfair competition.

The Algerian legislator excluded collective marks from any transfer, assignment, or pledge; they cannot be subject to compulsory execution.

1.2.3. License to Use the Trademark

The Algerian legislator also allows the owner to grant a license to use the trademark. Article 16 of Ordinance No. 03-06 stipulates: “The rights relating to the mark may be the subject of an exclusive or non-exclusive license for all or part of the goods or services for which the mark has been registered.”

The license contract must specify, under penalty of nullity, the mark, duration, goods or services concerned, and the geographical area of use. Article 17, paragraph 2, further requires that the license be recorded in the trademark register kept by the competent authority. A license to use the trademark is a contract through which the owner grants another person the right to exploit his mark, wholly or partially, in exchange for royalties. This contract does not confer real rights but merely personal rights, allowing the licensee to use the mark as agreed.

2. Legal Protection of the Trademark

Among the most important legal effects resulting from the registration of a trademark is the **legal protection** granted to it, due to its role in market competition, which makes it vulnerable to various forms of infringement. The trademark enjoys dual legal protection in domestic law—through a

civil action (Subsection One) and a **criminal action** (Subsection Two).

2.1. Civil Action as a Means of Protecting the Trademark

Anyone whose right to a trademark has been infringed may file a civil lawsuit against the infringer and claim compensation. Civil action is the only means of protecting unregistered trademarks and is based on general principles of civil liability. The owner of an unregistered mark may invoke civil protection through an unfair competition claim.

Commercial competition is originally based on fair practices that allow merchants to attract customers and promote products legitimately. However, when competition exceeds fair limits and employs deceptive or dishonest means, it becomes unfair competition.

The trademark, as one of the tools of free competition, grants its owner the right to seek judicial protection and claim damages for harm caused by unfair practices.

Unfair competition is defined as the performance of dishonest or illegal practices that violate the principles of honesty and integrity governing commercial life, causing harm to another competitor by diverting his customers.

This type of claim is based on tort liability, as established in Article 124 of the Civil Code: "Any act whatever by a person which causes harm to another obliges the person by whose fault it occurred to compensate for it."

The Algerian legislator prohibits the use of unregistered trademarks or marks not applied for; therefore, an unregistered mark cannot enjoy legal protection against infringement. Trademark registration is a prerequisite for protection and for its use in trade.



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However, according to Article 4 of Ordinance No. 03-06, the legislator deviated from general civil liability principles, since the right to compensation generally protects all rights regardless of their nature. Thus, even the owner of an unregistered mark can seek compensation for harm, but the intent behind this provision is to encourage traders to register their marks to ensure market regulation and combat fraud.

2.2. Criminal Action as a Means of Protecting the Trademark

The trademark is one of the essential tools used in commercial competition, as traders seek to distinguish their goods or products through it. Therefore, its protection is necessary, and civil protection alone is insufficient to prevent violations. The legislator expanded the scope of legal protection by introducing criminal sanctions against offenders, known as criminal protection. Criminal protection applies only to registered trademarks – that is, when the owner has completed all the legal procedures for registration with the competent authority, the Algerian National Institute of Industrial Property. This criminal protection remains valid throughout the legally prescribed period of ten (10) years, renewable.

Ordinance No. 03-06 related to trademarks regulated the criminal protection of trademarks in Articles 26 to 36, which addressed the acts that constitute an infringement of the ownership of a registered trademark. These articles also organized the procedures for filing criminal proceedings against infringements or imitations of trademark ownership and established the specific penalties for such acts – all to

ensure their protection. Among the crimes regulated by the legislator is the crime of trademark imitation.

The crime of imitation is considered the most serious offense affecting the trademark. Given the great importance and prominent role played by trademarks in the modern economy, the Algerian legislator sought to curb this phenomenon by establishing criminal penalties consisting of imprisonment and fines.

2.2.1. The Imitation Lawsuit

According to the Algerian legislator, imitation is “any act that infringes the exclusive rights of a trademark committed by another person in violation of the rights of the trademark owner.”

For the crime of imitation to exist, according to the broad concept adopted by the Algerian legislator, there must be similarity, identity, or closeness between the original and the imitated trademark, whether in the form of the mark or in the function for which it was created. Accordingly, criminal punishment is imposed for imitation of the trademark itself. If it is proven that there is an identical match between the original and the imitated mark, the moral element is not required – only the material element is sufficient. According to Article 26, the legislator does not require proving the intention of the offender, as the terms “fraud” or “intent” were not mentioned in the context of the offense of imitation. Therefore, the mere act of imitation, regardless of the good or bad faith of the imitator, is sufficient for liability. The existence of imitation can be determined according to several criteria, the most important of which is considering the similarities between the two marks. The determining factor in this criterion is examining the similarities, not the



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differences, between the marks. If the resemblance reaches a degree that causes the average consumer to fall into confusion or deception, imitation is established.

Another criterion for proving imitation is the **general appearance test**, since consumers generally do not scrutinize the details or minor elements of a mark or product. Therefore, to determine imitation, one must look at the prominent and visible features of the imitated item. Based on this general appearance, imitation may be confirmed or denied.

In addition to these two criteria, a **third criterion** exists: observing the original and the imitated item **one after another**. Consumers, when purchasing a product, usually do not carry the original with them for direct comparison but retain a mental image of it. This mental image does not allow for a precise comparison. Thus, to facilitate determining imitation, one must look at the two items consecutively, as this makes the evaluation easier. The aforementioned criteria are only indicative; the main consideration must always be based on the **average consumer's perception**. Hence, the judgment should not rely on the perception of an overly cautious buyer who examines every small detail nor on that of a negligent buyer who pays no attention at all.

Trademark imitation may also occur through **fraud**, which constitutes the crime of **fraudulent imitation**. This crime requires **criminal intent**. Fraudulent imitation occurs when a mark similar or close to the original is used in a way that may cause confusion between the two. The difference between this offense and the basic one lies in the presence of intent. Generally, the legislator does not require

intent in the crime of imitation, whereas in fraudulent imitation it is essential. Fraudulent imitation may occur through alteration, addition, or distortion of the original mark in a way that causes confusion among consumers.

2.2.2. The Crime of Using an Imitated Trademark

The Algerian legislator considers that the registration of a trademark grants its owner an exclusive right that prevents others from using it commercially without prior authorization. The owner may invoke this right against anyone who uses a mark or symbol similar to his own in a way that could cause confusion among the public. The Algerian legislator confirmed that the violation of this right constitutes an act of imitation punishable by law. In addition to the previously mentioned offenses, the Algerian legislator explicitly required that every product sold or offered for sale across the national territory must bear its trademark. The same applies to services. The mark must be placed on the packaging or container when direct placement is impossible, except in cases where the nature or characteristics of the product do not allow it. Failure to comply with this requirement constitutes a **violation of the law**.

The crime of imitation in all its forms represents a real problem facing the Algerian economy. Despite the legal texts that aim to reduce it, reality shows that it continues—and perhaps is even increasing. This may be due to the limited capabilities of the supervisory authorities, as well as to the behavior of some Algerian traders and manufacturers who prefer to imitate well-known brands rather than create their own successful and competitive ones nationally and internationally. Moreover, the penalties established by the



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Algerian legislator may not be sufficiently deterrent to limit this phenomenon.

Criminal protection of trademarks applies in cases of infringement upon their use – that is, an infringement of the right to use a registered trademark. Once such infringement occurs, the owner of the registered mark is not required to prove that he has suffered harm as a result. Criminal protection applies whether the infringer gains profit or incurs loss due to the infringement of a registered trademark.

The Algerian legislator established several legal consequences arising from filing a criminal action when acts constituting infringement of trademark ownership are proven. These include **principal penalties, supplementary penalties, and precautionary measures.**

Conclusion

In conclusion, it is clear that trademarks play an important role in the economic and commercial sphere. Therefore, various countries have established specific provisions for trademarks and ensured effective protection within their domestic laws. This is what the Algerian legislator adopted through Ordinance No. 03-06 related to trademarks.

It is observed that the Algerian legislator attached great importance to trademarks in their legal organization and established several effects upon their registration, the essence of which lies in confirming the ownership of the trademark for the registrant and granting him the right to carry out various legal operations on it, such as monopolizing its exploitation and use for designated goods

and services. The right of exploitation is relative and limited to a particular product or service, except for well-known marks, and is valid for a legal period of ten years, renewable. The owner also has the right to dispose of the trademark, whether through assignment or pledge, and it may be the subject of a license. The legislator required, in addition to the general conditions, that these transactions be in writing and registered.

Given the importance of trademarks in market competition, they are exposed to various forms of infringement. This led the Algerian legislator to establish legal rules to protect them, prohibiting any infringement and providing **dual legal protection: civil and criminal**. Civil protection of trademarks is embodied in the action for **unfair competition**, based on **tort liability**, where compensation is due from anyone who causes harm to another. This protection applies to both registered and unregistered marks.

In contrast, **criminal protection** applies only to **registered trademarks**. Protection arises only upon registration, and any infringement thereafter constitutes a criminal offense punishable by law. Among the forms of infringement regulated by the Algerian legislator is **imitation**.

Recommendations:

- The need to update the legal provisions related to trademarks to align with the current global market conditions.
- To organize the criminal protection of trademarks within a single law encompassing all aspects.
- To take into account technological developments worldwide—such as artificial intelligence—and their



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potential impact on intellectual property in general and on trademarks in particular when enacting new legal texts governing intellectual property rights.

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