

Areas of Counterfeiting in Industrial Property under Algerian Legislation

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Abstract: Infringement in industrial property has very broad and extensive areas due to its great diversity and complexity, as well as its prominent importance in economic development, which contributes to bringing about the scientific and technological revolution and constitutes one of the strongest pillars of industrial and economic development.

Counterfeiting in the field of industrial property may concern appellations of origin, trademarks, inventions, the layout-designs of integrated circuits, and finally industrial designs.

Keywords: Counterfeiting, appellation of origin, trademarks, patents.

Introduction

Counterfeiting in general is the opposite of innovation, and its areas are extensive, affecting all things that have value. It constitutes a blatant infringement of the rights of their owners. As a phenomenon, it has many causes behind its emergence and spread, including openness to global markets, large-scale technological development, the pursuit of rapid profit at the lowest prices, and weaknesses in monitoring bodies due to the difficulty of tracing its source.

The difficulty of combating this crime is attributable to consumers' lack of awareness, the inability to trace the source of counterfeit goods, and the shortage of material and human resources available to monitoring bodies. Combating this crime therefore begins with consumers by improving their consumer culture and adopting a deterrent policy against counterfeiters.

Infringement in industrial property has very broad and extensive areas due to its great diversity and complexity, as well as its prominent importance in economic development, which contributes to bringing about the scientific and technological revolution and constitutes one of the strongest pillars of industrial and economic development.

Therefore, counterfeiting in the field of industrial property may concern appellations of origin, trademarks, inventions, the layout-designs of integrated circuits, and finally industrial designs.

Accordingly, the research problem raised by this study is: **What are the areas of counterfeiting in industrial property under Algerian legislation?**

First Requirement: Appellations of Origin

The definition of an appellation of origin and its conditions will be addressed as follows:

First Branch: Definition of an Appellation of Origin

The Algerian legislator regulated appellations of origin under Ordinance No. 76-65 of 16/07/1976. Article 1 of this Ordinance defines an appellation of origin as follows: “The term ‘appellation of origin’ means the geographical name of a country, region, part of a region, locality, or named place that serves to designate a product originating therein, the quality or characteristics of which are exclusively or essentially attributable to the geographical environment, including natural and human factors...”

A geographical name is also considered to be a name which, without originating from a country, region, part of a region, locality, or named place, is associated with a specific geographical area for the purposes of certain products[1].

Through the first paragraph of the aforementioned article, the legislator establishes the close relationship between products and the land. The second paragraph also refers to the quality of certain products associated with the geographical location that permits their production, and to the fact that natural and human factors give products a distinctive character. Examples include, in the field of mineral waters, Saïda and Ifri, and, in the field of wines, French wines. Appellations of origin also include industrial products characterized by skill and tradition, such as Swiss watches.

With regard to determining the concept of the country of origin of goods, Article 14(1) of the Customs Code[2] provides that: “The country of origin of goods shall be considered to be the country in which they were wholly obtained or in which they underwent substantial processing, except where special provisions concerning preferential rules of origin set out in international agreements or tariff trade agreements concluded between Algeria and a country, group of countries, customs union, or customs territory apply.”

An appellation of origin is important because it enables the producer to identify his goods and distinguish them from similar goods, while giving them national and international recognition. Consumers rely on such information because it guarantees the distinctive characteristics of goods produced in a particular place. Its importance therefore derives from the role it plays in guaranteeing the quality and nature of goods offered for sale. The purpose of establishing it is to attract customers, and what matters in this regard is the distinctive characteristics of production resulting from the particular characteristics of the production area, especially its natural and human factors, rather than characteristics adopted merely as a means of advertising. Therefore, any interested party has the right to request the invalidation of an appellation of origin used to designate a product if the product does not originate in the place concerned, which requires it to be considered a matter of public policy[3].

Second Branch: Conditions for the Protection of an Appellation of Origin

The protection of an appellation of origin requires both substantive and formal conditions:

First: Substantive Conditions

1. The appellation of origin must be associated with a geographical name: This is intended to establish the place of origin of the products subject to legal protection, such as the appellation of the Saïda mineral water associated with the Saïda region. It may also be associated with a locality or part of a region, such as Ifri mineral water located in the Béjaïa region.

2. The appellation must designate a product: This requires associating the appellation of origin with the name of a product that has a material connection with the geographical area in which it originated or was manufactured, given that the place of production or manufacture constitutes, for the consumer, a guarantee of the product's quality and distinctive specifications.

3. The product must have distinctive characteristics resulting from natural and human factors: This means that such characteristics must be attributable exclusively or essentially to the environment in which the product originated or was produced, with all its natural and human factors, whether in terms of the type of climate prevailing in the region where the product originated, the nature of the soil, or the methods used to produce or manufacture it. Thus, legal protection is granted to an appellation of origin only through the combination of natural and human factors, that is, through the availability of human expertise combined with the geographical factor, with greater weight given to the latter[4].

4. The appellation must be lawful: This means that the appellation of origin must not violate the law, public policy, or public morals. The Algerian legislator expressly provided for this in Article 04 of Ordinance No. 76-65 concerning appellations of origin, by denying protection to appellations that do not conform to the definitions contained in Article 1 of the Ordinance, as well as unlawful appellations and appellations contrary to good morals and public policy, in addition to appellations derived from the classes or types of products, such as “olive oil,” “Marseille soap,” etc.

Second: Formal Conditions

In addition to the substantive conditions required to confer legal protection on an appellation of origin, the legislator has imposed formal conditions for its protection, consisting of procedures for filing, registration, and publication. Appellations of origin enjoy legal protection only if they are registered and filed by the following persons pursuant to Ordinance No. 76-65 concerning appellations of origin[5]:

- Any ministry acting individually or in agreement with other ministries, such as the Ministry of Industry, Trade, and Agriculture, for the creation of an appellation of origin;
- A legally established institution;
- Any natural or legal person carrying out production activities in the geographical area concerned;
- Any competent authority; in this regard, the legislator has not clarified this authority, which creates a degree of ambiguity concerning it.

The Algerian legislator has distinguished between national and foreign appellations of origin. It has allowed nationals to file applications for registration of national appellations of origin, but not foreign ones. The latter may be registered only within the framework of an international convention to which Algeria is a party and subject to reciprocity[6].

In the first case, the application is submitted directly to the legally competent authority or by registered mail with acknowledgment of receipt, namely the Algerian National Institute of Industrial Property. In the second case, concerning foreign appellations of origin, the application is submitted to the National Institute of Industrial Property through a legally authorized Algerian representative residing in Algeria.

After the filing application, accompanied by the necessary documents, has been submitted, the competent department examines the application and grants the applicant a period of two months to correct it in the event of an error. Accordingly, the department rejects the application if there is justification and notifies the applicant thereof, or accepts the application, registers it in a special register, and publishes it[7].

Upon fulfillment of these substantive and formal conditions, the appellation of origin is protected for a period of 10 years from the date of filing the application. This period may be renewed whenever it expires. Protection may also cease pursuant to a decision ordering its regulation or modification based on a request submitted by a person having a legitimate interest or by any competent authority. An appellation of origin may also expire when its registered owner relinquishes it by means of an express request submitted to the Algerian National Institute of Industrial Property.

Third Branch: Counterfeiting of an Appellation of Origin

By referring to Ordinance No. 76-65 concerning appellations of origin, as well as certain provisions of the Algerian Penal Code and Customs Code, it becomes clear that the Algerian legislator has not defined the counterfeiting of an appellation of origin. Instead, it has clarified the meaning of unlawful use of an appellation of origin in Article 11 of the aforementioned Ordinance: “The direct or indirect unlawful use of a falsified or fraudulent appellation of origin, or the imitation of an appellation of origin as provided for in Article 21, shall be considered unlawful.”

Thus, the legislator has not defined counterfeiting with regard to this element of industrial property. Its role is limited to providing for punishment and criminalization without addressing the definition, which falls within the competence of legal scholars and jurists.

The counterfeiting of an appellation of origin may be defined as any act involving the use of a recognized appellation of origin on another product that has no material connection with the land, thereby misleading consumers as to the true origin of the product. An example is the marketing of Deglet Nour, one of the world's finest Algerian dates, in Tunisian markets under a counterfeit appellation of origin as if they were Tunisian dates, noting that Deglet Nour is both a registered appellation and a trademark at the same time[8].

It should be noted that disputes brought before the courts are not usually presented as disputes exclusively concerning an appellation of origin. Rather, they are presented as disputes concerning a trademark, because the registered trademark provides considerably greater legal protection than that provided by an appellation of origin alone. An example is the dispute between the applicants for the “Ifri Mouah” and “Ifri Ibrahim” trademarks, concerning which the Supreme Court issued a decision on 13/07/1999[9], annulling the decision of the Béjaïa Judicial Council, which had annulled the appealed judgment and ruled anew to invalidate the “Ifri” trademark of the respondent, declare its use in his product and commercial activity unlawful, and order the publication of a copy of the decision in the Economic Advertising Bulletin.

Second Requirement: Trademarks

First Branch: Definition of a Trademark

A trademark means a distinctive sign or indication adopted by a trader, manufacturer, or service provider as a symbol to distinguish his goods, products, or services from those belonging to others, such as the DOVE trademark distinguishing cosmetic products.

The Algerian legislator defined a trademark in Ordinance No. 03-06 of 19/07/2003 concerning trademarks[10] as follows: “Any sign or combination of signs capable of being represented graphically, in particular words, including personal names, letters, numbers, drawings or images, and the distinctive shapes of goods or their packaging, and colors, whether alone or combined, which are used to distinguish the goods or services of a natural or legal person from those of others.”

A commercial trademark (*marque de commerce*) is the sign placed by a trader on the products of his commercial establishment or indicating the source of sale. An industrial trademark (*marque de fabrication*) is that which a manufacturer places on the products he manufactures, thus indicating the source of production. A service mark (*marque de service*) is the sign used by an individual or collective service-providing enterprise. A trademark performs an informative and advertising function by attracting customers, contributing to the circulation of goods and products, and identifying their source, thereby enabling consumers to recognize them easily and trust them[11].

A trademark for goods or services is mandatory for every good or service offered. However, this obligation does not apply to goods or services whose nature and characteristics do not permit a trademark to be placed upon them, nor to goods bearing an appellation of origin, the regulation of which has not yet been issued.

It should be noted that conformity or quality marks do not fall within appellations of origin because they are subject to special provisions contained in the law relating to standardization[12].

Such a mark is placed on a product to certify that it conforms to legal specifications. It is neither transferable nor subject to seizure, as it is a collective mark of a special nature. Accordingly, some products may bear this mark alongside the manufacturer's or commercial service mark, but it must remain separate from it. The Algerian Institute of Standardization is responsible for granting it[13], and, in its capacity as the owner of conformity marks, it is required to register them with the Algerian National Institute of Industrial Property. The mark may also be subject to international filing with the World Intellectual Property Organization.

A trademark may take various forms and images, including letters and numbers, symbols, engravings, and drawings. It may also take the form of names, provided that they assume a distinctive form. The enumeration of trademark forms is illustrative rather than exhaustive, since the legislator refers to “all signs capable of being represented graphically.” Accordingly, an applicant may use his family name as a trade name or as a commercial, industrial, or service trademark, provided that its use does not cause harm to others, such as the use of the family name of a deceased person without the consent of his successor, since it constitutes a personal right and is therefore non-transferable. However, it may be disposed of and used commercially with the consent of its owner under the terms of the contract, as is the case with the names of artists and athletes.

Second Branch: Conditions of a Trademark

A trademark is subject to both formal and substantive conditions:

First: Substantive Conditions

The substantive conditions of a trademark are as follows:

1. The trademark must be new: This means that the trademark must not have previously been used within the territory of the State for the same goods and products. Novelty is therefore an essential element in determining whether a trademark is entitled to legal protection.

2. The trademark must be distinctive: The trademark must possess a distinctive character of its own that prevents it from being confused with other similar products. If it loses its distinctive character, it falls outside the scope of protection because it can no longer perform its essential function. A trademark devoid of any distinctive character is not considered a valid trademark[14].

Accordingly, for a trademark to benefit from legal protection, it must possess a distinctive character, meaning that it must have material characteristics suitable for distinguishing the products, objects, or services of each enterprise[15].

Furthermore, the Algerian judiciary, pursuant to a decision issued by the Supreme Court, held that displaying the name of an essential compound included in the composition of cosmetic products on the product package does not constitute a manufacturing trademark.

3. The trademark must be lawful: This means that it must not violate the law, public policy, or good morals, such as the Red Crosses, official stamps, flags and banners, and other symbols of a State[16].

Thus, obscene expressions and images contrary to public morals, as a trademark, are in principle refused registration even if the name is not contrary to public policy and morality in the country of the trader or manufacturer applying for registration in a foreign State. In general, a trademark that has been registered without complying with these conditions is considered invalid[17].

Second: Formal Conditions

These consist of the procedures for registering the trademark with the competent authority by the interested party or his representative under a special power of attorney, and the publication of the registration application after its acceptance following examination, followed by registration and publication of the trademark. The procedures concerning filing, registration, and publication established by Executive Decree No. 05-277 of 02/08/2005, as amended and supplemented by Executive Decree No. 08-346 of 26/10/2008, which specifies the procedures for filing and registering trademarks, must be respected[18].

Accordingly, the trademark is filed by submitting the application and its supporting documents in person by the interested party or his representative, or by mail. Registration is an administrative procedure carried out by the Director of the Algerian National Institute of Industrial Property by entering the trademark in the public register after examining the file from both the formal and substantive perspectives for the purpose of accepting the filing, against the preparation of a filing record. A copy of this record is then delivered to the applicant and serves as a filing certificate. The registration is subsequently published in the Official Bulletin of Legal Announcements at the applicant's expense.

The applicant acquires ownership of the trademark from the date of filing the application, without prejudice to the priority right acquired within the framework of international

conventions. Protection is valid for 10 years from the date of filing and may be renewed for the same period without limitation. It should be noted that any person who has displayed goods or services under the trademark created by him during an officially recognized international or local exhibition has the right to claim registration of the trademark and the priority right therein within three months from the end of the exhibition, provided that ownership thereof is deemed to date from the date of display[19].

It should be noted that some consider that ownership of a trademark is acquired through use rather than filing and registration, since what matters is not the use of the trademark but rather the prior registration thereof[20]. This suggests that importance is attached to the formal conditions, whereas the decisive consideration lies only in the substantive conditions.

Third Branch: Counterfeiting of a Trademark

Counterfeiting in the field of trademarks constitutes a blatant infringement of the rights of their owners, and this field is considered one of the areas of industrial property most exposed to counterfeiting.

First: Definition of a Counterfeit Trademark

Trademark counterfeiting consists of creating a trademark that is completely identical to the original trademark, or placing a trademark that, in its overall appearance, resembles the genuine trademark, so that the new trademark may mislead consumers and cause them to believe that it is the original trademark.

It should be noted that counterfeiting does not necessarily have to be complete. It may exist where the composition of words is changed in a manner that creates confusion due to similarity in pronunciation. Counterfeiting of a trademark is therefore assessed in terms of the overall similarity of the essential and distinctive elements of the protected trademark.

In light of this, and pursuant to a decision issued by the Commercial and Maritime Chamber on 04/07/2004 under No. 404570, the Chamber considered counterfeiting to be any similarity between similar and identical signs that is likely to cause confusion in terms of designation and pronunciation and to mislead customers regarding the nature, quality, and origin of the product. This judgment followed facts which, in essence, may be briefly summarized as follows: the Judicial Council upheld a judgment finding a difference between a package of “Taous” couscous bearing the drawing of a bird as a trademark and its counterpart, who chose a pot for his counterfeit product and called it “Taous,” and his application for registration of the same trademark was accepted by the Algerian National Institute of Industrial Property.

In this context, the judges, in the reasoning of their decision, referred to the description of the colors, focusing on the packaging and wrapping to demonstrate the difference, without addressing pronunciation as a basis for similarity between the two trademarks. They found that “Taos” as a bird differs from “Taous” as a name, which the respondent adopted as a trademark for his product, namely the pot. In Arabic, “طاوس” is written with one *waw*, whereas the name “طاووس” is written with two[21].

The Supreme Court quashed the aforementioned decision on the basis of Article 06 of the Ordinance of 19 March 1966 concerning manufacturing and commercial trademarks, which was in force at the time of the facts and which permits the first applicant to request the invalidation of a trademark filed after his trademark where such trademark is likely to create

confusion with his own. Confusion exists where the similarity of the product in terms of designation and pronunciation leads the customer to believe that he is purchasing a product belonging to the original owner, whereas it actually belongs to the imitator who adopted the trademark[22].

Accordingly, two fundamental rules were established. The first is that the trademark belongs to the first person to file it. The second is that the first applicant may request the invalidation of a trademark filing likely to create confusion with his trademark. The Commercial and Maritime Chamber also left the assessment of similarity to the discretionary authority of the judges of fact, who

Third Requirement: Inventions

The field of inventions is considered one of the areas most exposed to counterfeiting because of its importance and the profits it generates. Counterfeiting in the field of inventions can be demonstrated by defining the invention, its conditions and effects, and then identifying the act of counterfeiting.

First Branch: Definition of an Invention

The World Intellectual Property Organization defined an invention as “the idea reached by an inventor, which enables him in practice to find a solution to a particular problem in the field of technology. It is anything new in the field of science or research that can be exploited, whether related to new products or methods used, or to both.” From this, two types of inventions may be distinguished:

- **Industrial production invention (*nouveau produit*):** the creation of a new tangible object, whether a mechanical compound, such as the invention of a musical instrument, or a chemical product, such as the invention of insecticides.
- **Industrial process invention (*nouvel emploi*):** the creation of a new industrial method or means for producing something that already exists and is known, whether the method is technical, such as the invention of a mobile phone equipped with imaging and recording technologies, or chemical, such as the manufacture of a particular medicine using a different method.

The Algerian legislator has also defined an invention as an idea that makes it possible, in practice, to find a solution to a specific problem in the field of technology[23]. Accordingly, an invention, as a product of intellectual and mental activity resulting from the effort of its creator, grants the latter the right to exploit it financially in accordance with the law. This requires undertaking certain procedures prescribed by law, namely obtaining a patent, which is a certificate granted by the competent authority to an inventor, thereby providing protection for the invention and enabling its owner to benefit financially from it.

Second Branch: Conditions of an Invention

For an inventor to benefit from legal protection, a set of substantive and formal conditions must be fulfilled.

First: Substantive Conditions

These consist in the invention being new, resulting from an inventive activity, and being capable of industrial application[24].

1. The invention must be new: Novelty means that the invention is new if it has not been included in the state of the art. The latter means everything that has been made available to the public in written or oral form, through use, or by any other means anywhere in the world, before the filing date of the application or the date on which priority is claimed. The Algerian legislator has adopted the principle of absolute novelty, meaning that the invention must not have been disclosed at any time or in any place.

2. It must result from an inventive activity: This means that the inventor's idea must not be obvious in such a way that it would occur to a person skilled in the relevant craft or profession. This criterion is used to assess inventive activity, taking into account the inventor's efforts to obtain the invention and considering the invention itself.

3. The invention must be capable of industrial application: This means that its subject matter must be capable of being manufactured or used in the field of industry. Accordingly, principles, theories, discoveries of a scientific nature, and mathematical methods fall outside the scope of patent protection and are excluded from the field of inventions.

Industrial applicability means that the idea must be capable of industrial application and that any manufacturer can implement it once the necessary means are available. An invention is therefore considered capable of industrial application if its subject matter can be manufactured or used in any kind of industry.

Second: Formal Conditions

These consist of filing an application containing a comprehensive description of the invention and the drawings necessary for understanding it, accompanied by the documents required by the Algerian National Institute of Industrial Property, which examines the application from a formal perspective. If the file is incomplete, the applicant is granted a period of two months, which may be extended, to correct the file; otherwise, the application is deemed withdrawn.

If, however, the file satisfies all substantive and formal conditions, the patent is granted to the applicant after being registered in the patent register and published in the Official Bulletin of Patents[25].

A patent means the document or instrument issued by a competent public authority, known as the Patent Office or Industrial Property Institute depending on the system of each State, granted to an applicant on the basis of an application filed with it and accompanied by a technical and descriptive specification of the invention. The patent protects the invention and grants its owner the exclusive right to exploit it for a specified period of ten years. The invention constitutes the subject matter of the patent and means a new solution to a specific problem[26].

Third Branch: Counterfeiting of an Invention

Third Branch: Counterfeiting of an Invention

Counterfeiting in general is the opposite of innovation, as it constitutes an imitation of something by a counterfeiter who copies it from the innovator. Counterfeiting an invention means manufacturing the thing that is the subject matter of the patent during the period of validity of the patent, even if the counterfeiting is not perfected[1].

Counterfeiting presupposes that a person unlawfully exploits the invention, whether by producing it, selling it, or benefiting from it in any manner, since this constitutes an infringement of the patent owner's exclusive right to exploit it.

Accordingly, counterfeiting an invention consists in creating an invention identical to the original invention, whether it is an industrial product or a new industrial process, and attributing it to oneself without the permission or consent of its owner, and deriving financial benefit from it without right, whether by exploiting it or disposing of it, which constitutes a blatant infringement of the inventor's right.

Counterfeiting may take different forms. It may occur when the perpetrator manufactures the innovative object covered by the patent without the owner's authorization. Accordingly, counterfeiting is prohibited when it occurs unlawfully, that is, when it concerns objects whose manufacture is exclusively reserved to the patent or certificate owner by virtue of the official legal instruments granted to him, which authorize him to exploit his invention. Thus, counterfeiting does not arise merely from producing something similar to something previously existing; rather, it must be carried out contrary to what is legally established in the field of industrial property.

Counterfeiting may also occur when the perpetrator reproduces the innovative object covered by the patent, whether the counterfeit object is completely identical to the original or very close to it. Therefore, identity between the counterfeit invention and the original invention is not required for counterfeiting to exist, that is, the counterfeiter does not necessarily have to reproduce the original invention exactly, as though it had been printed or copied from the original. Counterfeiting may also take the form of similarity between them, meaning that the counterfeiter reproduces the invention in a non-identical manner, reproducing its essential features while retaining some marginal differences. Both identity and similarity constitute two forms of the crime of counterfeiting an invention. It should be noted that complete identity resulting from producing something modeled on something previously existing is rare, because imitation is generally imperfect, which leads to the emergence of distinguishing characteristics and consequently makes it possible to distinguish the original invention from the counterfeit[2]. Based on the foregoing, counterfeiting is committed without the consent of the owner of the invention. If consent exists, whether express or implied, the act does not constitute an infringement of patent ownership. Nevertheless, the patent owner's tolerance does not constitute evidence of his consent to the counterfeiting of the patent. Nor does the counterfeiter's ability or inability to perfect the imitation, or his good or bad faith, have an effect on the criminalization of the act. Counterfeiting of an invention is generally not so perfect that it becomes difficult for a person to perceive the difference between the genuine and counterfeit invention. The determination of whether an act constitutes counterfeiting falls within the discretion of the trial court, which generally relies on experts to establish the truth, based on criteria and principles consisting of focusing on the aspects of similarity rather than the aspects of difference, and on the substance rather than the appearance, as previously mentioned and explained in determining the criteria of counterfeiting.

The Algerian legislator addressed the counterfeiting of inventions by determining the acts that constitute this offense. The counterfeiting of an invention is considered a misdemeanor when any intentional act is committed within the meaning of Article 56. These acts include[3]:

- Manufacturing the product protected by a patent, or using, selling, or importing it without the knowledge of its owner.

- Using or marketing the manufacturing process protected by a patent.
- Any person who intentionally conceals counterfeit objects, sells them, offers them for sale, or brings them into the national territory shall be considered a counterfeiter.

Fourth Requirement: Layout-Designs of Integrated Circuits

Through this requirement, the definition of layout-designs of integrated circuits and their conditions will be addressed, followed by an examination of counterfeiting in this element of industrial property.

First Branch: Definition of Layout-Designs of Integrated Circuits

The Algerian legislator defined the concept of an integrated circuit and a layout-design as follows[4]:

- **Integrated circuit:** A product in its final form or in an intermediate form, in which at least one element is an active element and all or part of the interconnections are an integral part of a body and/or a piece of material, and which is intended to perform an electronic function.

- **Layout-design, or topography:** Any three-dimensional arrangement, whatever its form, of elements, at least one of which is an active element, and of all or part of the interconnections of an integrated circuit, or such a three-dimensional arrangement prepared for an integrated circuit intended for manufacture.

Layout-designs of integrated circuits may be technically defined as follows: In electronics, layout-designs of integrated circuits are understood as miniaturized electronic components operating with semiconductor units assembled into a circuit known as an integrated or embedded circuit. These circuits take the form of a small crystal made of silicon material called a wafer. These circuits are placed on a case or metal by means of external connectors. These circuits are divided into two types.

A linear integrated circuit, whose function is to transmit electronic charges, and a digital integrated circuit, whose function is to operate and store information in digital systems such as computers. These circuits rely on the decimal or octal numbering system and perform programming functions, such as the operation of read-only memory (ROM) in computers[5].

Second Branch: Conditions of Layout-Designs of Integrated Circuits

These consist of substantive and formal conditions[6]:

First: Substantive Conditions

1. The layout-designs of integrated circuits must be original: This means that the layout-design created by the designers must be the result of their intellectual effort and must not have been previously circulated, and the same applies to the manufacturers of integrated circuits.

2. The layout-design must concern the layout-design itself: This excludes any concept, method, system, technique, or coded information relating to the layout-design. Thus, the art of layout-designing an integrated circuit incorporates novelty and innovation.

Second: Formal Conditions

These consist of a set of legal procedures imposed by law for the purpose of providing oversight and protection to rights holders in this field. These procedures essentially consist of submitting a filing application containing a set of descriptive data concerning the layout-design of the integrated circuit.

The right to file the application belongs to its creator or his successors in title, and the filing and submission of the application are made before the Algerian Institute of Industrial Property. This filing is subject to legal formalities that must be fulfilled, followed, in the event of acceptance of the application, by the registration and publication stages, which constitute essential functions of the Algerian Institute of Industrial Property. The Institute registers the layout-design after verifying that its substantive conditions are fulfilled and that the applicant is entitled to file it, in a special register maintained for this purpose, and publishes it in the Official Bulletin of Industrial Property. Upon fulfillment of these substantive conditions, legal protection is granted to the layout-designs of integrated circuits.

Fifth Requirement: Industrial Designs and Models

Through this requirement, the definition of industrial designs and models, their conditions, and certain cases of counterfeiting thereof will be addressed.

First Branch: Definition of Industrial Designs and Models

The term “design” refers to images of shapes and ornaments used for any material through an artificial process or means, whether mechanical or chemical, connected or combined, which are appreciated or evaluated by the naked eye. Such a design may consist of an image derived from nature, a beautiful imaginary scene, or merely lines, engravings, or ornaments, as is the case with furniture and decorative objects. The Algerian legislator has defined it as any combination of lines or colors intended to give a special appearance to an industrial object[7].

The term “model,” on the other hand, refers to the external form in which products appear, giving them an attractive quality, that is, the form in which the innovative mechanism is incorporated into the product itself, as in the external design of automobiles or perfume bottles. According to Article 1 of Algerian law, a model is any form capable of being shaped or any industrial object that can be used to manufacture other units and that differs from other models by its external appearance[8].

It is clear from this that the practical benefit of each consists in giving products an attractive appearance or a particular form that attracts customers and leads them to prefer these goods over other identical goods. Consequently, this enables each party to the industrial transaction—the manufacturer and the consumer—to achieve what it seeks: the highest possible profit and circulation of goods for the producer, and their differentiation from other goods with confidence and reassurance for the consumer[9].

Second Branch: Conditions of Industrial Designs and Models

Since presenting goods and products in an attractive form contributes to their circulation, the legislator has granted the owner of a design or model legal protection when the substantive and formal conditions are fulfilled:

First: Substantive Conditions

1. Industrial character: This means that it must be capable of industrial application to products in order to distinguish them from others, such as designs intended for textiles and leather.

2. Novelty: This means that the design or model must, as a whole, be new and possess a distinctive character and must not constitute a reproduction or imitation of another design. In any event, novelty is a factual matter to be determined by the trial judge. A design or model is considered new if it has not previously been disclosed, meaning that novelty and innovation,

which constitute elements of modernity, require the existence of something that did not previously exist.

3. The industrial design or model must not be contrary to public morals: Accordingly, it does not benefit from legal protection when the form of the industrial design or model violates public policy and public morals by virtue of what its meaning suggests, such as obscene forms and models[10].

Second: Formal Conditions

The Algerian legislator has regulated these formal conditions through a series of procedures consisting of filing, registration, and publication[11]. The filing application must contain a set of data and procedures concerning its submission by registered mail, with a request for acknowledgment of receipt, to the Algerian Institute of Industrial Property.

After the application is submitted, the competent department, represented by the Algerian Institute of Industrial Property, registers it in a special register maintained for this purpose. It is then published in indexes prepared by the competent departments so that the public may be informed of it. The fulfillment of these substantive and formal conditions guarantees legal protection to holders of rights in industrial designs and models against any infringement thereof and guarantees their right to exploit them exclusively.

Third Branch: Counterfeiting of an Industrial Design or Model

No person may, during the period of legal protection granted to a formally registered industrial design or model, carry out any imitation or modification of the design or model without the consent of its original owner.

Accordingly, creating a design or model that is completely identical to the original design or model constitutes the crime of counterfeiting. Counterfeiting of a design or model may occur through precise imitation, or it may consist of reproducing the original industrial design or model in an almost complete manner, with an overall similarity that leads consumers to confuse the two, even where certain partial differences exist.

It should be noted that, like inventions, industrial designs and models have not been given a definition of counterfeiting by the Algerian legislator. The legislator merely stated that any infringement of the rights of the owner of a design or model constitutes the misdemeanor of counterfeiting[12].

Among the cases of counterfeiting in Algerian jurisprudence is the case of **Bimo and Regal**. Bimo, whose headquarters are located in "Baba Ali," used and marketed chocolate under the **Ambassadeur** trademark in black packaging surrounded by a red border. This design was filed and registered with the National Institute of Industrial Property on 29/11/1995. Regal, whose headquarters are located in Bouira, used similar packaging containing the same design and model, but under the **President** trademark, which had been filed with the National Institute of Industrial Property at a later date than Bimo's filing. Bimo therefore brought an action before the El Harrach Court on the basis of counterfeiting, seeking the annulment of the registration of the model filed and used by Regal because of the confusion and ambiguity that it could create in the mind of the consumer[13].

The court therefore issued a judgment in favor of Bimo on the basis of priority in filing the design, annulling the subsequent registration and ordering cessation of its use. The Algiers Judicial Council upheld the judgment of the El Harrach Court.

Conclusion

1. Conclusions

Counterfeiting is an international phenomenon that affects economies and reduces the volume of genuine investment.

- The seriousness of this phenomenon goes beyond harming consumers, particularly in the field of medicines and food products, as well as in the field of automobile spare parts.
- Counterfeiting has developed to such an extent that it is often impossible to distinguish between the counterfeit and the genuine product except through specialists and experts.
- Counterfeiting works to suppress the spirit of initiative, creativity, and innovation among rights holders.
- It is difficult to prosecute perpetrators of counterfeiting, particularly since this phenomenon has transcended the national territories of States in the context of international groups and networks specializing in counterfeiting.
- The weakness of national mechanisms, due to insufficient information and the lack of rapid action to confront and combat counterfeiting, is attributable to the weakness of the necessary human and technological resources.
- The absence of a culture of avoiding counterfeit goods among consumers in society, which is attributable to the individual's social and economic situation within society.

2. Recommendations

- Unify the provisions within a single law concerning counterfeiting in all areas of industrial property in order to facilitate the necessary deterrence to combat counterfeiting.
- Invest in human resources and provide a framework for experts in this field, while training specialized judges to adjudicate this type of case concerning counterfeiting claims, whether criminal or civil.
- Update the legal provisions guaranteeing protection for all areas of industrial property.
- Coordinate efforts among the various institutions working to combat counterfeiting, whether administrative or judicial institutions.

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