

CONDITIONS FOR EXERCISING UNFAIR COMPETITION LAWSUIT IN THE FIELD OF PROTECTION OF INDUSTRIAL PROPERTY RIGHT

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Abstract:

Competition is a natural phenomenon driven by individuals' efforts to excel, and it is inherent in the field of business law, particularly economic activities. Competition is desirable in the commercial environment because it leads to the survival of the fittest in terms of fair treatment, offering higher quality goods at the most affordable prices. The principle of freedom of trade encompasses the obligation of freedom of competition to foster its prosperity and gain a market share through legitimate methods, such as maintaining product quality, setting prices that align with customers' purchasing power. However, this competitive process must be based on fairness and integrity. If competitive practices exceed their natural boundaries and involve illegitimate methods, transforming into unfair competition by violating professional norms and practices, such actions are not permitted by the law and the affected trader has the right to seek compensation from those who engaged in such illegitimate actions. The fundamental principle is that competition is based on honor, integrity, compliance with laws, and commercial customs and practices. Any departure from these principles renders competition unfair, and it becomes necessary to protect those who are harmed by it. The means of this protection is through a claim of unfair competition. In the field of industrial property, for a claim of unfair competition to be accepted, it is required that there is competition in the first place, then this competition is characterized as unfair, and damage has been caused or will be caused to the competing trader.

Keywords: Competition , industrial property , trad , unfair competition .

INTRODUCTION:

Over the past two decades, many countries around the world have adopted a new economic policy characterized by openness. This economic policy has created numerous opportunities alongside significant challenges, with one of the prominent challenges being the activation of competition, which is the essence of trade. The freedom of trade and industry primarily aims to achieve profit by attracting a larger number of customers. Traders and producers use various methods and means to encourage customers to frequent their establishments, leading to competition among traders and manufacturers engaged in similar business activities¹. As long as the means used by the trader are legitimate, there is no issue, as every economic agent seeks to attract and increase their customer base to acquire the goods they sell, produce, or the services they provide. This can only be achieved through two means or a combination of both: first, convincing new customers who have never consumed that particular product, and second, persuading customers of competing businesses to leave them and engage with the trader instead.

The fundamental principle in competition law is that both of these means are legitimate. These competing businesses strive to attract new customers and retain their existing clientele, employing various legitimate methods and techniques. This is what constitutes legitimate and honorable commercial competition, which is based on fairness and respect for the established rules of the competition game within the business community.

However, the issue and dispute arise when a merchant or manufacturer utilizes illegitimate and contrary means to commercial customs, causing harm to others. This includes attacking the reputation of a competing trader by disseminating false information about them, infringing upon their trade name and trademark, inciting workers to strike and abandon work, spreading chaos, and other

forms of unfair competition². In such cases, the affected trader or producer has the right to initiate a legal lawsuit based on the acts of unfair competition committed by those who have caused them harm through illegitimate means. From this perspective, it becomes apparent that the purpose of pursuing a claim of unfair competition is not solely to recover customers, but rather to protect the commercial establishment and its elements, and to cease the unlawful activities that pose a threat. These activities can result in significant harm, manifested in the infringement upon the essential and intangible element of communicating with customers.

This lawsuit grants the merchant the right to preserve what they have achieved and to defend, in any form, the protection of their commercial establishment from customer reluctance to frequent it when such reluctance arises due to false claims made against the merchant or their product, whether in relation to their name, trade address, or their goods, such as their trademark. Consequently, the merchant has the right to retain their customers, who have been acquired through long-term efforts, good treatment, and quality merchandise. In this regard, the merchant has the option to resort to legal action and demand the cessation of those claims that have led or may lead to customer reluctance and avoidance. This is the means by which the merchant can file a claim of unfair competition³. In this context, the Kuwaiti court issued a ruling on 20/10/68, stating the following: "It is established that the merchant has the right to the element of communication with customers of their commercial establishment. This right entails preventing other traders from resorting to illegitimate means to influence these customers, attract them, and protect the element of communication with customers. The actions taken by the competing merchant to acquire customers from others, through illegitimate means, fall under unlawful actions that impose liability on the aggressor to provide compensation."⁴

Indeed, it is evident that the element of communication with customers, which is a component of the commercial establishment, is considered a financial right that can be disposed of and protected through a claim of unfair competition, as stated in Article 78 of the Algerian Commercial Code⁵. This right can be protected when competition exceeds natural boundaries, and the competitor resorts to actions and means that contradict integrity, creativity, commercial customs, or violates professional ethics, turning into unfair competition that causes harm. In such cases, the perpetrator is obliged to compensate for the resulting harm to others. This lawsuit represents a general protection of industrial property rights. To initiate a claim of unfair competition resulting from an infringement of industrial and commercial property rights, the law requires the presence of certain elements for establishing liability. These elements include the existence of unlawful acts, harm, and a causal link. Therefore, the claim of unfair competition serves as a means of general protection for industrial and commercial property rights, and it necessitates the presence of the elements required by the law to establish liability, which are unlawful acts, harm, and a causal link⁶.

To accept a claim of unfair competition in the protection of industrial property rights, several conditions must be met. Firstly, there must be competition, characterized by its illegitimate nature. In addition, there should be harm caused or likely to be caused to the competing merchant. While the court assumes harm in cases of unfair competition without the need for explicit proof⁷, it generally establishes claims of unfair competition on the basis of principles of tort liability. However, it is argued that basing claims of unfair competition on principles of tort liability is inconsistent with recognizing the merchant's rights in industrial and commercial property. Intellectual property requires the protection of these rights through specific claims, just as tangible property is protected through claims of restitution or entitlement⁸. Therefore, the fundamental question arises: What are the conditions for pursuing a claim of unfair competition in the field of protecting industrial property rights? To answer this question, we clarify the legal basis of the claim of unfair competition first (Part One), followed by the conditions for pursuing this legal claim (Part Two). Finally, the article concludes with a summary of essential findings and necessary recommendations.

Part One: Legal Basis of Unfair Competition Claim

The law has established specific legal protection for certain elements of the commercial establishment, namely industrial property rights. However, it has not established specific protection for the commercial establishment as a whole against unfair competition that diminishes its value and

causes harm to it⁹. Despite the importance of unfair competition, the majority of legislations have not regulated this claim with explicit provisions¹⁰. Instead, they have left it to judicial and jurisprudential discretion.

A jurisprudential debate arose among scholars regarding the basis and legal nature of the claim of unfair competition or the criterion upon which it should be determined that we are dealing with unfair competition. Some jurists argued for removing this claim from the framework of tort liability because it does not suit it¹¹. Others based it on the theory of abuse in the exercise of rights¹². Another group of scholars attributed it to specific principles¹³. However, some jurists attempted to find a legal basis for it that aligns with its unique nature. It has been suggested by some that the general requirements for a claim of liability for an unlawful act necessitate the presence of three conditions: fault, harm, and a causal link. Although these conditions are also required to establish liability in a claim of unfair competition, their interpretation may differ at times from their intended meaning in cases of liability for an unlawful harmful act¹⁴.

First Claim: Unfair Competition is a Proprietary Claim

Some jurists argue that the claim of unfair competition aims to protect the merchant's right to their customers, resembling proprietary claims such as restitution, entitlement, and possession¹⁵. This approach reflects the merchants' perspective as actual owners of customers. However, this perspective has faced several criticisms. Firstly, it is not an accurate expression of statutory law provisions, as the judiciary does not consider mere infringement on customers sufficient but requires fault, even if it is non-intentional. Proprietary claims are established to protect tangible property¹⁶, while the claim of unfair competition aims to protect the commercial establishment and its elements, which are intangible. Furthermore, unfair competition can occur without direct infringement on customers, such as when a merchant incites workers of a competing establishment to leave their jobs and join their own to benefit from their expertise and trade secrets¹⁷.

Second Claim: Unfair Competition as a Penalty for Abusive Exercise of Rights

Some jurists argue that the claim of unfair competition is merely a penalty for the abusive exercise of trade freedom. Competition in the field of commercial activities is considered a right recognized by commercial legislations, especially in countries that adhere to a liberal system. However, this right is not absolute and is subject to limitations that must not infringe upon the rights of other competitors. Therefore, this claim is seen as a penalty for the merchant's abuse of their right to engage in trade. If a merchant engages in actions that go against customary practices of the profession, they have misused their right to engage in commercial activities¹⁸. This opinion was advocated by the jurist Gosselin, who distinguished between acts of unfair competition and considered them not inherently illegal but rather dependent on the underlying motive behind them. He also differentiated between acts of unfair competition and prohibited acts that are carried out separately from the exercise of any right and constitute a violation of the rights of others¹⁹.

Indeed, the theory of the abusive exercise of rights has faced criticism, particularly from jurists such as Rieber and Planiole, who argue that the concept of abuse in the exercise of rights contains inherent contradictions. According to their perspective, when someone exercises their right, they do not violate the law, and their actions are not deemed unjust unless there is an infringement upon that right²⁰. One action cannot simultaneously be in accordance with and contradictory to a right. The right ends when the abuse begins. Therefore, if competition deviates from its purpose due to a merchant or producer resorting to illegitimate methods, they have misused their right. A merchant engaging in unfair competition has the intention to harm their competitors. Several provisions prohibit abuse resulting from a dominant position in the market or in a specific sector, as well as the prohibition of abusive economic dependence. The Algerian legislator has incorporated these principles, particularly in Article 41 of the Civil Code, which was repealed by Law 10/05. One specific form of abuse mentioned is the refusal to sell or provide a service without a legitimate justification²¹.

Third Claim: Unfair Competition as a Claim of Tort Liability

The majority of jurists and the judiciary agree that the claim of unfair competition is fundamentally a claim of tort liability based on personal fault committed by the defendant. This is in line with Articles 1383-1382 of the French Civil Code, which are equivalent to Article 124 of the Algerian Civil

Code. The latter states, "Any act, regardless of its nature, committed by a person through their fault and causing harm to others, obliges the person who caused it to provide compensation." This principle is adopted by the judiciary and supported by most legislations, including Algerian law. For tort liability to arise, certain elements must be met, such as the presence of fault²². In this context, fault does not necessarily mean intentional conduct (resulting solely from negligence and lack of caution) but also includes unintentional conduct that causes harm to others and requires reparation²³. Criticisms have been raised against this approach, arguing that it neglects the originality of the claim. The claim of unfair competition would not exist without the emergence of a distinct world known as the business world, characterized by specific features, particularly the dynamism of its actors and the competitive nature that acts as a driving force in attracting customers²⁴.

The claim of unfair competition is not intended solely to achieve pure civil objectives but is, in fact, a means to protect established legal positions and regulate fair and honest competition, both among the competitors themselves (economic operators) and between the economic operator and the consumer.

Jurists and the judiciary in Egypt and France almost unanimously agree that the claim of unfair competition is, in essence, a special type of liability claim aimed at protecting the intellectual property rights of the trader (elements of their commercial establishment)²⁵. Initially, legislations focused on protecting the constituent elements of the commercial establishment through explicit provisions, such as trademarks under Order 2606/03²⁶, patents under Order 2707/03²⁷, the ornamental designs of integrated circuits under Order 2808/03, as well as models and industrial designs under Order 2986/66²⁸. If these constituent elements of the commercial establishment are infringed upon, the aggrieved party can directly initiate the prescribed claim for the protection of these elements in the referenced laws. However, the legislator has not established direct specific protection for the commercial establishment as an independent entity separate from the constituent elements in its composition against acts of unfair competition, which often occur and result in the diversion of customers from the commercial establishment, even if no infringement has occurred on a protected element of the commercial establishment by specific laws.

The jurist Rubyieh considered the claim of unfair competition as a specific type of liability claim, based on the excessive use of civil liberties. He defines civil liberties as belonging to private law within the theory of public freedoms. The law has not precisely defined the content of civil liberties, as Rubyieh relies on the principle of preventing individuals from exploiting others in regulating their relationships. According to Rubyieh, the primary objective of the claim of unfair competition is to protect the right of the competitor when another competitor exceeds their right, leading, in its consequences, to the cessation or prevention of excessive use of the right, beyond what would lead to compensation for damages²⁹. Rubyieh also considers it a specific claim in terms of its conditions. Regarding fault, in tort liability, every unlawful act is harmful, but not every harmful act is considered unlawful. Therefore, Rubyieh regards the act of unfair competition as any act that exceeds what competitors would expect within the framework of customary economic competition in a fair environment³⁰. As for Algerian legislation, it has not established specific rules governing liability arising from acts of unfair competition. Instead, it relies on general principles according to Article 124 of the Algerian Civil Code.

Section Two: Conditions for filing a claim of unfair competition.

To accept a claim of unfair competition, three elements must be present.

First Claim: Existence of acts of unfair competition.

Civil legislations do not specifically define fault when regulating liability for unlawful acts. Instead, this task is left to jurisprudence and the definition that has been established by legal scholars and the judiciary. Fault is considered a violation of a legal duty coupled with awareness of the violation³¹. Liability is only incurred if a fault has been committed. In the context of unfair competition (the harmful act), the fault lies in engaging in unfair competition through the use of unlawful means that contradict customs and norms.

Jurisprudence stipulates that this unfair competition must occur between two merchants engaged in similar or identical trade. However, modern jurisprudence argues that acts of unfair competition can

occur between individuals who are not engaged in the same trade. For example, economic parasitism is considered a form of unfair competition³². It is up to the judge to determine the act constituting unfair competition.

Nadia Foudil, in her book "Explanation of Algerian Commercial Law," states that if there is competition between two merchants engaged in similar trade activities, a claim of unfair competition requires that one of them commits a fault in this competition. This fault leads to the diversion of customers from the merchant who committed the fault to the other merchants, causing harm to the first merchant³³. The standard that has been established by jurisprudence in determining the meaning of fault is the commission of acts that violate the principles of trust, honor, and integrity in trade. According to this view, the standard of fault is not solely derived from moral principles, and not all acts of competition that are not in line with ethical principles can be considered as unfair³⁴. This is because competition within the scope of commercial activities allows for some acts of competition that may not be approved by purely moral principles.

A- Occurrence of a competitive situation

Due to the specific nature of a claim of unfair competition, a preliminary requirement must be met, which is the occurrence of a competitive situation. Initiating a claim of unfair competition necessitates the presence of a competitive situation between two traders or between two similar or comparable businesses. However, some juristic opinions do not require the competition to be limited to traders, such as in the case of competition between individuals engaged in the ready-made clothing or leather trade. If one of them engages in an act of unfair competition, the aggrieved trader can file a claim of unfair competition against the offending trader. The situation differs when it arises between different trades. For instance, if a person involved in the leather trade engages in an act of unfair competition to harm a person engaged in the food industry, the aggrieved trader cannot file a claim of unfair competition, but can instead pursue a claim based on the principle of negligence due to the harmful act committed. However, this scenario is subject to an exception, namely economic parasitism³⁵.

B- Forms of error in unfair competition acts:

These are the actions that constitute unfair commercial competition, manifesting in various forms. The condition of fault is one of the essential requirements for unfair competition. According to Professor Abdullah Darmish, since competition is considered legitimate in the field of trade and industry, it is necessary to determine when fault gives rise to liability³⁶. This makes it difficult to define the meaning of fault that warrants liability in the commercial field and to draw a clear line between what is considered legitimate and what is not. Algerian legislation on industrial property protection, specifically, does not limit the forms of fault or the acts that constitute unfair competition. Instead, it grants discretionary power to the judge in many cases to determine which acts constitute unfair competition. Unfair competition acts are diverse and cannot be exhaustively listed, as they form the basis of fault in a liability claim. Moreover, it is impossible to predict the future developments in such acts, especially in the era of the digital revolution³⁷. Therefore, acts of unfair competition do not fall under a precise categorization, as they change with the evolving nature of business activities.

The French legislator, when regulating competition³⁸, did not specifically address provisions regarding unfair competition or the acts and situations that constitute a deviation from fair practices³⁹. However, Article 10 of Order 75-02, which includes the approval of the Paris Convention⁴⁰, considers certain acts as unfair competition, particularly those that contradict fair customs in commercial and industrial affairs. These acts are prohibited, including:

- Any actions that, by their nature, create confusion with the establishment of a competitor, its products, or its industrial or commercial activities.
- False claims made in the course of trade that undermine the trust in a competitor's establishment, products, or commercial or industrial activities.
- Data or claims used in trade that have the potential to mislead the public regarding the nature, manufacturing methods, characteristics, suitability for use, or quantity of goods.


Despite the fact that the forms of fault cannot be exhaustively⁴¹ listed due to their abundance, diversity, and constant evolution, jurisprudence has established a certain number of cases that can be used by judges as a basis for considering them as forms of unfair competition.

Due to the specific nature of the element of fault in the claim of unfair competition, given the multitude and variety of its forms, legal jurisprudence has differed in determining the standard reference for defining fault. Despite the multiple and diverse classifications that have been applied to these acts and the legal scholars' efforts in addressing these classifications based on different principles, some legislations have adopted a division based on the scope of the infringement. The infringement may occur against the reputation of a competing trader, their goods, or their commercial property. It may also target the commercial establishment's internal organization or the general market regulations⁴². Other legislations divide the forms of fault into classical acts of unfair competition and modern forms of unfair competition. Classical acts of unfair competition can be summarized as follows:

- Actions that undermine confidence in creativity or invention, resulting in loss of credit and reputation through derogation and deception.
- Actions aimed at creating disturbance by disclosing secrets, primarily obtained through unethical methods and practices such as breaching confidentiality by disclosing confidential information.

As for modern forms of unfair competition, they include false advertising that deceives consumers, economic parasitism through attacks on trade names and trademarks. And incitement of employees who are vital to the economic project, encouraging them to leave the commercial establishment, causing disruption and chaos, or enticing them to work for a competing trader or to exploit trade secrets⁴³. Debate has arisen among legal scholars and the judiciary regarding whether fault requires intent, meaning the intention to cause harm, or if mere negligence and lack of precaution are sufficient for its establishment. Comparative jurisprudence has settled on the view that the fault component of unfair competition exists even if there is no malicious intent on the part of the actor, and it can be established without the intention to cause harm. Nonetheless, unfair competition persists⁴⁴. And this is what was affirmed by the Court of Appeal in Paris in its decision when it stated, "When a company presents its product for sale in a form similar to what another competitor has previously used, this act constitutes a lack of precautionary measures because it did not verify that this form had been previously used by another competitor. This could create confusion among customers who might believe that the product belongs to the competing party. Consequently, the first company has committed an act of unfair competition against the second company and is liable to compensate it."⁴⁵ Therefore, the fault in the field of unfair competition should be considered within a comprehensive framework that includes both intentional acts and acts committed as a result of negligence or lack of caution⁴⁶, and the importance of differentiation lies in the fact that malicious intent can be a reason for increasing compensation, while a mistake committed in good faith can be a reason for reducing the amount of compensation. Some legal scholars believe that the search for malicious intent only becomes apparent when there is a desire to know which of the claimants can be pursued in a claim of imitation or unfair competition. The law regulating industrial property in Algeria does not specify the forms or cases of unfair competition, but rather it is provided for in Law 04/02⁴⁷ relating to the rules applied to commercial practices. Article 27 thereof states that unfair commercial practices within the meaning of the provisions of this law include practices through which economic assistance is provided, such as:

1. Tarnishing the reputation of a competing economic operator by disseminating negative information that affects his person, products, or services.
2. Imitating the distinctive features of a competing economic operator or imitating his products, services, or advertising with the intention of gaining customers of that operator by sowing doubts and/or illusions in the mind of the consumer.
3. Exploiting a distinctive technical or commercial skill without permission from the owner.
4. Tempting contractors working with a competing economic operator contrary to labor legislation.

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5. Exploiting professional secrets as a former employee or partner in order to harm the employer or former partner.
 6. Disrupting the organization of a competing economic operator and diverting its clients using unfair methods such as waste or sabotage of its advertising means, embezzlement of cards or orders, illegal brokerage, and causing disturbances in its sales network.
 7. Disturbing the market organization and causing disruptions in it in violation of laws and/or legitimate prohibitions, especially by evading the obligations and necessary conditions for the establishment, operation, or conduct of a business.
 8. Establishing a commercial establishment in close proximity to a competitor's establishment with the aim of exploiting its reputation outside of customary and competitive practices.

The second requirement: Damage

Damage in the field of unfair competition is represented by the loss of customers by the merchant committing the unfair acts, whether the customers turn to the benefit of the perpetrator of those acts or to other merchants. It is also stipulated that the damage can be material or moral, significant or minor. A claim of unfair competition can be pursued even if the damage has not occurred; it is sufficient for it to be potential. An example of this is a person who imitates a product but has not yet put it on the market. In this case, the damage has not occurred, but the potential for its occurrence remains, contingent on the introduction of the imitated product to the market. In this situation, liability arises without actual damage occurring. Therefore, liability arises based on the mere malicious intentions, even if their results have not materialized⁴⁸. This ruling is found in Article 182 of the Algerian Civil Code. Damage may occur in the future because the judiciary presumes the occurrence of damage as soon as unfair competition takes place. The judge deduces acts of unfair competition from events that are likely to cause harm to the plaintiff. Therefore, a claim of unfair competition differs from a claim of civil liability in that mere potential damage is sufficient to establish a claim of unfair competition, contrary to the general rules of civil liability⁴⁹. This is because the element of fault is of great importance and is the necessary and sufficient element to the extent that it encompasses the second element, which is damage, and thus makes its proof unnecessary. As we mentioned, damage is the diversion of customers away from the plaintiff's store and their departure as a result of the unfair means employed by the defendant⁵⁰.

The third requirement: Causation

The general rules of liability require that the alleged fault be the sufficient and effective cause of the damage in order for the liability of the actor to be established⁵¹. Since a claim of unfair competition is a preventive claim, accepted by the judiciary based solely on the existence of potential damage, the judiciary does not require proof of the wrongful acts except in cases where it is difficult to prove them. Proving the existence of a causal relationship between the fault and the damage is often difficult, especially when the damage is potential. When the victim proves this causal relationship, the judiciary assumes that the practices contrary to the rules of competition had a positive impact on the occurrence of the competitive damage, as if the judiciary is establishing a presumption of causation between the wrongful act and the resulting damage, contrary to the general rules of civil liability, which do not recognize what is called a presumption of causation except in cases such as liability for traffic accidents⁵². The requirement of causation has been relaxed. As for the leniency in proving it and the sufficiency of proving a negative inferred from the absence of other possible explanations for the damage.

Conclusion

In conclusion, it is evident that intellectual property rights in general, and industrial property rights in particular, play a crucial role in attracting investment and in the economic development of any society, whether advanced or developing. It is inconceivable to have a modern state without a protective legal system for intellectual and industrial property rights, reflecting the importance of protecting creative and knowledge-based products, especially with the advent of technological advancements that are sweeping the world. This is particularly important in the context of the new global economy, which is based on knowledge, information, and intellectual products that have become a fundamental material value and a key element in the assets of a merchant. As a result of

this progress, there is an increasing focus on the protection of intellectual and industrial property rights in particular.

In light of the attacks on intellectual property rights, we notice a shift in focus towards the role of national and international legislation in creating laws that are suitable for protecting intellectual and industrial property rights, and ensuring their effective and strict enforcement to preserve the motives of intellectual creativity. The image of attacks on these rights has evolved significantly with technological and scientific advancements in the absence of a favorable legislative environment. Piracy, counterfeiting, and other forms of unlawful acts have prevailed. Therefore, comparative legislation has established legal systems to protect these rights, including the possibility of filing a lawsuit for unfair competition in case of infringement of these rights. This is a lawsuit that does not have to be based on normal liability; its basis is the unlawful harmful act. It is the right of anyone who has suffered damage from an act of unfair competition to file a liability lawsuit based on Article 124 of the Algerian Civil Law and to demand compensation and cessation of unlawful acts.

Based on the information provided, we can draw some conclusions and recommendations:

1. Competition law is a strong pillar for contributing to the development of industrial property systems, which in turn leads to economic activity development. It ensures that markets remain open, providing an opportunity for the competitive development of commercial and industrial enterprises.
2. Relevant authorities responsible for intellectual property rights should seek guidance from international recommendations, observations, agreements, and scientific conferences, especially those held at universities.
3. Efforts should be made to enrich Algerian legislation and establish specific legal texts to regulate unfair competition, aligning with other laws, and implementing more practical mechanisms to strongly combat anti-competitive practices.
4. Attacks on industrial property take various forms, including traditional and modern forms such as economic parasitism.
5. Therefore, it is essential to train specialized judges in the field of industrial property crimes. Judges should be well-versed in all relevant provisions and strive to address any gaps in the existing laws.
6. Working to establish specialized judicial police teams to investigate and gather evidence related to such attacks on industrial property rights, including counterfeiting and piracy, is crucial.

Footnotes and References.

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- [1] Hamadi Al-Zubair, Legal Protection of Trademarks, Al-Halabi Legal Publications, First Edition, 2012, p. 07.
 - [2] Kilani Abdel Radi Mahmoud, Protection of the Commercial Establishment through Unfair Competition Lawsuit, Dar Al-Nahda, 2001, p. 116.
 - [3] Mohammed Al-Amir Youssef Wahba, Errors in Unfair Competition Lawsuits, Doctoral Thesis, Cairo University, Faculty of Law, 1990, p. 88.
 - [4] As cited in Sameeha Al-Qalyoubi, The Commercial Establishment (Sale and Mortgage), Dar Al-Nahda Al-Arabiya, 1989, p. 30.
 - [5] Article 78 of Order 59/75: The movable funds allocated for conducting commercial activities are considered part of the commercial establishment, which necessarily includes its customers and reputation.
 - [6] Aziz Al-Akeeli, Explanation of Commercial Law, Vol. 1, Dar Al-Thaqafa Library, Amman, 1998, p. 107.
 - [7] Mohammed Mahboubi, Protection of Industrial Property Rights from Unfair Competition, Article on the internet www.justice.org, Date of visit 09/09/2012
 - [8] Tharwat Abdel Rahim, Commercial and Industrial Property in Saudi Systems, General Bureau of Libraries Affairs, 1987, p. 181.
 - [9] Ahmed Mahrez, Explanation of Algerian Commercial Law, Second Edition, Diwan Al-Matbuat Al-Jamiya, Algeria, 1981, p. 197.
 - [10] Among them is our Algerian national legislation, which has not regulated this lawsuit with explicit texts.
 - [11] Among the strongest supporters of this trend, we find the jurist Georges Riebber and the jurist Robieh.
 - [12] A leading figure of this theory is Professor Josran.

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- [13] Among the jurists who attributed this claim to specific principles are the jurist Rieber, Professor Aktham Al-Khouli, and Professor Mustafa Kamal Taha.
- [14] Aziz Al-Akeeli, same reference, p. 256.
- [15] Hassan Al-Masri, Commercial Law, Volume One, Dar Wahdan for Printing and Publishing, Second Edition, 1994, p. 292.
- [16] Kilani Abdel Radi Mahmoud, Protection of the Commercial Establishment through the Unfair Competition Lawsuit, Dar Al-Nahda, 2001, p. 198.
- [17] Aktham Al-Khouli, Al-Mawjaz fi Al-Qanoon Al-Tajari, Volume One, Sidi Abdullah Wahba Library, No Country, 1970, p. 199.
- [18] Aziz Al-Akeeli, same reference, p. 256
- [19] Joseph Semaan, Unfair Competition, Al-Halabi Publications, Beirut, 2004, p. 172
- [20] Mohammed Al-Amir Youssef Wahba, same reference, p. 111
- [21] Article 41 of Algerian Civil Law was replaced by Article 124 repeated Algerian Civil Law.
- [22] Consider the second paragraph of Article 15 of Law 02/04
- [23] Sawashi Waseela, Characteristics of Unfair Competition Lawsuit versus the Lawsuit of Tort Liability, Master's Thesis, Ben Aknoun, 2004, p. 20
- [24] Ilham Zaamoum, Protection of the Commercial Establishment from Unfair Competition, Master's Thesis, Ben Aknoun, 2004, p. 43
- [25] Sawashi Waseela, same reference, p. 21
- [26] Decree 06/03 dated 28/07/2003 concerning trademarks
- [27] Decree 07/03 dated 28/07/2003 concerning patents
- [28] Decree 08/03 dated 28/07/2003 concerning the protection of the design of integrated circuits
- [29] Decree 86/66 dated 28/04/1966 concerning fees and industrial designs
- [30] Ahmed Mahrez, same reference, p. 192
- [31] Joseph Semaan, same reference, p. 135, referred to from the book "Usage Excessif de la Liberté Civile" by Paul Roubier
- [32] Joseph Semaan, same reference, p. 138
- [33] Ali Ali Suleiman, Explanation of the General Theory of Obligations, Diwan Al-Matbuat Al-Jamiya, Algeria, 6th edition, 2005, p. 141
- [34] Joseph Semaan, same reference, p. 32
- [35] Nadia Foudil, Explanation of Algerian Commercial Law, Diwan Al-Matbuat Al-Jamiya, 2004, p. 229
- [36] Aziz Al-Akeeli, same reference, p. 235
- [37] Halimi Mohamed Al-Hajjar, Unfair Competition in the Face of a New Type (Economic Parasitism), Zain Legal Publications, Beirut, 2004, p. 32
- [38] Abdullah Drimish, International Protection of Industrial Property and its Legal Applications, Doctoral Thesis, Faculty of Law Ain Chock, Casablanca, 1988, p. 121
- [39] Kilani Abdel Radi Mahmoud, same reference, p. 116
- [40] Decree No. 86-1243 dated 01/12/1986 and the law dated 01 July 1996, which entered into force in 1997.
- [41] Hamadi Al-Zubair, same reference, p. 118
- [42] Decree 75.02 dated 09 January 1975, which approves the Paris Convention for the Protection of Industrial Property signed on 20 March 1883.
- [43] Refer to Swiss and German law, which have restricted these works (see Zaamoum Ilham, Protection of the Commercial Establishment from Unfair Competition Lawsuit, p. 64)
- [44] Kilani Abdel Radi Mahmoud, same reference, p. 116
- [45] Nadia Foudil, same reference, p. 61
- [46] Amin Juma, Unfair Competition Between Theory and Practice, Article in Al-Muhamme Magazine, 1997, Issue 31, p. 63-43
- [47] Recueil Dalloz, 1994, Issue 29, 1st September 1994, Dalloz Edition, p. 22
- [48] Law 04/02 dated 23 June 2004 concerning the rules applied to commercial practices (the term "unfair competition" appeared only in the Health and Promotion Law of 1985, and the legislator used the term "unfair practices")
- [49] Ali Ali Suleiman, same reference, p. 162
- [50] Amin Juma, same reference, p. 58



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- [51] Haseem Mohammed Al-Rashid, Unfair Competition in Kuwaiti Law, Master's Thesis, Kuwait University, 2000, p. 81
- [52] Refer to Article 124 of Decree 58/75 as amended and supplemented by Law 10/05 concerning Algerian Civil Law