

# LEGAL AND PRACTICAL PROBLEMS OF THE TRADE NAME OF THE COMMERCIAL COMPANY

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## Abstract

*The Algerian legislature has been subjected through commercial law to the provisions of commercial companies starting from their establishment and possible amendment to their end. business ", so that commercial companies are considered business by form, as the company's form and subject matter determine the commercial nature of the company As regards the procedure for establishing the company, however, the Algerian legislator distinguished between persons' companies and money companies, including what relates to the company's designation or what is referred to as the trade name.*

*Hence the importance of this study, so that it is necessary to distinguish between both the trade name and the business address, the expression being the identification of the company in particular by others, so that it may become the business address - If a people's company is known and traded by the people and then becomes a money company, it may in this case lose its previously renowned business address and thus suffer a loss.*

**Keywords:** Trade name; Business title; Commercial Companies; Legal Protection of Partner; Industrial property.

## I- INTRODUCTION:

A trade name is an essential element of a company's business identity and is one of the most important marketing and discrimination tools in the market. The trade name represents the mark by which the company, product or service is known, and reflects the values and vision the company seeks to achieve. The importance of the brand name is reflected in several aspects, including building trust with customers, facilitating the process of product and service recognition, and enabling the company to build a strong and distinctive reputation in the market.

When choosing a trade name, several criteria must be observed to ensure its effectiveness and positive impact, such as simplicity, clarity, reminiscence, and excellence from competitors. It must also be ensured that the name does not conflict with other intellectual property rights, and that it can be registered as a trademark to protect the company's rights.

Legally, the trade name is subject to several legal procedures to guarantee and protect property rights. These procedures include registering the name with the competent authorities and ensuring that it is not used by other companies. The trade name contributes to building a strong and sustainable identity for the company, and is a strategic investment that significantly affects its future success and growth.

Article 416 of the Algerian Civil Code stipulates that the company has a contract under which two natural or legal persons are obliged to contribute to a joint activity by providing a share of work, money or cash, with the aim of sharing the profit that may result in, achieving an economy or achieving an economic goal of mutual benefit, and also bear the losses that may result therefrom.

This definition shows that the company is a contract based, like the rest of the contracts, on general objective elements: satisfaction, eligibility, convenience, reason. It is also based on the special objective pillars of two or more people's agreement to contribute to a particular financial project. in addition to the provision of a set of quotas, whether financial or labour and sharing the profit or loss resulting from this project, another element must also be the intention to participate, that is, the partners' willingness to cooperate in achieving the company's purpose.



Business companies are divided into two types: companies based on personal consideration, called people's companies: Solidarity Company, Simple Recommendation Company, Scissor Company, and companies based on financial consideration, called Money Companies: Shareholding Company, Equity Recommendation Company, and Limited Liability Company.

Whatever type of business, whether a company based on personal or financial consideration, is subject in its establishment to a set of formal and objective conditions, the unavailability of which results in invalidity. One of the most important of these procedures or conditions is the company's designation in commercial law as the commercial address of the business.

But by reference to the provisions of commercial companies, the Algerian legislator has distinguished between the business address and the trade name according to the type of commercial company. In the case of a company, the Algerian legislator used the term "business address", As for the money company, the term "trade name" has been used, and here the problem in the term seems obvious, why did the Algerian legislature not adopt a unified term, given that the company of any kind aims to achieve profits? Especially since there are cases in which a people's company is transformed into a money company, in this case the name changes its nature and its terms change by changing the type of company.

Problems of study:

- Has Algerian legislator been able to achieve the legal protection of the company by adjusting the company's trade name of her kind?
- How influential does a trade name be if a people company becomes a money company?

The trade name is the name that the company uses to identify itself in commercial transactions and various activities. The trade name is a crucial part of the company's business identity, helping to distinguish it from competitors and facilitating recognition by customers and business partners

So during this research we will address the concept of the business title in Algerian legislation and comparative legislation, and then we will be exposed to the problem of the term "business title" in Algerian legislation.

## II– Trade name concept in Algerian and comparative legislation

The definition of trade name varies from law to law and that it varies according to the type of company, accordingly, the legal material governing the company's name varies according to the form it takes to exercise its activity For this reason, the legislator regulated the company's commercial address and allocated to each company a substance defining the manner and form of determining the company's address business title in comparative legislation and then in Algerian legislation.

### II .1. The trade name in Comparative Legislation:

A trade name is the name under which a company is known and conducts its commercial activities. It is registered in official records to be a legal identifier for the company. The trade name is used in commercial transactions, contracts, and invoices, enhancing trust among customers and business partners.

Example : Samsung uses the trade name "Samsung Electronics Co., Ltd." in its official dealings and all legal documents.

The trade name of the willing people company may be known for becoming a money company and this address becomes traded between people, making this trade name a large commercial value that may outweigh the value of the company's assets or personal financial disclosure to the partners themselves. If this company wants to become a public joint stock company, that is a money company, it will lose its trade name according to the law, causing serious harm to it, so some legislation has alerted and addressed this point<sup>1</sup>.

<sup>1</sup> Wael Munir Khali Al-Shaloudi, study on the transformation of the company's business address into a business name in accordance with the provisions of Jordanian Corporate Law No. 22 of 1997 and its amendments, Amman, Jordan, 01/12/2020, <https://www.mohamah.net/law/%d8%%d8%ad%89%d88d89-%d9%8a%d8%af-%d8%b9%d9%86%d8%d8%aa%d8%d9%86%d7%d8%d7%d9%d8%d8%d8%d8%d9/6%d8%d8%d8%>



Article 2 of the Egyptian Law on Shareholding Companies, Equity Recommending Companies and Limited Liability Companies of 1981 stipulates: "The shareholding company..... The shareholder's liability is limited to the performance of the value of the shares in which it is subscribed and solicits only the debts of the company as much as the shares in which it is written. the company shall have a business name derived from the purpose of its establishment and shall not take the names of the partners or the name of one of their addresses. "

Article 63 of the Kuwaiti Commercial Companies Act No. 15 of 1960, as amended by Decree No. 16 of 1992, stipulates that: "The joint stock company is a company that is naked to the address and must be called a specific business name indicating its purpose and allocation. The name may not be derived from the name of a natural person except in the following cases:

- If its purpose is to invest a legally registered patent in that person's name.
- If the company owns a business with a natural personal name.
- If converted into a joint stock company from a company to a company whose address includes the name of a natural person.
- The name of the company shall be followed wherever a joint stock company is received."<sup>1</sup>.

Article 62 of the Qatari Commercial Companies Act No. 5 of 2002 stipulates that: "Each joint stock company shall have a name indicating its purpose. It may not be the name of a natural person, unless the company's purpose is to invest a patent registered in that person's name, or if the company owns a business and takes its name. In any event, the company's name must be added: Qatari Joint Stock Company<sup>2</sup>".

The trade name in French law, is a label whereby the company is identified and distinguished from other companies. The brand name is used in business activities as a means of marking the company and its products or services in the market<sup>3</sup>.

The trade name is regulated by article L. 123-1 of the French Trade Code (Code de commerce).

Characteristics: The trade name must be unique and cannot be similar to other trade names in the same business area. It can be protected by registration in the commercial registry and companies.

Judicial example: Société Taittinger SA et Société Claude Taittinger C. Allbev Ltd., where the use of the brand name and the company's rights to protect that name were addressed.

The trade Name in English Law, is a name that the company keeps for commercial purposes and deals with customers and suppliers. It is used to distinguish a company from other companies in the same industry, The name of a company is regulated by the Companies Act 2006, in particular section 41 on protected names<sup>4</sup>.

The name must not be misleading or similar to that of other companies. It can be registered with House of Companies for legal protection.

Judicial example: The case of R v Registrar of Companies, ex parte AG, dealt with the topic of brand names and the rights of companies to retain their names.

In American Law, the trade Name in US Law is a name used by the company for trading, and is different from a company's legal name that is registered with official authorities, Trademark is regulated by the Federal Trademark Act (Lanham Act) and state laws that vary from state to state<sup>5</sup>.

Characteristics: Requires no conflict with other brand names to ensure that there is no confusion in the market. State and federal brand names are registered for protection.

Judicial example: American Well Works Co. v. Layne & Bowler Co., which dealt with the protection of brand names and trademarks from unlawful use.

On the other hand, a brand name is the name under which a company markets its products or services. The brand name aims to create a specific mental image in consumers' minds and enhance their loyalty

<sup>1</sup> Act No. 15 of 1960 promulgating the Kuwaiti Commercial Companies Act 15/1960.

<sup>2</sup> Qatar Commercial Companies Act No. 5 of 2002.

<sup>3</sup> French Commercial Code, 15/09/2021, Amended by Ordinance no. 2021-1189.

<sup>4</sup> Act 2006, Companies Act, U.K Legislation.

<sup>5</sup> The Lanham Act, [https://www.law.cornell.edu/wex/lanham\\_act](https://www.law.cornell.edu/wex/lanham_act)



to the brand. The brand name can differ from the trade name and is a crucial element in the company's marketing strategy.

Example: Nestlé uses the brand name "Nescafé" to market its coffee products, while the company's trade name is "Nestlé S.A."

A trade name can in some cases constitute confusion, for example: In the *Ford Motor Co. v. Ford's Garage* case, a restaurant was barred from using the name "Ford's" because that could lead to confusion between the restaurant's services and those of the Ford Automobile Company.

From the foregoing, we note that the legislation differed in its texts regarding the commercial title of commercial companies regarding the inclusion of the name of the partner in the business title of the money companies, especially the joint stock company.

## **II .2. The trade name of the company in Algerian legislation:**

In order to determine the commercial title of a business in Algerian legislation, commercial law must be invoked in relation to commercial companies, starting with book V. Therefore, the commercial title must be subjected to discrimination between persons' companies and money companies.

### **II .2.1. Persons' companies (Commercial title)**

People's companies are companies that are based on personal consideration, in which the personality of the partner plays a key role. so that partners have solidarity responsibility for the company's debts and have merchant status, The company is also managed by all partners unless the Basic Law provides otherwise. s share may be waived only by certain restrictions, and the company terminates if its personality results in its de facto and de jure absence, such as death.

Under Algerian legislation, persons' companies are the Solidarity Company, the Simple Recommendation Company and the Scissors Company.

Article 552 of the Commercial Code stipulates that in the Solidarity Company, the Company's address consists of all the names of the partners or of one of them followed by the word "and their partners". Thus, as long as the business address of a company contains the names of the partners, this indicates that the company is based on personal consideration, and the partner's liability for the debts of the company is in solidarity with the other partners with his personal funds.

Although the Simple Recommendation Company comprises two types of partners: a solidarity partner and a trustee partner, it is considered to be a persons' company, article 563 bis 2 of the Commercial Code stipulates that the company's address shall consist of all the names of the solidary partners or of the name of one or more of them, followed in all cases by the word "partners".

The liability of the recommending partner in the Simple Recommendation Company shall be limited to the extent of the company's equity share other than the solidarity partner, which in all cases is subject to the provisions of the partner in the Solidarity Company as referred to in article 563 bis1.

### **II .2.2. Money Companies (Trade Name)**

Money companies are considered to be financially considered, and are not considered for the personal consideration of the partner, other than people's companies. The funds companies are the Multi-Person Limited Liability Company, the Limited Liability Corporation, the Single Person, the Equity Recommendation Company and the Shareholding Company.

However, in the provisions of these companies, Algerian legislator used the term "trade name" rather than "business title", as in the case of companies of persons, on the understanding that their name did not include the name of the partners but depended on the company's own capital.

The reason for mentioning the trade name instead of the title is that the title is closely related to the personality of the individual partner and this personality shows its relevance in persons' companies (solidarity and simple recommendation). In money companies, the importance is given to financial consideration. Thus, what distinguishes them from other companies is their financial capacity and the purpose or purpose for which they were created. and the names or surnames of the partners have nothing to do with the company's relevance and the trust of its clients, This is because partners in this type of company are determined by their responsibility to the extent that they contribute to the company's capital. In addition, the independent financial disclosure of these companies enables creditors to execute on their funds and property to meet their debts and is

irrelevant to shareholders in securing the company's obligations whatever their financial capacity. So these companies derive their name from the purpose for which they were created<sup>1</sup>.

However, the legislator's statement in the limited liability company may be regarded as an exception to the rule adopted in the money companies, so that article 564, paragraph 4, of the Commercial Code provides that the title of the company may in this case include the name of one or more partners, the designation being preceded or followed by the phrase "limited liability company" or its initials: "U. M.L. 's capital should be disclosed.

This is a departure from the general rule since it allowed the name of the partner or partners to be included in the name of the money company (the limited liability company) but restricted it to a condition that it was not in conjunction with the company's capital statement, and notes that the legislator in the said article used the term commercial address rather than the trade name, although it concerned a money company.

The Algerian legislator therefore made it imperative to mention the company's capital within the company's address, while the name of one or more partners was considered optional.

Article 593 of the Commercial Code stipulates that the name of the company shall be preceded or followed by the mention of the form of the company and the amount of its capital. The name of one or more partners may be included in the name of the company. s capital within the company's address, whereas the name of one or more partners was considered optional.

As for the equity recommendation company, its provisions are in conformity with the recommendation company's simple provisions with respect to the business address, so that it is forbidden for the recommending partner to include its name in the name of the company, whereas only the solidary partner has the right to include its name in the company's address.

However, to protect others, if the company's address includes the name of a trustee partner, in which case its responsibility is solidarity and unlimited, as if it were a solidary partner, in order to protect others from being fooled into dealing with the trustee because of its name mentioned in the company's address, where it is paid to believe that it is a solidary, responsible partner with absolute liability, granting the company substantial credit.

However, with reference to article 90, paragraph c, of the Jordanian Companies Act, it states: "A public shareholding company derives its name from its purposes, to be followed wherever the term" limited public shareholding company "appears, and may only be in the name of a natural person if the purpose of the company is to invest a legally registered patent on that person's behalf."<sup>2</sup>.

We therefore note that the Algerian legislator has granted freedom to partners to include their name in the company's name, both in the company of persons and in the company of funds, but has restricted it in the companies of funds to include the value of the company's capital except for the company recommending shares. In doing so, by granting such freedom to partners, the legislator may place private money companies in direct danger of exploiting such freedom through fraud and unlawful competition.

This is unlike the Jordanian legislator who allowed the company name to be derived from the name of a natural person but within one exception is a patent investment registered in the name of that person, as well as the Kuwaiti, Emirati, Saudi, Oman, Qatari, Bahraini and Yemeni legislator as they expanded the exception in a way that serves the interests of the companies<sup>3</sup>.

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<sup>1</sup> Sami, Fawzi Mohammed, *Commercial Companies, Public and Private Judgements*, Culture House for Publishing and Distribution, Amman, Jordan, 2006, P 42.

<sup>2</sup> Act No. 22 of 1997, Article 90 of the Jordanian Companies, 1997.

<sup>3</sup> Wael Munir Khali Al-Shaloudi, study on the transformation of the company's business address into a business name in accordance with the provisions of Jordanian Corporate Law No. 22 of 1997 and its amendments, Amman, Jordan, 01/12/2020, <https://www.mohamah.net/law/%d8%%d8%ad%89%d88%d8-%d9%8a%d8af-%d8b9%d9%86%d8d8aa%d8d9%86%d7%d8d7%d9%d8d8%d8d8d9/6%d8d8d8d8>

Table showing the difference in trade name between people's companies and money companies:

Aspect	Partnership Companies	Capital Companies
<b>Definition</b>	Businesses owned and operated by two or more individuals who share profits and liabilities.	Businesses where the capital is divided into shares, and the shareholders are only liable to the extent of their shares.
<b>Trade Name Composition</b>	Usually includes the names of the partners. Example: "Smith & Johnson Partnership"	Does not necessarily include the names of the shareholders. Example: "Tech Innovations Inc."
<b>Name Stability</b>	Changes if a partner leaves or joins.	Remains the same regardless of changes in shareholders.
<b>Liability Indication</b>	Often indicates the nature of liability (e.g., "Limited Partnership").	Often includes terms like "Corporation," "Incorporated," "Limited," or "Public Limited Company" to indicate limited liability.
<b>Flexibility</b>	More flexible in changing the trade name due to the nature of personal association.	More rigid and requires legal procedures to change the trade name.
<b>Legal Requirements</b>	May vary, but typically less stringent compared to capital companies.	Subject to more stringent legal requirements and regulations.
<b>Perception</b>	May be perceived as smaller or less formal.	Often perceived as more stable and formal.

**Source :** Table prepared by the researcher

This table outlines the key differences between the trade names of partnership companies and capital companies, highlighting the elements that typically appear in their names and the implications of these elements.

### III- Problematic term of commercial title in Algerian legislation

The term "business title" has given rise to a wide debate, especially since it is different from legislation. The issue of the transformation of a people's company into a money company puts us in a very problematic position, given that a people's company adopts a business address and a money company adopts a trade name. Therefore, it is necessary at the outset to distinguish between the two terms and then to identify the areas of controversy raised by that distinction.

#### III.1. Distinction between commercial title and trade name

The trade name is the name of the company or contractor from the date of its registration in the commercial registry. The commercial address represents the location of the company's headquarters, the name and address of the company and all information leading to its identification, in general.

In Algerian law, Algerian legislation does not define a commercial name, but only in the text of article 78 of the Commercial Code. The second paragraph of the said article stipulates that a part of the business is considered to be the movable property intended to engage in a commercial activity. The business includes the obligatory nature and fame of its clients.

Through the foregoing, the similarities and differences between the trade name and the business title can be identified:

##### 1- Intersections between trade name and business title

Legally, the term trade name or business address can be used on both the natural person and the legal person, in the sense of whether it is an individual trader or a business company, each of which is considered a means of attracting customers while at the same time the brand name or business address is working to give the individual or business a reputation and a prominent reputation of others.



## 2- Differences between trade name and business title

By reference to Algerian commercial law, the adoption of a commercial name is optional. A commercial title is compulsory, as is the case for commercial companies, and cannot be established without a commercial title.

According to Algerian legislation, the term "trade name" applies to money companies, whereas the term "business title" applies to people's companies, since the latter is based on personal consideration on the basis that partners are directly associated with the business rather than the financial disclosure of the company, as is the case with money companies.

This explains that the brand name distinguishes the enterprise from other enterprises or companies, whereas the commercial address distinguishes the trader from other traders, that is, the partner from other partners for the people's companies.

It is also the store's brand name, which itself clearly distinguishes it from other stores, The commercial title is used in Egyptian law for a dual purpose, as it is used to distinguish one store from another with a distinctive label such as green salon or stylish fashion, It is also used to distinguish one trader from another and to distinguish one trader from another trader. So we find that there is an opinion in the doctrine that goes to consider the name and the business address as a financial component and that's what we agree on, It also considers them as "movable property", which we do not agree to release<sup>1</sup>.

By reference to the Egyptian legislator, the commercial name and address taken as a characteristic of a place or store's distinction from another is a money, but it is incorrect to consider the commercial address taken as a characteristic of a merchant's distinction from another person as a money and therefore not fit to be the place of any personal right. The purpose of using the commercial address in Egypt is either to distinguish a store from another store or to distinguish a trader from another trader. If the purpose of its use is to distinguish a store from another store, It may be disposed of for sale or any other financial offset authorized by commercial law. If its purpose is to distinguish a merchant from another, the owner of this address may not dispose of it at all, He may not sell it because he is connected to his person, not to his shop, nor may he make any financial compensation against him for the same reason, as the Egyptian Court of Cassation on 11 January (December) 1997 to spend the distinction between a brand name and a business address taken as an innovative label or label for the store<sup>2</sup>.

The Turkish legislator uses the term "trade name" for commercial companies rather than the term "commercial title".

New resolutions were issued on the subject of companies' brand name on 14/02/2014 and came into force after it was published in the Official Gazette (No. 28913), where significant changes and changes have been made in the terms of choice of the company's trade name, as no brand name can be registered (Ticaret Unvanı) before adding the phrase distinguishing it from another commercial name registered in one of the directorates of the commercial registry in Turkey (The most important conditions to be considered when choosing the name of the company, s.d.).

A trade name is the name chosen by traders to distinguish their business from other stores in order to facilitate inference and attract customers, so that the brand name consists of an alias or innovative name indicating the type of trade to which the business belongs, for example: The Happy Family Restaurant, or Elegance Trading Shop. The commercial address consists of the merchant's name or surname, for example: Karam Transport Company, or Anis Children's Clothing Foundation, thus concludes that the brand name is used to distinguish the shop from other shops. The commercial address distinguishes the dealer from other merchants.

**Differences between Trade Name and business title :**

<sup>1</sup> Khaled al-Shawi, Explanation of the Iraqi Commercial Companies Law, People's Press, Baghdad, 1st Edition, Iraq, 1968, P 142.

<sup>2</sup> Samiha al-Qalyoubi, Industrial Property, Arab Renaissance House, 6th Floor, item (603), Cairo, Egypt, 2007, P 80.



- Purpose and Usage : Trade Name used in legal documents and official transactions, but the business title used in marketing and advertisements.
- Registration and Legal Protection : Trade Name must be registered in official commercial records, but the business title can be registered as a trademark to protect it from unauthorized use.
- Impact on Corporate Identity : Trade Name reflects the identity of the company as a whole, but the business title reflects the identity of the products or services offered by the company.

### **Real-life Legal Examples**

#### **.1- Apple Inc. vs. Samsung Electronics Co. Ltd**

In this case, Apple sued Samsung for intellectual property rights infringement concerning Samsung's use of designs and patents belonging to Apple's iPhone devices. Although the dispute was about patents and designs, the trade name "iPhone" was a crucial point of contention, with Apple defending its trade name as a registered trademark.

#### **.2- The Coca-Cola Company vs. PepsiCo Inc**

Coca-Cola and PepsiCo have engaged in numerous legal battles over commercial advertising and unauthorized use of trade names and brand names. One famous case involved PepsiCo's use of a promotional phrase similar to Coca-Cola's, leading to a lawsuit to protect the brand name rights.

The trade name of businesses raises many problems in multiple issues, including:

#### ❖ **Trade Name Problems in French Law**

##### **1/- Problematic similarity and fraud:**

The trade name should be distinctive and unique to prevent any confusion or fraud. A major problem is the similarity between brand names that may lead to confusion among consumers and negatively affect the company's reputation. For example, if a new company chooses a similar name to a well-known company in the same field, it can frustrate consumers who think they are dealing with the original company.

Example: In *Société Taittinger SA et Société Claude Taittinger C. Allbev Ltd.*, there was a dispute over the use of a similar name leading to a decision to block the use of the disputed name to protect the trademark and trademark name<sup>1</sup>.

By this last judgment rendered on 22 June 2022, the Court of Cassation first took care to highlight its disagreement with part of the reasoning of the *Cour d'appel de renvoi* considering that "the Court of Appeal erred in ruling out the infringement of the well-known mark without taking into account, in its overall assessment, all the relevant factors." In doing so, the Court of Cassation rectified the methodology of the Court of Appeal and recalled the classical principle according to which the assessment of a possible infringement of a trademark (whether renowned or not) requires the consideration of all the relevant factors. It follows from this that, depending on these factors, the use of a surname may constitute an unjustified exploitation of a renowned trademark (The company *Taittinger* has assigned, s.d.).

##### **2/- The problem of protecting the trade name:**

Another problem is the protection of the trade name from unlawful use or seizure. Companies can have difficulty proving their rights over a trade name if they do not register it or are unable to demonstrate its continued use (*Institut National de la Propriété Industrielle (INPI)*, s.d.).

Example: *Société Brasserie Fischer c. Société Brasserie Kronenbourg* case on how to protect the company's brand name from unauthorized use by another company.

#### ❖ **Trade Name Problems in English Law**

##### **1/- Problem of misinformation:**

In English law, there is a major problem with the trade name's ability to mislead. A trade name should not be so misleading or similar to another company's name as to cause confusion. Using a misleading name can be considered a fraud on consumers and other businesses (*Companies Act 2006*, s.d.).

Example: In the case of *R v Registrar of Companies, ex parte AG*, the extent to which the trade name was misled and its impact on other companies' rights was considered.

##### **2/- The problem of registration and legal protection:**

<sup>1</sup> Judgment of cassation, chamber of commerce, 20-19.025, 2022.



Registration of a trade name is necessary to ensure legal protection. Failure to register may lead to difficulty in defending a company's rights if another company uses a similar name (UK Intellectual Property Office, s.d.).

Example: Marks & Spencer PLC v. Interflora Inc.'s case addressed the dispute over trademark and trademark rights, and emphasized the importance of registration to protect rights.

#### ❖ Trade Name Problems in U.S. Law

##### 1/- Problem of trespassing and theft:

In the United States, one of the biggest problems is the infringement or theft of a brand name. Companies may find themselves in costly legal disputes if another company claims that the brand name was used illegally<sup>1</sup>.

Example: In American Well Works Co. v. Layne & Bowler Co., parties' rights with respect to the use and infringement of a brand name were considered.

##### 2/- The problem of harmonizing federal and state laws:

A trade name can be registered at the state or federal level, creating a problem in harmonizing different laws. Companies may need to defend their rights in more than one jurisdiction, increasing legal complexities<sup>2</sup>.

Example: United Drug Co. v. Theodore Rectanus Co. case, which dealt with different laws between states and coordination with federal laws in protecting the trade name.

### III.2. The impact of the transformation of the people company into a money company on the company's trade name

A business company of personal consideration, with a business address, may occur and be established; This title gains her business fame and becomes traded between people so that the company becomes known and popular with people through that address she grew up with which makes this business address a great value that will determine the company's success more than the company's and partners' funds may determine, However, if any circumstance, whether optional or compelling, occurs and this circumstance shifts the company from personal to financial consideration In so doing, as stipulated by Algerian legislation in commercial law, it will be obliged to dispense with its well-known address on the grounds that the money companies do not include in their name the names of the partners, especially if they relate to the shareholding company, This could result in substantial losses as the company's title of fame and success was lost after it became a money company.

Therefore, the Algerian legislature had to rely on certain Arab legislation, although it differed with regard to the topic of the commercial title of commercial companies and, in particular, money companies, but that variation would determine the optimum text in that regard.

As the Algerian legislator opened the space for the money company by allowing it to include the name of the partners in the company's business address In the event of a conversion of a solidarity company with the name of a partner with no business reputation but a name known for its wealth, Or that his name is similar to that of a well-known family with a business reputation. The company turned into a joint stock company, for example, would be fraudulent since third parties would sign that the partner's name in the company's address belonged to a well-known trader with a high business reputation.

Therefore, the Algerian legislator and the protection of others who may deal with the company after its transfer should have placed certain restrictions in this case, such as requiring the person whose name is included in the company's address to acquire commercial fame prior to the transfer of the company to protect the interests of the partners and others and the public interest.

This is the same issue raised by some Arab legislation, such as Bahraini, Qatar and Kuwait, which requires Algerian legislation to keep abreast of other Arab legislation and to study the strengths and

<sup>1</sup> The Lanham Act, [https://www.law.cornell.edu/wex/lanham\\_act](https://www.law.cornell.edu/wex/lanham_act).

<sup>2</sup> United States Patent and Trademark Office (USPTO), [https://cardinal-ip.com/managed-docketing/?gad\\_source=1&gclid=CjwKCAjwyo60BhBiEiwAHmVLJQS-KkoHcVT6VzIvF0G2fSUpnT9qQ2CTr06qXv0hdDK7PEXpoedm-hoCjQ8QAuD\\_BwE](https://cardinal-ip.com/managed-docketing/?gad_source=1&gclid=CjwKCAjwyo60BhBiEiwAHmVLJQS-KkoHcVT6VzIvF0G2fSUpnT9qQ2CTr06qXv0hdDK7PEXpoedm-hoCjQ8QAuD_BwE)

shortcomings of amending the commercial law in order to guarantee the interests of partners and the public interest.

#### **IV- Conclusion:**

The trade name and the business title are vital elements forming a company's identity and affecting its market reputation. While the trade name is used in a legal and administrative context, the brand name is used in marketing and building customer relationships. A precise understanding of these two terms helps enhance the ability to manage companies effectively and protect their rights in the market.

#### **RESULTS OF THE STUDY:**

The term "trade name" is an event that originated in the modern age in conjunction with the idea of free competition between commercial and industrial enterprises.

Algerian legislation did not differentiate between the terms "commercial title" and "commercial name". For persons' companies, the term "commercial title" was used, whereas for money companies the term "trade name" was used, despite the difference between the terms.

The Algerian legislator was also keen to take care of the financial protection of the company, especially the money companies, by relying more on its name on the financial aspect of the company than on the personal aspect as the names of the persons, as in the case of the companies of the persons, as in this case they are personally responsible for the debts of the company. However, the Algerian legislature is satisfied that it has not been able to address all the problems posed with regard to the designation of money companies, Especially the case where a people's company becomes a money company after it has acquired a high reputation and business reputation of others which could cost it a significant loss by not being able to benefit from the same company's business address before becoming a money company, So that it will have to start again to build a new name and a new fame. which means a loss of time and effort without warranty to achieve the same result that the company once had to turn into the new format.

Thus to remedy this problem, absolute freedom must not be granted to use the company's business address after becoming a money company in order not to be a fraudulent claim, At the same time, this use should not be prevented from being released. public interest, especially for companies wishing to achieve greater results and profits, It is therefore desirable for Algerian legislators to adopt the general rule by allowing the use of the commercial address of money companies, which depends on the names of persons with certain restrictions and controls, in order to protect the company's interest and the public interest.

#### **RECOMMENDATIONS:**

- Review the articles of Algerian trade law in line with economic development.
- Algerian legislation should amend the provisions on the designation of commercial companies and thus standardize the term with the use of the term "trade name", rather than the term "commercial title", in view of the difference between the two terms.
- Money companies should be given the freedom to choose the company's trade name through their right to use the names of persons with certain restrictions that would give protection in the interest of the company and the public interest.
- The need to rely on various Arab legislation in the field of commercial law, particularly with regard to commercial companies, to find legal formulas that protect the interests of business partners and protect the public interest.
- In case of expansion to international markets, it must be ensured that the brand name conforms to the local laws and customs of those markets, and that there are no conflicts or legal problems.

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- [5] Ordinance No. 75/58 of 20 Ramadan 1395 of 26 September 1975 amending and supplementing the Civil Code, Official Gazette No. 78 of 12 years, dated 24 Ramadan 1395 of 30 September 1975, p. 990.
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