Research in Contracts and Business Law Review

Volume:06 / N°:04 (2021), p576-592

The role of parasitic competition in a protecting famous trademark

[1]Bendriss Halima[*] , [2]Lourrad Naima

[1] University DJILALI EL LIABES, Sidi Bel Abbes (Algeria).
halima.bendriss@univ-sba.dz

[2]University DJILALI EL LIABES, Sidi Bel Abbes (Algeria).
Email:lourrad.naima@gmail.com

Received:05/07/2021 Accepted:21/11/2021 Published:12/20/2021

Abstract:

Competition is the spirit of commercial practices and the essence of economic freedoms. Plays a major role in the flourishing of commercial activity which in turn leads to the prosperity and progress of countries' economies The famous mark is considered one of the intangible rights that its owner achieves great progress over his competitors in the same trade. Therefore, most of the country's legislation, including Algeria, has sought to protect this type of trademark with a protection that exceeds that allocated to ordinary trademarks, if the famous mark is protected within the framework of its specialization and outside its field of specialization, By means of a parasitic competition lawsuit. this study aims to search for the specificity of the well-known mark, and on the legal basis for parasitic competition in Algerian law, to conclude this study on the lack of legal framing of the content of the well-known mark in Algerian law. This study recommends that the provisions of the well-known mark should be reorganized. Provisions for commercial intrusion.

Keywords: The competition ; Famous mark; Specialization; Regionalism; parasitism

[*] **Corresponding author**.

INTRODUCTION

The right to a mark is not absolute, but relative, as it is restricted in terms of place because it is limited to the borders of the country in which the mark was registered, and restricted in terms of jurisdiction because the owner of the mark cannot invoke it in the face of everyone, rather it is in the face of those who practice the same activity that He practices it, and accordingly, the same mark may be used to distinguish different products, i.e. use the mark in a different sector. However, there are marks that have gained wide fame that exceeded the territory of the country in which they were registered as a result of several factors that affected its acquisition of this fame, which made others intrude on this mark and exploit its fame, either in a different sector of activity in the state's territory or in the same activity but outside the state's territory. This is the basis for taking this brand out of its regular framework into a new one which is the frame of fame. From this standpoint, the concept of parasitic competition emerged as an extension of the unfair competition in the field that the latter has been short of following up, and therefore this study examines the correlation between the two concepts of parasitic competition and the specificity of the famous mark. In terms of the following problem: **To what extent can parasitic competition protect the famous trademark?**

In the context of discussing this study, the Algerian and French laws will be dealt with, following the descriptive, analytical and comparative approach within the following plan:

The first axis: the famous mark and the explosion of the principle of specialization are the factors of the emergence of parasitic competition

The second axis: the legal basis for the parasitic competition lawsuit and its legal elements.

The first axis: The relation between parasitic competition and the famous trademark.

The emergence of the famous mark changed the essence of the trademark system, which is the principle of specialization (first), and that the emergence of parasitic competition came as an extension of the protection of the famous mark outside its specialization (second).

First: The principle of specialization in the trademark system and the specificity of protecting a famous mark

The trademark is the symbol that is used to distinguish the products or services of a particular store over other similar products and services. Symmetry is what is called specialization and the latter is a fundamental principle in trademark law. However, the emergence of the trademark led to the explosion of this principle.

1- The content of the principle of specialization in trademarks

The trademark law is governed by two principles, on the basis of which a trademark is protected; they are the principles of territoriality and specialization. The principle of territoriality means that the mark is legally protected within the borders of the country in which this mark is registered. As for the principle of specialization, it means that "the legal protection established for the mark is limited to the products with which the mark is registered." It follows from this saying that it is permissible for others, based on the principle of freedom Industry and commerce, the use of the same mark for other activities, whether inside or outside Algeria(1 [1]) . However, the appearance of famous mark changes these concepts.

2- The emergence of the brand and the explosion of the principle of specialization

The acquisition of some marks for a fame that exceeded the borders of the country in which the mark was registered resulted in the intrusion of others on this fame , and the exploitation of this fame either outside the territory of the country in which it was registered or within the region and in non-similar products, on this basis this mark was specially protected, represented in Protect them within the framework of their specialization and outside it , in the national territory and outside it.

The Algerian legislator stipulated the famous mark in the provisions of Ordinance 03-06 related to trademarks, but he did not define it or give criteria for indicating the fame of a mark in order to get special protection. By referring to the jurisprudential definition, the latter disagreed about the definition of the famous mark, and the reason was due to the formulation in which the French intellectual property law came [2] Which refers to two marks of the famous mark and the reputable mark, which led to the question of whether the famous mark is the reputable mark or are they different? On this basis, two trends of jurisprudence emerged in France. The first believes that there is a difference between a famous mark and a reputable mark. The first "is known to a large part of the public" and the second "is known only to a part of the public concerned with the consumption of the products or services that it designates[3]." The second trend of jurisprudence rejects any distinction between a famous mark and a reputable mark in terms of the extent of its knowledge by the public, and that this distinction does not provide any benefit[4] , and on this basis, the famous mark and the reputable mark are equal and represent the same degree of fame, and that the only difference between the two marks finds Its basis is in the registration procedures. A reputable mark is a well-known and registered mark, while a famous mark is a well-known mark that is not registered but it is protected in the countries of the Union, in accordance with the requirements of Article 6 bis of the Paris Agreement.[5]

The estimation of the mark's reputation is subject to the competent authorities. This is what the Paris Convention stipulated in the text of the aforementioned sixth article. However, the Algerian legislator did not give criteria for knowing whether the mark is famous or not and leaving it to jurisprudence and the judiciary. In this field, jurisprudence believes that the fame of the mark indicates an economic benefit to it, as it has been shown that it has achieved great success and won the appreciation of its customers. [6]

Also, the World Intellectual Property Organization (WIPO) has set standards to determine the fame of a mark. These criteria are some

of them that have an objective character that is based on the mark in itself, and some have a Personal characteristic[7], it falls in the framework of the objective criteria, the filing of the mark and the length of its use are presented, and this criterion was taken by the French judiciary[8], and the same judiciary[9] said that it includes the fame of the mark, the budget allocated for its promotion, and the turnover made behind the sales. As for the personal criterion, the reputation of the mark is assessed on its basis in view of the extent of its knowledge by the public through an opinion poll.[10]

It should be noted that there is no fixed criterion for determining fame, just as the majority of famous marks belong to luxury products that have been filed, and because the fame of the mark is not considered a permanent status because it may decline or disappear over the years, and therefore the fame must be assessed on the day the lawsuit is filed by its owner[11]. Because it is possible for the famous mark to lose its distinctive character due to gaining an indefinite fame and this is what is known as mark relapse. This case raises an important legal point, which is that the special protection that the mark had during its famously vanishes upon its relapse.

The Paris Agreement, like it, the Algerian legislator did not refer to the relapse of the mark, unlike the French legislator who dealt with the subject of relapse of the mark[12]. Two conditions are required for the relapse of the mark, the first of which is that this mark has become the regular designation of the product or service, and thus loses its function from a specific means of the source of goods and services offered in the market to a mere expression expressing the familiar designation of the product itself[13] . As for the second condition for relapse of the mark, it results from the actions of its owner, which expressly or implicitly indicate his will to abandon the mark.[14]

The second axis: How parasitic competition contributes to protect the famous trademark

Second: The emergence of parasitic competition as an extension of the protection of the famous mark outside its field of specialization

The famous mark had special protection when certain conditions are met, and that parasitic competition is an idea developed by jurisprudence and the judiciary that came to protect the famous mark outside its field of specialization.

1-The legal conditions for granting special protection to a well-known mark

In order to approve a special protection for a famous mark, three conditions must be met [15]

1-1- **Existence of a mark in conflict with the famous mark**: Article 7 of Ordinance 03-06 relating to trademarks stipulates that "Symbols similar to or similar to a mark or to a trade name distinguished by fame in Algeria are excluded from registration and used for similar and similar goods belonging to another institution to the point of causing misleading between them or Symbols that are a translation of the mark or trade name[16]**,** "according to this text, it is forbidden to register a mark identical to the famous mark, that is, which is an exact copy of it, and also a mark similar to roughly the original mark and leads to deception of consumers[17]

A mark is considered to be in conflict with the famous mark, every mark is identical or similar to it, and the lesson in the similarity between the two marks is in the overall appearance of the mark by looking at it or hearing it[18] **,** and whether or not the likeness is a matter of reality subject to the assessment of the authority of the trial judge. Accordingly, it is forbidden for others to deposit a mark identical or similar to the famous mark, except that the problem of the mark that is a translation of the famous mark is raised, is it a disputed mark or not? The French judiciary has dealt with this problem and considered that the mark that is a translation of a famous mark is a contested mark to simulate the translation. Accordingly, some French jurisprudence considered that it is better for the owner of the mark to deposit his mark in several languages[19]

Coming back to the Algerian legislator, he did not explicitly refer to the analogy with the translation, but he prohibited the registration of every mark similar to the famous mark that would cause confusion

with the consumer, and therefore if this translation was with a foreign term who is used and known in Algeria, this translated mark falls within the urban framework because it would cause deception Consumer.

1-2- **The use of the conflicting mark to the famous mark in order to distinguish similar or identical products (excluding the famous mark from the principle of territoriality):** Article 6 bis of the Paris Convention is permitted for the protection of the famous mark outside the country's borders, whether this mark is registered or not, and this text is an exception to the territorial principle which aim is that the mark enjoys protection only within the borders of the country in which it is registered, and in order to exclude the famous mark from the principle of territoriality, two conditions must be met, the first of which is that the conflicting mark is used to distinguish similar or identical products, and the second condition is the potential for confusion among the consumer Between the two marks**.** [20]

The use of the conflicting mark to distinguish products not identical or similar (excluding the famous mark from the principle of specialization): The principle of specialization is the essence of the trademark system, but the famous mark is excluded from the application of this principle. And the exclusion of the famous mark from the principle of specialization has been restricted by the Algerian legislator with three conditions, the first of which is that there is no connection between the owner of the famous mark and the no identical products, and the second condition is that the use of the contested mark leads to harm to the owner of the famous mark, such as reducing its attractiveness[21]and limiting its expansion**.**[22] The third and final condition is that the famous mark must be registered.[23]

2- The link between the concept of parasitism and the protection of the famous mark

Parasitic competition erupted with the French jurist saint-gal, who defined it as "the act whereby a person intrudes on the footsteps and path of others by taking advantage of his efforts and the reputation of his name, activities, products and services." The intrusion derives

its importance in being an extension of the illegal competition So that it leads to the follow-up of behaviors that were difficult or impossible to condemn under the pretext of unfair competition, even though intrusiveness violates commercial integrity.[24]

Parasitic competition is also defined as "the set of practices through which an economic agent intervenes in another agent system, with the aim of obtaining the economic benefits achieved by the skills and professional knowledge that the intrusive economic agent has invested in order to develop it and benefit from it, without his contribution in this investment or effort, provided that these skills are not from one of the rights protected by special legal texts, such as the rights of registered industrial property, and without the intrusive economic agent being a competitor to the economic agent that is intrusive into it, otherwise it will be attached to the system of unfair competition.[25]

The second axis: the legal basis for the parasitic competition lawsuit and its legal elements

Parasitic competition is the term used to describe the behavior of the economic activity of an agent that exploits the reputation achieved by the mark in a field other than the field in which it was famous. The jurisprudence differed in its legal basis, some of whom returned it for the idea of enrichment without cause, and some of them returned it for tort liability (first), and because every liability requires it to have elements for judicial follow-up, we will explain the pillars of responsibility for parasitic competition (second)

First: The legal basis for parasitic competition

The parasitic competition is the product of jurisprudence, and the latter did not settle on the basis of this claim. Some of them return it to enrichment without reason, and some of them return it to tort liability.

1- Enrichment without cause as a basis for a parasitic competition lawsuit

Some jurisprudence [26] goes to the establishment of the parasitic competition lawsuit to enrichment without a reason. Enrichment is based on enriching a person's responsibility due to another person's

lack of responsibility, as this opinion was considered that unlawful exploitation and the harm that results ultimately leads to the enrichment of the parasite's realization without relying on a reason. Which leads to the parasite's behavior entering the scope of gain without reason, and accordingly the parasite competitor has enriched itself at the expense of others through its unlawful exploitation of the efforts of others, which led to the lack of responsibility of this third to the extent that it enriched the parasite, which requires determination of its responsibility and obligating him to compensate the intruder victim on him. However, this opinion was criticized on the basis that defaulting competition is the broad field in which the practices of the parasite are condemned, and it is the direction that the majority of jurisprudence goes to and followed them in that judiciary.

2- Tort liability as a basis for parasitic competition

Supporters of this trend go to say that tort liability rules are the fertile field through which it is possible to redress the harm resulting from the actions of merchants that are inconsistent with the rules of integrity and honor that must be provided in the commercial field, according to this jurisprudence, it is a sufficient means for determining the responsibility of businessmen and reforming their machinations every time they do not adhere to customs and create turmoil in the market.[27] these rules take a special name in the commercial field, and they are responsible for unfair competition, and the latter is every action that conflicts with the law and customs and commercial norms and integrity, such as spreading rumors and false allegations that distort the commercial reputation of the competitor, or to use means that lead to equivocation or confuse commercial activities.[28]

The Algerian legislator has termed acts of unfair competition with unfair commercial practices in Ordinance 04-02[29] as Article 26 of it stipulates the penalties that the legislator has cited against errors committed during the exercise of freedom of trade, while Article 27 of the same one has included examples of unfair practices.[30]

Responsibility on the basis of unfair competition is a liability based on Article 124 of the Civil Code applied in the commercial field to redress the harm caused to the competitor in the same activity, i.e. similar activities, but in the absence of uniformity in commercial activity, the jurisprudence was based on the rules of tort liability also to determine the responsibility of each parasite who deviates from his behavior from the usual commercial habits and economic dealings,[31] and from it, the parasite asks about a mistake he committed by exploiting the fame of the mark of others, and thus caused economic disturbance by intruding on the intellectual efforts of others, which undoubtedly constitutes an error who necessitate to compensate for the damage it causes.

The fact that the parasitic competition lawsuit was established on the same basis as the unfair competition lawsuit is what prompted jurisprudence to say[32] that parasitic competition is a form of unfair competition that is been activated in the absence of a competitive relationship between the parasitic competitor and its victim.

Second: Elements of a parasitic competition lawsuit

Since parasitic competition was one of the fields of application of tort liability rules, the scope of application of the latter does not deviate from the triad of error, damage and the causal relationship between them.

1- The error: The error [33] in the parasitic competition is the act of a person taking advantage of the values achieved by the famous mark without reaching the point of competing with the owner of the famous mark in its field of specialization. So the image of error in the parasitic competition is the use of the fame of the mark by the parasite in a different activity from the activity of the owner of the mark, i.e. outside the field of specialization of this mark, for example the use of a mark that has become popular in the field of smart phones and exploited by the parasite in the field of electrical devices. This type of behavior cannot be pursued by imitation or by unfair competition because they depend on the similarity of commercial activity as a basis for follow-up, and the parasite action takes advantage from the

fame and exploits it in another field, so parasitic competition has emerged with the explosion of the principle of quotas in trademarks.

2- **Harm**: Harm in parasitic competition appears in the belief that prevails among the victim's customers that this project has expanded the scope of its activity, and from it the effect that occurs to the victim's customers, if the parasite's products are inferior, it leaves the customers an impression of the poor quality of all the products bearing that mark, and accordingly Therefore the economic value of the famous mark is affected by the action of the parasite action. It is equal if the damage is material resulting from diversion of the clients from the products of the plaintiff as a result of the action of the defendant who is the parasite, or morally, it affects the competitor's reputation or its establishment, and this pillar is considered available, whether the damage is severe or trivial, immediately or in the future.[34]

A parasitic competition lawsuit can be filed even if the damage is not realized but is expected to occur in the future, and thus the judge's authority extends to limit the persistence of parasitic competition acts that cause harm in the future, and in this case the parasite is forced to stop the acts of parasitic competition without requiring the plaintiff to prove the Harm[35]

3- Causal relationship: the causal link is the third pillar in the liability lawsuit, and it is meant that the harm caused was a result of the mistake committed by the defendant, and the aggrieved merchant must establish evidence of the perpetration of the act of parasitic competition and then of the damage he suffered, and he must also prove that This damage was a direct result of the act committed and that is by all means of proof. However, the matter is more difficult in the case of establishing a causal relationship to the potential harm. [36]

The jurisprudence goes to say that there is no room to search for a causal relationship, unless the subject matter of the lawsuit is the claim of compensation, but if it is aimed only at stopping the dishonest act, then the need to show the harm disappears and in return, the explanation of the causal relationship becomes unnecessary. [37]

Conclusion

The prosperity of trade can only be achieved through the development of commercial practices that are within the framework of legitimate competition, and the famous mark is considered as one of the means used by the merchant in the field of competition and the development of his commercial activities.

And due to the peculiarity of the famous mark jurisprudence create the parasitic competition to protect this mark outside its field of specialization, and from this point this study showed the following results:

- Unlawful competition is considered the fertile field for the civil protection of the famous mark in the same activity in which it was registered, but outside its specialization the unfair competition is restricted to its protection, so that parasitic competition appears as an extension of the unfair competition to protect the famous mark outside its field of specialization.

Parasitic competition is a legal jurisprudential production, so there was a difference in the legal basis on which it could be established, but the tort liability is the most correct legal basis for jurisprudence and judiciary on which the parasitic competition lawsuit is based.

- The Algerian legislature has not regulated provisions related to unfair competition, and has included the latter's actions in the Commercial Practices Act and gave them a punitive character.

Among the recommendations that could be included in this research paper are the following:

- The necessity of enriching the list of unfair practices mentioned in the text of Article 27 of the Algerian Commercial Practices Law, and the inclusion of commercial intrusion because the legislator has stipulated the famous mark in Ordinance 06-03 relating to marks, and stipulated that it must be protected outside its specialization, and that the latter cannot be protected outside Its specialty only in case parasitic competition

- Providing jurisdiction in Article 26 of the Commercial Practices Law to the civil judge, because he is the one who relies on him to

enrich the enumeration of anti-competitive practices that appear due to the development of the commercial field as is the case for the emergence of the concept of a famous mark.

Extending the provisions of the famous mark in Trademarks Law 06-03

Bibliography List

- **Books**

- Abdel Fattah Bayoumi Hegazy, Industrial Property in Comparative Law, Dar Al Fikr University, Alexandria, 2008.
- A.CHAVANNE nouvelle loi sur les marques de fabrique, R.T.D.C om 1991
- Farha Zarawi Salih, Complete in Algerian Commercial Law, Intellectual Rights, Industrial and Commercial Property Rights, Literary and Artistic Property Rights, Ibn Khaldoun Publishing and Distribution Oran, 2006.
- P.ROUBIER , Le droit de la propriété industrielle, Recueil Sirey, T. 1, 1952
- J-Schmidt Szalweski, le droit des merques , Dalloz,1997.
- A- CHavanne et J-J Burst : Droit de la propriété industrielle, Précis Dalloz, 5ème éd., 1998
- Salah Zainuddin, Industrial and Commercial Property, Patents of Invention, Industrial Designs, Trademarks, Geographical Indications, House of Culture for Publishing and Distribution, Amman, Jordan, 2010 edition
- Y- Guyon, Droit des affaires, Economica, T.1, 16 éme éd ,1990
- Zeina Ghanem Abdul-Jabbar Al-Saffar, Unfair Competition for Industrial Property, a Comparative Study, Hamed Publishing and Distribution House, Jordan, Second Edition 200

- **Thesis and dissertations:**

- Nawal Sari, Competition Law and General Rules for Obligations, A thesis for a PhD in Private Law, Faculty of Law, University of Jilali Yabes, Sidi Bel Abbas, 2009-2
- Ali Ben Ali Yamina, The Status of the Famous Mark in the Algerian and French Laws, Memorandum for obtaining a Master's Degree in Business Law, Faculty of Law, Oran, Academic Year 2007/2008.

Articles:

- G-Bonet: la protection des merques notoires dans le code de la propriété intellectuelle , Mélanges , J- Foyer ,puf, 1997
- H, DESBOIS , la protection des marques notoires ou de haute renommée en l'absence de risque de confusion entre les produits, mélanges D/BA STIVAN, droit de la propriété industrielle, libraires techniques, 1994.
- Samia Hassayn and Badlis Abdel Aziz, Violating Consumer Protection and Assaulting the Distinctive Mark through Commercial Intrusiveness, an article

published in the Journal of Judicial jurisprudence issued by the Laboratory of the Impact of Judicial Jurisprudence on the Legislative Movement, Muhammad Khaider University, Biskra, Issue 14, year 2017

- Helmy Muhammad Al-Hajjar, and Hala Helmy Al-Hajjar, Unlawful Competition in the Face of a Hadith by Al-Tafila Al-Eqtisia, Author's publisher, Beirut, Lebanon, 2004

Legal Documents

- Ordinance No. 48-66 of February 25, 1966, including Algeria's accession to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as amended, Official Gazette of February 25, 1966, No. 16, p. 198
- Ordinance 04-02 of July 23, 2004 defining rules applicable to commercial practices, C-R of June 23, 2004, No. 41.
- Ordinance No. 06-2003 of July 19, 2003, relating to marks, Official Gazette July 23, 2003, No. 44, p. 22.
- Code of intellectual property, ed. Dalloz, 1997

Judgments and judicial decisions:

-Paris 31 mai1996, Gaz .Pal ,1996,P.520

-T.G.I.R rnne 14 décembre 1998, Ann propr ind 1995, p. 95

-T.G.I paris 27 février 1994, PIBD 1994 ; III. P 328

End notes:

[1] Farha Zarawi Salih, Complete in Algerian Commercial Law, Intellectual Rights, Industrial and Commercial Property Rights, Literary and Artistic Property Rights, Ibn Khaldoun Publishing and Distribution Oran, 2006, p. 221

[2] Art. L713- 5 C.FR. propr intell « l'emploi d'une marque joussant d'une renommée pour des produit ou services non similaires à ceux désignés dans l'enregistrement engage la responsabilité civil de son auteur s'il est de nature à porter préjudice au propriétaire de la marque ou si cet emploi constitue une exploitation injustifiée de cette dernière. Les dispositions de l'alinéa précédent sont applicables à l'emploi d'une marque notoirement connue au sens de l'article 6 bis de convention de paris pour la protection de la propriété industrielle précitée »

[3] CJCE14 septembre 1999, General Motors c.xplon SA, cite par ch de HAAS, op, cit, p 139 « la marque de renommée est celle connue d'une partie significative du public concerné par les produits ou services concernés par cette marque »

[4] H, DESBOIS , la protection des marques notoires ou de haute renommée en l'absence de risque de confusion entre les produits, mélanges D/BA STIVAN ; droit de la propriété industrielle, libraires techniques, 1994, p 26

[5]A.CHAVANNE nouvelle loi sur les marques de fabrique, R.T.D.C om 1991 , p 205 « on peut penser que l'alinéa 1er concerne les marques notoires déposées et que l'alinéa 2 concerne les marques notoires non déposées qui bénéficient de l'article 6 bis de convention de paris »

[6] P.ROUBIER , Le droit de la propriété industrielle, Recueil Sirey, T. 1, 1952,p 566

[7]Abdel Fattah Bayoumi Hegazy, Industrial Property in Comparative Law, Dar Al Fikr University, Alexandria, 2008, p. 181

[8] T.G.I.R rnne 14 décembre 1998, Ann propr ind 1995, p. 95

[9] T.G.I paris 27 février 1994, PIBD 1994 ; III. P 328

[10] Article 16, Paragraph 2 of the TRIPS Agreement "A mark is considered well-known if it is known in the concerned public sector, including its knowledge in the relevant member country as a result of the mark's promotion."

[11] Farha Zarawi Saleh, op, cit., p.226

[12] Art, L, 714-6 (a) C.FR , propr- intell ; « encourt la déchéance de ses droits le propriétaire d'une marque devenue été son fait la désignation usuelle dans le commerce du produit ou du service »

[13] As the mark "Esquimau", which is understood as a type of ice cream, and the mark "Thermos" has become a term used to refer to containers with preservatives.

[14] Ali Ben Ali Yamina, The Status of the Famous Mark in the Algerian and French Laws, Memorandum for obtaining a Master's Degree in Business Law, Faculty of Law, Oran, Academic Year 2007/2008, p. 54

[15]Abdel Fattah Bayoumi Hegazy, op. cit., p. 198

[16] Article 7 Paragraph 8 of Ordinance 06-03 on Marks

[17] Farha Zarawi Saleh, op, cit., p266

[18] J-Schmidt Szalweski, le droit des merques , Dalloz , 1997,P.32 "l'imitation est constituée des lors qu' existent des ressemblances visuelles ou phonétiques »

[19]A- CHavanne et J-J Burst : Droit de la propriété industrielle, Précis Dalloz, 5ème éd, 1998, P.711.

[20] Article 7, paragraph 8 of Ordinance 06-03, relating to signs, "... to the point of causing misleading between them ...."

[21] Paris 31 mai1996, Gaz .Pal ,1996,P.520

[22] G-Bonet: la protection des merques notoires dans le code de la propriété intellectuelle, Mélanges, J- Foyer ,puf, 1997, p201"la merque renommée ou notoire se trouve ainsi enfermé en quelque sorte dans sa spécialité "

[23] Article 7, Paragraph 8 of Ordinance 06-03, and also A-F Bayoumi Hegazy: op, cit.,, p. 206

[24] Y- Saint Gal, op.cit., p. w 18 "la concurrence parasitaire ,comme son nom l'indique , consiste pour un tiers à vivre en parasite dans le sillage d'un autre , en profitant des efforts qu'il a réalisée et de la réputation de son nom de ses activités , et de ses produits ou services ".

[25] Samia Hassayn and Badlis Abdel Aziz, Violating Consumer Protection and Assaulting the Distinctive Mark through Commercial Intrusiveness, an article published in the Journal of Judicial jurisprudence issued by the Laboratory of the Impact of Judicial Jurisprudence on the Legislative Movement, Muhammad Khaider University, Biskra, Issue 14, year 2017, p.202.

[26] Helmy Muhammad Al-Hajjar, and Hala Helmy Al-Hajjar, Unlawful Competition in the Face of a Hadith by Al-Tafila Al-Eqtisia, Author's publisher, Beirut, Lebanon, 2004, p. 129.

[27] Helmy Muhammad Al-Hajjar, and Hala Helmy Al-Hajjar, op .cit., p134

[28] Y- Saint Gal , protection et défense des marques de fabrique et concurrence déloyale , droit françaises et droits étrangers , éd ,D ,1982 P w 04

[29] Ordinance 04-02 of July 23, 2004 defining rules applicable to commercial practices, C-R of June 23, 2004, No. 41

[30] If Article 26 of Ordinance 04-02 mentioned above constitutes a basis for condemning unfair commercial practices, while Article 124 of the Civil Code forms the basis for unfair competition, it is noted that liability in Article 26 of Ordinance 04-02 is a liability without harm because it is deterrent and punitive. As for liability in Article 124 of the Civil Code, it is based on harm because it aims to fix it. Order 04-02 regarding commercial practices is characterized by a punitive nature because Article 26 of it provides for penalties in the form of fines, although it would have been better for the legislator to leave this issue to the civil judge because the penal judge does not rely on him much to enrich the legislative census of unfair commercial practices. Also, in the penal sphere, the principle of legality prevails, so this principle cannot be reconciled with the wording in Article

27 of the aforementioned Order 04-02 when some of the aforementioned acts were considered as unfair commercial practices and that other acts can be added to these. Accordingly, it is better to leave the field that Article 27 of Murr 04-02 addressed to the civil judiciary because it has the ability to develop and adapt to the commercial environment. Nawal Sari, Competition Law and General Rules for Obligations, A thesis for a PhD in Private Law, Faculty of Law, University of Jilali Yabes, Sidi Bel Abbas, 2009-2010, p.109.

[31]Muhammad Salman Mudhi Marzouq Al-Gharib, Monopoly and Unfair Competition, Dar Al-Nahda Al-Arabiya, Egypt, Edition 2004, p. 99.

[32] Muhammad Salman Mudhi Marzouq Al-Gharib, op .cit., p. 101.

[33]The error is defined as a breach of a legal duty associated with the perception of the offender, see Zeina Ghanem Abdul-Jabbar Al-Saffar, Unfair Competition for Industrial Property, a Comparative Study, Hamed Publishing and Distribution House, Jordan, Second Edition 2007. pg 137

[34]Salah Zainuddin, Industrial and Commercial Property, Patents of Invention, Industrial Designs, Trademarks, Geographical Indications, House of Culture for Publishing and Distribution, Amman, Jordan, 2010 edition., P. 434

[35] Y- Guyon : Droit des affaires, Economica, T.1, 16 éme éd ,1990 , N 845 ,p909. "…l'action en concurrence déloyale ne tend pas seulement à réparer le dommage déjà causé . Elle vise aussi , et surtout, à faire cesser pour l'avenir l'emploi de procédés illicites . Or ,de se point de vue , il suffit que le préjudice soit vraisemblable ou même en quelque sorte présumé ".

[36] Zina Ghanem Abdul-Jabbar Al-Saffar, op .cit, p. 141

[37] A- le tranec : la concurrence déloyale , Juriscl.de la responsabilité civile 1967, N 72 12. "…si on ne réclame que la cessation d'un acte illicite , la nécessité de la démonstration du préjudice n'étant pas nécessaire , celle du lien de causalité ne l'est évidemment pas davantage".