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## INTELLECTUAL PROPERTY LEGAL PROTECTION

Algeria has become in a few years an economic and financial power, many French companies have found opportunities to establish, enjoying the proximity of France, both geographically and culturally.

For those of them that show a strong interest in this market, but have not yet invested, it seems that one of the brakes is the sense of **legal uncertainty**, particularly with regard to the protection of Intellectual property. For some time, **counterfeiting** has taken alarming proportions.

However, a process of reforms has been initiated to bring the system of protection of **intellectual property** rights in line with international standards and in particular the rules of the World Trade Organization.

### PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

The Algerian legislative environment with regard to intellectual property has many similarities with the French regime.

### PATENT OF INVENTION

An invention can be defined as a solution for solving a problem in the field of the art. Are patentable within the meaning of the ordinance of July 19, 2003, the new inventions, involving an inventive character and likely industrial application. However, some inventions are excluded from patentability.

It is advisable to carry out a prior art search among the protected **patents** in Algeria, or even a search on the art state, in order to determine whether to start the filing procedure.

Anyone wishing to protect an invention must make an express request to the Administration, the **Algerian National Institute of Industrial Property** (ANIIP- INAPI). It is possible to require either a product patent, when the invention relates to a product, or a process patent, when the invention consists of a method of manufacturing or obtaining a product.

The protection of the invention may be **acquired** either by an international **deposit**, at the **World Intellectual Property Organization** (WIPO), via the **Patent Cooperation Treaty** (PCT), by designating Algeria, or by an Algerian deposit made directly to ANIIP. In addition, under the **Paris Union Convention**, an applicant whose patent is in the process of being registered in France enjoys, from the filing date in France, a priority period of 12 months to his rights abroad. INAPI, after completion of the deposit formalities and the payment of **royalties**, proceeds to a simple examination of form of the request.

Any **granted** patent is published. Its owner has exclusive rights over the invention and third parties are not **entitled** to exploit the invention without its authorization, whether for manufacturing, use or sale.

The term of protection is 20 years from the date of filing, under two conditions: the inventor must pay the maintenance taxes (**annuities**) and must: the invention (**compulsory licenses** may be granted to third parties in case of default sufficient use during the four years following the filing or three years after the grant of the patent).

## BRANDS OF PRODUCTS OR SERVICES

**A trademark**, or service mark is a sign used to distinguish between products of a company from those of its **competitors**. According to the ordinance of 19 July 2003, a mark is a sign likely to graphic representation that can be constituted by one or more words letters, numbers, drawings or **images, emblems, monograms** or signatures, colours or combinations of colours. To be valid, a mark must be:

- . distinctive, that is to say does not correspond to the usual designation of the product,
- . lawful: it must not be **a prohibited sign**, such as a flag or emblem State, or a sign contrary to public order or morality; it must not nor deceive the public, especially on the nature, the quality, or the origin geographical location of the product or service,
- . available: it is highly recommended to perform prior art searches among Algerian **brands** and international brands that are effective in Algeria.

The application for registration is made with ANIIP: a file must be filed and fees paid. ANIIP practices a formal examination, checks whether the mark **fulfills** the conditions of validity and verifies the existence of earlier marks. Once registered, the mark is published.

The protection formalities may be accomplished either by an international deposit with WIPO, via the **Madrid Protocol**, by designating Algeria, or by an Algerian deposit made directly with ANIIP. In addition, under the Paris Union Convention, an applicant whose trademark is being registered in France has a priority period of six months to make a deposit in Algeria.

The term of protection of a registered trademark is 10 years from filing. This may be renewed indefinitely for periods of the same duration, provided that it can prove the use of the mark in the year preceding the renewal date. The mark owner then has an exclusive right of exploitation. There is no provision for domain names in the trademark regulations. The organization that manages the domain name registry is NIC.dz

## DRAWINGS AND INDUSTRIAL DESIGNS

The appearance of the products is a protection by designs, as they materialize by graphic elements of two dimensions (drawings) or three dimensions (models). To benefit from the protection granted by law, a design must be new and not be contrary to public order or morality.

The deposit of the design is made with ANIIP - which only carries out a formal examination- and royalties must be paid. The registration is published after **the expiry** of the first year of protection or earlier, at the request of the holder. The holder of a design has an exclusive right of exploitation over it.

The total term of protection of a registered design is 10 years from the date of filing. It breaks down into two periods: the first year and the nine years following.

## COPYRIGHT

Algeria, by acceding to *the Berne Convention*, has accepted the principle of works protection without formality of deposit or registration. This protection, regulated by the ordinance of July 19, 2003, is granted to any literary, scientific or artistic work, whatever the value or the merit, the destination, the mode of expression or the genre. The only basic requirement is the original character of the creation.

The author of an original work is invested, on the one hand, with economic rights which are transferable (in particular, the right of reproduction, **adaptation**, representation), on the other hand moral rights that are not transferable (essentially right of **disclosure**, right of paternity, right to respect for the work).

The economic rights last fifty years after the lawful publication or after the moment when the work was made accessible to the public, or after the realization. For moral rights, the term of protection is not specified.

In Algeria, the **National Office of Copyright and Neighbouring Rights** (NOCNR=ONDA), under the supervision of the *Ministry of Information and Culture*, has as its main mission the collective management of copyright in works in his repertory. However, if the author has **a monopoly of exploitation** over his works, he can not **abuse** them. Thus, it can not oppose the diffusion of these, without valid reason, because it must contribute to the diffusion of knowledge.

**COUNTERFEITING: THE MOVEMENT FOR EFFECTIVE CONTROL IS GOOD ENGAGED**

Despite an appropriate legal framework to protect intellectual property rights, counterfeiting has become so widespread in Algeria that it can be an important deterrent to foreign investors.

**COUNTERFEITING FRAGILIZES THE ALGERIAN ECONOMY**

On the one hand, with its many hard-to-monitor land borders and a 1,200-kilometer seafront, Algeria is an ideal target for international counterfeiting networks. On the other hand, the flow of counterfeits of Algerian origin is facilitated by a particularly active parallel market.

Also, Algeria is on the list of countries placed under surveillance by the United States, because of their counterfeit activities. They criticize it in particular for authorizing the sale of counterfeit generic pharmaceutical products and, more generally, for not enforcing intellectual property rights.

A third of products sold in Algeria - on official or "Informal" markets - would be counterfeit, food products, car parts, cosmetics, CDs, software, medicines, clothing or footwear and, to a large extent, household, the most affected cities are Algiers, Setif, Oran and Tlemcen.

However, Algeria has realized the importance of the contribution of intellectual property rights in the socio-economic prosperity of a country and their role in the preservation of cultural heritage. Moreover, it realizes the danger of counterfeiting for the health and safety of consumers.

**A RIGOROUS REGULATORY ENVIRONMENT**

There are two kinds of procedures, customs procedures and legal procedures

**CUSTOMS PROCEDURES**

Since July 15, 2002, Algerian customs services have had a regulatory framework to combat counterfeiting.

- Procedure of intervention on the initiative of the customs. The Administration may retain goods during a period of 3 days, if it appears during checks, that these are obviously counterfeits. It then informs the right holder, who is responsible for filing a request for intervention.
- Customs intervention procedure at the request of the right holder.
- The request must be based on a justification file (right of property, description and location of the goods...etc). When the request to intervene is accepted, the provision of a guarantee to cover any costs may be required.

From the moment the customs deduction is formally notified to the applicant, the latter has 10 days to appeal to the judicial authorities.

In addition, the Finance Act for 2008 amended and supplemented the Customs Code, to establish a rigorous system conferring more powers to the Administration, in particular by considering the illicit products import -export a customs offense.

In any case, counterfeits can be confiscated, placed outside commercial channels, destroyed, and heavy fines, or even imprisonment, are incurred by counterfeiters.

**LEGAL PROCEDURES**

The holder of an intellectual property right may bring an action for infringement before the civil courts, in order to obtain compensation for the damage suffered. But it is also possible to seize the criminal courts, to sanction the unlawful acts.

The counterfeiting of a work is punishable by imprisonment for six months to three years and / or a fine of 500,000 (approximately € 5,600) to 1,000,000 dinars (approximately € 11,150);

The counterfeiting of a trademark, imprisonment from one month to one year and / or a fine of 500,000 (approximately € 5,600) to two million dinars (approximately € 22,300); That of a patent, imprisonment of six months to two years and / or a fine of 2,500,000 dinars (about 28,900 €) to ten million dinars (about 111,400 €);

Finally, the counterfeiting of a design may be punished by a fine of 500 dinars (about 6 €) to 15,000 dinars (about 170 €).

Some lines of action against counterfeiting deserve to be highlighted:

- . Improving the implementation of the legal system in force to punish counterfeiting.
- . The political will shown at the highest level of the State to combat the informal economy.
- . The "indefatigable war" waged by the Algerian Customs against the phenomenon of counterfeiting. The customs administration set up a central sub-directorate for the fight against counterfeiting. In 2008 alone, the Algerian customs seized 4 million counterfeit goods. It should be recalled that on 27 November 2008, the Algerian and French Customs agreed on a partnership agreement to improve operational cooperation between the customs services of the ports of Oran and Marseille in the fight against fraud. This agreement is part of the convention of mutual assistance between the two countries concluded in 1985, which aims to strengthen the exchange of information and intelligence, particularly in the counterfeiting field.
- . The creation of a *National Agency for the Registration and Control of Medicines*.
- . The generalization of anti-counterfeiting teams; The General Directorate of National Security is planning the generalization, in all the police stations of the country, of teams specialized in the fight against counterfeiting.
- . Staffing a cyber police to track virtual crime that acts from the Internet, including hacking.
- . The forthcoming implementation of a protection device for works disseminated on the Internet.

⊕ QUESTIONS:

- TRANSLATE THE UNDERLINED TERMS INTO ARABIC.
- GIVE AN ABSTRACT (IN ARABIC) TO THE TOPIC.