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Order (Act) No. 03-06 dated 19 Jumada I, 1424 corresponding to July 19, 2003 related to Trademarks

- By virtue of the Constitution, especially Articles 38, 52, 122 and 124 therein,
- In accordance with Order (Act) No. 66-48 dated 5 Dhu Al Qada 1385 corresponding to February 25, 1966, which includes Algeria's joining the Paris Convention dated March 20, 1883 related to the industrial property protection,
- In accordance with Order No. 66-154 dated 18 Safar 1386 corresponding to June 8, 1966, which includes the Civil Procedures Law, as amended and supplemented,
- In accordance with Order No. 66-155 dated 18 Safar 1386 corresponding to June 8, 1966, which includes the Penal Procedures Law, as amended and supplemented,
- In accordance with Order No. 66-156 dated 18 Safar 1386 corresponding to June 8, 1966, which includes the Penal Law, as amended and supplemented,
- In accordance with Order No. 72-10 dated 7 Safar 1392 corresponding to March 22, 1972, which includes Algeria's joining some international agreements.
- In accordance with Order No. 75-02 dated 26 Dhu Al Hijjah 1394 corresponding to January 9, 1975, which includes the approval of the Paris Convention for the Protection of Industrial Property concluded on March 20, 1883 as amended in Brussels on December 14, 1900, Washington on June 2, 1911, Hague on November 6, 1952, London on June 2, 1934, Lisbon on October 31, 1958 and Stockholm on July 14, 1967.
- In accordance with Order No. 75-58 dated 20 Ramadan 1395 corresponding to September 26, 1975, which includes the Civil Law, as amended and supplemented,
- In accordance with Order No. 75-59 dated 20 Ramadan 1395 corresponding to September 26, 1975, which includes the Trade Law, as amended and supplemented,
- In accordance with Law No. 79-07 dated 26 Sha'ban 1399 corresponding to July 21, 1979, which includes the Customs Law, as amended and supplemented,
- In accordance with Law No. 84-17 dated 8 Shawwal 1404 corresponding to July 7, 1984 related to the Finance Laws, as amended and supplemented,

- In accordance with Law No. 89-02 dated 1 Rajab 1409 corresponding to February 7, 1989 related to the general rules for customer protection.
- In accordance with Order No. 03-03 dated 19 Jumada I, 1424 corresponding to July 19, 2003 related to competition,
- In accordance with the Decree No. 84–85 dated 19 Rajab 1404 corresponding to April 21, 1984, which includes Algeria's joining Nairobi Treaty on the Protection of the Olympic Symbol Name as approved in Nairobi on September 26, 1981,

Having listened to the discussions of the Council of Ministers,

The President of the Republic issues an order that reads as follows:

Part One General Definitions & Obligations

Article 1

This Order shall aim at determining the methods of trademarks protection.

Article 2

The following words herein shall have the meanings indicated against each:

1. Trademarks: All symbols representable in writing, especially words including persons' names, letters and numbers, drawings, pictures, forms distinguishing goods or packages thereof, and colors or combination thereof used to distinguish goods or services of a natural or nominal person from the goods and services of someone else.
2. Collective Mark: Each mark used to prove the origin, components, production and every common feature of goods and services of various institutions, when such institutions use this mark under the control of its owner.
3. Goods: Every natural, agricultural, traditional, or industrial product, whether raw or manufactured.
4. Service: Every performance of economic value.
5. Trade Name: The naming or title identifying an institution.
6. Competent Authority: The National Algerian Institute for Industrial Property.

Article 3

The goods or service mark shall be considered compulsory for each good or service rendered, whether sold or offered for sale inside the country. The mark should be placed on the cover or, where impractical, on the container if the nature or characteristics of goods preclude placing the mark directly thereon.

This requirement shall not be applicable to goods or services of which nature or characteristics preclude placing the mark thereon, and to the goods bearing the name of origin.

The provisions herein shall be made clear, when necessary, through the regulation.

Article 4

No trademark for goods or services shall be used inside the country unless it is registered or a registration application thereof is filed with the competent authority

Part Two The Right in a Mark

Chapter One: Acquisition of Mark Rights

Article 5

The right in a mark shall be acquired by registering it with the competent authority.

Without prejudice to the right of priority acquired within the frame of implementing the international agreements applicable in Algeria, the mark registration period shall be ten years retroactively effective from the date of filing the application.

The registration shall be renewable for consecutive periods estimated at ten years in accordance with the rules determined in the provisions approved to implement this Order.

Renewal shall be effective from the day following the expiry of registration term.

Article 6

Other than the case of right infringement, the mark shall be a property of the first person who meets the defined terms of the soundness of filing, or the person who proves the seniority of his filing priority in accordance with the above said Paris Convention.

Each person, who has offered goods or services under the required mark at an official or officially recognized international exhibition, shall have the right to demand the registration of this mark and claim the right of priority therein as from the date of exhibiting goods or services under this mark within three months from closing the exhibition.

Chapter Two: Reasons for Refusal

Article 7

The following may not be registered:

1. Symbols that do not represent a mark as set forth in Article 2 (Paragraph One).
2. Symbols related to the public property or not distinguished.
3. Symbols that represent the form or cover of goods if its nature, function or packaging require thereof.
4. Symbols in contrary to public order or morals as well as those the use of which is prohibited under the national law, or bilateral or multilateral agreements in which Algeria is a party.
5. Symbols comprising a simulation or imitation of official logos, flags, other logos, abbreviated names, symbols, signs or official hallmarks used for the purposes of control and guarantee by a country or an intergovernmental organization established under an international agreement, unless the competent authority has licensed such state or organization to do so.
6. Symbols which would mislead the public or commercial society with regard to the nature, quality or source of goods and services and other related characteristics.
7. Symbols which exclusively or partially constitute an indication that would involve a confusion regarding the geographical origin of certain goods or services. In case such symbols have been illegally registered as a mark, the use of that geographical indication would be hindered by third parties entitled thereof.
8. Symbols similar or identical to a mark or a trade name well-known in Algeria and have been used for similar or identical goods belonging to another institution to the extent that causes confusion between both of them, or symbols which are a translation of another mark or trade name.

The provisions of this Paragraph shall be applicable, as necessarily amended, to the goods or services not identical or similar to those for which the mark is required to be registered, provided that the use of such mark for identical goods and services indicates a link between these goods and services and the owner of the registered trademark,

and that such use would be detrimental to the interests of the registered trademark owner.

9. Symbols identical or similar to a mark that has been the subject matter of a registration application or a registration including goods or services identical or similar to those for which the manufacturing mark or trademark has been registered if such use would result in confusion.

The provisions of this Paragraph shall also applicable to the marks the protection period of which has expired since one year or more prior to the date of filing their registration application, or to the collective marks the protection period of which has expired since three years or more prior to this date.

All claimed priorities shall be taken into consideration in accordance with this Paragraph.

Article 8

The nature of goods or services covered by the mark shall not hinder, in any case, the registration thereof.

Chapter Three: Rights Granted by Registration

Article 9

The registration of a mark shall entitle its owner to the property thereof on goods and services he determines thereto.

Subject to the provisions of Article 11 below, the right of a mark property shall entitle its owner to the right of assignment, granting utilization licenses and preventing others from commercially using his mark on goods or services similar or identical to those for which the mark has been registered without a prior permission.

It shall be permissible to use the right granted under the mark registration towards the third party who commercially uses a mark, symbol or trade name that is confusingly similar for identical or similar goods and services without the permission of the owner.

The owner of a well-known mark in Algeria shall have the right to prevent others from using his mark without permission in accordance with the terms provided for in Article 7 Paragraph 8 above.

Chapter Four: Determination of Rights Granted by Registration

Article 10

The mark registration shall not entitle its owner to prevent others from commercially using in good will the following:

1. His name, address and pseudonym name.
2. The true data related to the class, quality, quantity, destination, value, place of origin, production period of goods, or performance of these services, provided that such use is limited to the purposes of identification or notification only according to the honorable practices in the industrial or commercial field.

Chapter Five: Obligation to Use the Mark

Article 11

The practice of the right granted by a mark registration shall involve the serious use of the mark on goods or the packages thereof, or related to the services identified by such mark.

Non-use of the mark shall entail its cancellation except in the following cases:

1. If non-use has not continued for more three consecutive years without interruption.
2. If the mark owner has not submitted, prior to the expiration of this period, an evidence on that difficult circumstances precluded the use thereof. In this case, it shall be permissible to extend the period for no longer than two years.

Article 12

The use of a mark by the licensee shall be considered as a use by the applicant or the owner of such mark.

Part Three Mark Filing, Examination, Registration and Publication

Article 13

The formalities of a mark filing, and the methods and procedures of examination, registration and publication thereof shall be determined with the competent authority through the regulation.

Except for the case of mutual agreement, applicants who reside abroad shall be represented before the competent authority by a representative designated in accordance with the applicable regulation.

Part Four Transfer of Rights

Article 14

Apart from the complete or partial transfer to the institution, the rights protected by the registration application or the mark registration may be wholly or partially transferred or mortgaged.

The transfer of right shall be deemed void if it is intended to mislead the public or commercial society with regard in particular to the nature, source, method of manufacturing, characteristics, or the usability of goods or services included in the mark.

Article 15

It is required, subject to nullification, that the transfer or mortgage contracts are concluded and signed by the parties therein with regard to the mark filed for registration or registered under the provision of Article 14 above, in accordance with the law regulating such contracts.

The transfer by institutions merger or any other form of institution dissolution shall be confirmed by a document proving thereof in accordance with the legislation governing such transfer.

Article 16

The rights associated with the mark may be the subject matter of a utilization license, exclusive or nonexclusive, for all or part of the goods or services for which the mark has been filed or registered.

Article 17

The license contract concluded in accordance with the law regulating thereof shall include, subject to nullification and under the provision of Article 16 above, the mark, license term, goods and services for which the license has been granted, the territory in which the mark may be used or the quality of manufactured goods or services rendered by the licensee.

The license shall be registered in the Trademarks Register at the competent authority. The methods of the register keeping shall be determined by the regulation. The competent authority shall keep an extract of a numbered and initiated register.

Article 18

The mark owner shall hold the acquired rights towards the licensee who fails to meet any of the conditions set forth in Article 17 above.

Part Five Rights Forfeiture

Chapter One: Retraction

Article 19

A mark registration may be retracted for all or part of goods or services for which such mark has been registered.

The retraction methods shall be determined through the regulation.

Chapter Two: Nullification

Article 20

The competent judicial party may retroactively nullify a mark registration as from the filing date upon the request of the competent authority or a third party in case it is perceived that the mark should have not been registered for a reason indicated in Paragraphs 1 – 9 of Article 7 herein.

A nullification lawsuit may not be filed if the mark becomes distinguished by registration, and shall prescribe within five years as of the date of mark registration. The registration application filed in bad faith shall be excluded from this procedure.

Chapter Three: Cancellation

Article 21

The competent judicial party shall cancel the registration of a mark upon the following:

1. A request by the competent authority or relevant parties if a reason indicated in Article 7 (Paragraphs 3 & 5–7) herein arises after registering the mark and continues after the cancellation decision. However, if the reason for cancellation is set forth in Article 7 (Paragraph 2), the registration shall not be cancelled if the mark has become distinguished after being registered.

2. A request by the relevant parties in case the mark has not been used in accordance with Article 11 above.

Part Six Collective Marks Related Provisions

Chapter One: A Collective Mark Property and Use

Article 22

Each nominal person subject to the public or private law shall have the right to own a collective mark in accordance with the provision of Article 2 (Paragraph 2).

Article 23

The collective mark owner shall ensure the appropriate use of his mark in accordance with the applicable legislative and regulatory provisions in this regard.

To this end, the system of collective mark use, which includes the bylaws thereof, shall consist of the following:

- Determining certain conditions for the use of the collective mark.
- Providing for an actual control over the use of such mark.

Chapter Two: A Collective Mark Transfer, Mortgage and Compulsory Enforcement

Article 24

The collective mark may not be subject to transfer, assignment or mortgage, and may not be subject to any compulsory enforcement.

Chapter Three: Collective Mark Cancellation

Article 25

Without prejudice to the provisions of Articles 21 & 24 above, the competent judicial party shall cancel the registration of the collective mark upon a request submitted thereto by the competent authority or by a third party assigned by others in the following cases:

1. Absence of the nominal person who owns the mark.
2. When the collective mark owner uses, permits or authorizes the use thereof according to conditions other than those determined in the system of use.

3. When the collective mark owner uses, permits, authorizes the use thereof in a way that would mislead the public regarding any common feature of goods or services for which the mark has been registered.

Part Seven Rights Infringement & Penalties

Article 26

Subject to the provisions of Article 10 above, every act infringing the exclusive rights of a mark carried out by a third party in violation to the mark owner's rights shall be considered a counterfeit of a registered mark.

The counterfeit shall be considered a crime that entails penalties determined in Articles 27 to 33 below.

Article 27

The acts made prior to the publication of a mark registration shall not be considered as infringing the rights related thereto.

However, subsequent acts may be examined and proceeded by sending a copy of the mark registration to the suspected counterfeiter.

Article 28

The mark owner shall have the right to file a lawsuit against any person who has counterfeited or is counterfeiting the registered mark. The same right shall be exercised against any person who has conducted or is conducting acts that suggest a future counterfeit.

Article 29

If the mark owner has proved that a counterfeit occurred or is being occurred, the competent juridical party shall pass a verdict with civil remedies, an order to stop counterfeit acts, and ensure follow up by imposing a bond to guarantee the compensation of the mark owner or the holder of the exclusive right of utilization. The competent juridical party may take, when necessary, any other arrangement provided for in Article 30 below.

If the mark owner has proved that an infringement against his rights is imminent, the competent juridical party shall settle thereof and order confiscating the tools and means used in the counterfeit and damaging them, when necessary.

Article 30

The defendant in each of the lawsuits stated in this Part may request, within the same procedure, the nullification or cancellation of the mark registration. In this case, the provisions of Articles 20 & 21 herein shall be applicable.

Article 31

Except otherwise stated in the licensing contract, the beneficiary of the exclusive right of a mark utilization may, after due notification, file a counterfeit lawsuit if the owner has not exercised this right himself.

Article 32

Subject to the transitional provisions herein, and without prejudice to the Provisions of Order No. 66-156 dated June 8, 1966 including the Penal Law as amended and supplemented, each person who commits a counterfeit felony shall be imprisoned for a period not less than six months and not more than two years, and shall be fined for not less than (2.500.000 AD) and not more than (10.000.000 AD), or shall be sentenced to only one of these two penalties together with:

- Temporary or final shutdown of the institution.
- Confiscation of tools and means used in this felony.
- Damage of elements subject matter of the felony.

Article 33

The following shall be imprisoned for not less than one month and not more than one year and shall be fined for not less than (500.000 AD) and not more than (2.000.000 AD), or shall be sentenced to one of these penalties:

1. Each person who has violated the provisions of Article 3 herein by not placing a mark on his goods or services, has intentionally sold or offered for sale a good or more, or has rendered services that do not bear a mark.
2. Each person who has placed on his goods or services a mark that is not registered or was not required to be registered under Article 4 herein, subject to the transitional provisions provided for herein.

Part Eight Special Provisions

Article 34

The mark owner may, upon an order from the court presiding judge and when necessary, seek the help of an expert to accurately describe the goods, which he claims that placing the mark thereon has been detrimental to him whether by seizure or otherwise.

The order shall be issued on the footer of a petition based on the mark registration evidence.

When the seizure is confirmed, the judge may order the plaintiff to pay a bail.

Article 35

The description or seizure shall be void by the force of the law if the plaintiff has not resort to the civil or penal actions within one month regardless of the damage compensations to be demanded.

Part Nine Transitional Provisions

Article 36

Each person who has not carried out the obligations of placing the mark and registration as provided for in Articles 3 & 4 herein shall fulfill thereof within one year as of the effectiveness date of this Order.

Part Ten Final Provisions

Article 39

The provisions of Order No. 66–57 dated March 19, 1966 related to manufacturing marks and trademarks shall be cancelled.

Article 40

This Order shall be published in the Official Gazette of the Democratic People's Republic of Algeria. Executed in Algeria on 19 Jumada I, 1424 corresponding to July 19, 2003. Abdul-Aziz Bu Taflika