

The crime of counterfeiting goods in Algerian Legislation

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Abstract---The trade in counterfeit goods is a transnational crime carried out by large and highly organized criminal groups. There is a close link between illicit trade and other forms of criminal activity, such as human trafficking, drug trafficking, active and passive corruption, and money laundering. This illegal trade harms the national economy, public health, and public order across the world.

Keywords---goods, trade, trafficking offense, counterfeit.

Introduction

In recent years, economic production has expanded at a rapid pace. This growth has increased the volume of commercial transactions in global markets and has created strong competition among economic actors across various sectors. Each seeks to meet consumer needs through different means, even when these practices lack fairness. One of the most widespread unfair practices is counterfeiting, which has flooded markets to the extent that many consumers can no longer distinguish between genuine and counterfeit goods due to the vast availability of imitated products.

Consumers do not have the technical knowledge that traders possess regarding the nature and characteristics of products. As the weaker party in commercial relations, they are vulnerable to deception. For this reason, the Algerian legislator deemed it necessary to protect consumers from fraudulent practices by traders who hold a strong economic position.

Moreover, the legislator did not rely solely on general legal provisions, as they do not offer sufficient protection. Instead, specific laws were enacted to deter dishonest commercial behavior. Central among

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these is the Consumer Protection and Anti-Fraud Law (Law No. 09-03 of 25 February 2009), along with related legislative and regulatory texts. These legal instruments aim to provide effective protection by preventing risks before they arise. Yet, such protection remains insufficient in the face of traders' greed and their drive for quick profit.

Significance of the Study

The importance of this topic lies in the direct connection between counterfeit goods and the health of citizens, who are the primary parties in commercial transactions and the first to suffer from the negative effects of such products. This makes the subject a priority and justifies the need for focused academic inquiry.

Objectives of the Study

This study addresses the protection of citizens from the crime of counterfeiting goods. Many states, including Algeria, seek to confront this crime, especially within a market-economy framework. Algeria has introduced a wide range of legislative and regulatory measures and has established various administrative and judicial bodies, in addition to consumer-protection associations.

Research Problem

This paper examines the following central question: How has the Algerian criminal legislator addressed the crime of trafficking in counterfeit goods within its punitive framework?

To answer this question, the paper will first present the constituent elements of the crime of counterfeiting, and then examine the penalties prescribed and the precautionary measures applicable.

First: The Elements of the Crime of Counterfeiting

Under the principle of legality and the requirement that no criminal act exists without a prior legal provision, the crime of counterfeiting—linked to the field of intellectual property and the protection of industrial products—has been clearly defined. The law criminalizes any unlawful conduct that violates the rules governing goods intended for export. These rules aim to ensure the quality, type, and dimensions of such products. The act is punishable by a fine ranging from 20,000 to 100,000 Algerian dinars, in addition to the confiscation of the goods (Article 170 of the Algerian Penal Code, Ordinance 66-156 of 8 June 1966, as amended and supplemented).

Counterfeiting is also addressed in special legislation. Article 26 of Ordinance 06-03 on trademarks states: "Any act that infringes the exclusive rights conferred by a registered trademark and committed by another person shall be deemed a misdemeanor of trademark counterfeiting" (Ordinance 03-06 of 19 July 2003 on trademarks).

This legislative framework provides the legal element of the crime, alongside its remaining elements: the material element (1) and the moral element (2).

1. The Material Element of the Crime of Counterfeiting

The material element is fulfilled when the offender commits an act prohibited under laws regulating intellectual and industrial property. This act represents the criminal behavior that harms interests protected by law. It may take the form of a positive act or an omission. Its existence is essential to the crime, which cannot be established without it.

The material element is studied through two components: the criminal act (A) and the criminal result (B).

A. The Criminal Act

The criminal act consists of any conduct that violates the exclusive rights granted to the holder of intellectual or industrial property. These rights include trademarks, patents, industrial designs, integrated circuit layout designs, and appellations of origin, in addition to copyright and related rights.

To understand the criminal act more fully, it is necessary to examine the conditions required for an infringement and the forms it may take.

Conditions Required for the Infringement

In general, the infringement must be unlawful. This requires the following:

- **The infringement must relate to an existing and valid right** The right must fall within the intellectual and industrial property rights protected by Algerian legislation. Although the list provided by the legislator is illustrative, these rights remain limited in scope and clearly defined, especially when criminal responsibility is at stake. For industrial property, the right holder must prove ownership before the competent authorities. For copyright and related rights, the work or performance must meet the condition of originality (Ferha, 2007, p.179)
 - **The offender must not rely on a justified act** Some acts are lawful, such as use for evaluation, analysis, research, or teaching. Examples include copying for school or university purposes or quoting a work. (Qara, 2010, p.94) These acts are protected under Articles 1 and 39 of the Penal Code.
 - **The right holder must not have given consent** If the right holder authorized the use of the protected right in any form, the crime does not exist. The authorization must be given before or at the time of the act. (Qara, 2010, p.87) The Supreme Court held: “Any unlawful exploitation outside a legal license constitutes counterfeiting and forgery of a protected artistic work.” (Supreme Court Decision No. 368024, 28/11/2007) Thus, any exploitation without authorization amounts to counterfeiting.
 - **The right must not have expired** Intellectual property rights lapse after a certain period. Copyright protection lasts for fifty years following the author’s death. Related rights pass to the public domain thereafter, with the National Office of Copyright and Related Rights assuming responsibility for their protection. (Supreme Court Decision No. 390531, 24/09/2008)
- Industrial property rights may expire through invalidity, cancellation, or the passing of the legal protection period. For patents, protection runs for twenty years starting from the filing date with the National Institute of Industrial Property (Article 9 of Ordinance 03/05 of 19 July 2003)

Forms of Infringement

Infringement takes two main forms: direct and indirect.

1. Direct Infringement

This differs depending on whether the right violated is a copyright or a related right, or an industrial property right.

Direct infringement of copyright and related rights, as provided in Articles 151 and 152 of Ordinance 03-05, includes:

- Unlawful disclosure of the work or the artist’s performance.
- Violation of the integrity of the work or performance.
- Reproduction of a work or performance in any manner through counterfeit copies.
- Communication of the work or performance to the public through performance, broadcasting, or any other means.

Direct infringement of industrial property rights includes: (Qara, 2010, p.407)

- Imitation, unauthorized use, or reproduction of trademarks and industrial designs.
- Manufacturing a patented product or using a patented process.
- Copying the layout design of an integrated circuit in whole or in part.

2. Indirect Infringement

Indirect infringement does not require the offender to participate in the counterfeiting itself. It is sufficient that they commit an indirect act, such as selling, offering for sale, importing, exporting, concealing, or leasing counterfeit goods. The counterfeiter and the seller may be different persons.

The most serious forms of indirect infringement are the sale or offer for sale of counterfeit goods, and the import or export of such goods.

Sale implies that counterfeiting has already occurred; the matter then concerns the commercial distribution of counterfeit goods. These two crimes are often linked, though not necessarily in all cases. The purpose of selling counterfeit products must be financial profit, regardless of whether the seller is a trader or not. It also does not matter whether the sale occurs once or repeatedly (Qara, 2010, p.401)

Offering for sale means displaying counterfeit products to the public, or sending samples to traders for future sale—even if the sale does not ultimately take place (Salah Zain al-Din, 2003, p.81) These acts undermine consumer confidence in genuine goods and violate the legal protection granted to intellectual and industrial property, such as patents, industrial designs, appellations of origin, and layout designs (Salah Zain al-Din, 2003, p.82)

The legislator has also criminalized the export and import of counterfeit goods that infringe any intellectual property right, classifying these acts as forms of indirect counterfeiting.

Importing consists of bringing a counterfeit item from abroad for commercial purposes, provided the importer knows that the product is counterfeit. Exporting means transferring a counterfeit item from the country to another state for sale or commerce (Abd al-Aziz Sharabi & Mohamed Amin Farrouj, 2008, p.21)

Infringement is established when counterfeit goods cross national borders through import or export. The primary offender is the person who exports the goods on their own behalf or orders the export. The material element is fulfilled once counterfeit goods are imported or exported, regardless of whether the person participated in the act of counterfeiting. It is sufficient that they introduce counterfeit goods into the country or transport them abroad.

The goods must be protected under intellectual property legislation. The rationale for criminalizing these acts is to combat all forms of fraud involving goods produced inside or outside the country, and the illegal trafficking, promotion, sale, or leasing of such goods for quick and unlawful profit (Griouj, 2018, p.41)

B. The Criminal Result

The material element of the crime of counterfeiting does not always require actual material harm to the right holder. It is sufficient for the act to cause moral harm or to create a risk to the protected interest. An example is the damage to the author's reputation or public defamation. The result is the effect produced by the criminal act and the change it causes in the external world.

Proving that the material or moral loss is a direct consequence of the act of counterfeiting is often difficult. Intellectual creations may be presented to the public in a manner that harms the reputation of the right holder or infringes upon one of their economic or moral rights. This applies regardless of the means used—copying, writing, manufacturing, production, or even use. The assessment remains relative (Griouj, 2018, p. 55)

2. The Moral Element of the Crime of Counterfeiting

A crime cannot exist without the moral element, which is the criminal intent or bad faith of the offender. The moral element reflects the offender's awareness and intention.

Article 26 of Ordinance 06-03 on trademarks does not explicitly mention this element. This creates ambiguity. However, registering a trademark with the relevant authority—the National Institute of Industrial Property—makes the registration publicly known. The offender cannot claim ignorance of it. The intention is therefore presumed, and ignorance of the law cannot serve as a defense (Sebti, 2017, p. 102)

In what follows, a distinction is drawn between the act of counterfeiting itself (A) and the sale or offer for sale of a counterfeit product (B).

A. The Act of Counterfeiting

Some scholars argue that the crime of counterfeiting is based solely on the material element, which is the fabrication of the mark, regardless of the offender's bad faith. According to this view, the moral element is not required, and fraudulent intent is not a condition for the crime. The existence of the material act is sufficient, and the trademark owner is not obliged to prove the counterfeiter's bad faith. French jurisprudence supports this view (Yves Saint Gal, 1972, p. 36)

Article 29 of Ordinance 03-06 on trademarks, which defines the misdemeanor of counterfeiting, does not require bad faith or a specific criminal intent. The text simply states: "Any act that infringes the

exclusive rights of a registered trademark committed by another person in violation of the rights of the trademark owner shall constitute the misdemeanor of trademark counterfeiting.”

Thus, once the offender imitates the trademark, the crime is established without the need to prove bad faith. Creating a new mark presupposes that the applicant registers it in good faith. It is difficult to claim that the similarity between the original and counterfeit marks is a mere coincidence.

B. Selling or Offering a Counterfeit Product for Sale

Article 33(2) of Ordinance 03-06 addresses this situation by specifying the penalties for persons who intentionally sell or offer for sale goods or services bearing counterfeit marks. The reason for criminalization is that such conduct misleads the consumer and creates the impression that the two establishments are identical or that one is a branch of the other.

Unlike the act of counterfeiting itself, bad faith is required here. The seller must know that the product is counterfeit, and this knowledge must be proven (Sebti, 2017, p. 171)

The criminal intent in this case lies in prior knowledge. The seller must be fully aware that the goods bear a counterfeit mark and that they are being sold for that purpose (François Terré, Philippe Simler, Yves Lequette, *Droit Civil: Les Obligations*, Dalloz, 1993, p. 24)

From this, it follows that the crime of counterfeiting cannot be established through the material element alone. The general criminal intent must also be proven. As with other intentional crimes, counterfeiting requires the presence of two components: the element of will and the element of knowledge of the prohibited act.

Thus, excluding the moral element from the crime of counterfeiting is, in our view, incorrect. The crime is complete when the general criminal intent is present, even if the specific intent is absent.

Second: Penalties Prescribed for the Crime and the Protective Measures

The Algerian legislator has provided, in addition to civil sanctions, criminal penalties for those who commit the misdemeanor of counterfeiting. These penalties include **principal** and **supplementary** penalties (1), as well as protective measures and their conditions (2).

1. Principal and Supplementary Penalties

The Penal Code distinguishes between principal penalties (A), which may be applied alone, and supplementary penalties (B), which may accompany the principal sanction.

A. Principal Penalties

The principal penalties prescribed by Algerian law are imprisonment and fines. The court may impose one or both.

- **Imprisonment** is a main penalty that restricts liberty. It is applied to anyone who violates intellectual or industrial property rights by counterfeiting the protected goods. The sentence ranges from six months to two years, as stated in Article 32 of Ordinance 06-03: “Any person who commits the misdemeanor of counterfeiting shall be punished by imprisonment from six months to two years.” (Article 32, Ordinance 06-03 on trademarks)

- **Fine** The fine is the second principal penalty. It is a monetary amount paid to the competent authority. The fine ranges between 25,000 DZD and 100,000 DZD, according to Article 32 of Ordinance 06-03.

B. Supplementary Penalties

Alongside imprisonment and fines, the legislator introduced other penalties aimed at reducing counterfeiting. The trial judge may impose these penalties when necessary, based on discretionary authority granted by law. In some situations, these supplementary penalties become mandatory. They include confiscation, destruction, and the temporary or permanent closure of the establishment.

- **Confiscation** is a supplementary penalty aimed at seizing all goods unlawfully counterfeited, including the products and tools used to commit the offense. The judge must order confiscation in addition to the principal penalty, whether imprisonment or fine. This follows the spirit of Article 32 of Ordinance 06-03: “Any person who commits the misdemeanor of counterfeiting shall be punished by

imprisonment from six months to two years and a fine from 2,500,000 to 10,000,000 dinars, or by one of these two penalties only, together with:

- the temporary or permanent closure of the establishment;
- the confiscation of the items, tools, and materials used in the violation;
- the destruction of the items subject to the violation.”

The decision to confiscate all tools used in the infringement reflects the sensitivity of such cases, which require swift action. Confiscation helps safeguard the reputation of the genuine trademark and prevents its deterioration.

• **Destruction** The court orders the destruction of all seals, models, and trademark samples, as well as all tools used in the commission of the counterfeiting offense (Ferha, 2007, p. 281) This penalty is applied along with the principal penalty, in accordance with Article 32 of Ordinance 06-03.

• **Temporary or Permanent Closure of the Establishment** The closure of the establishment—either temporary or permanent—is a supplementary penalty. It is issued when the court imposes a principal penalty. The judge may order the closure of the place where the counterfeiting occurred, either permanently or for a specified period, as indicated in Article 32.

However, the legislator did not specify the duration of the temporary closure, which creates uncertainty. It also left unclear the fate of the workers when the establishment is permanently closed (Ferha, 2007, p. 282)

1. Protective Measures and Their Conditions

The law grants any person whose trademark has been infringed the right to request protective measures (A), provided that the required conditions are met (B).

A. Protective Measures

Article 34 of Ordinance 03-06 on trademarks provides for these measures. It states that the trademark owner may request a detailed description, with the assistance of an expert, of the goods on which the contested mark has been placed and which are alleged to cause harm through counterfeiting (Article 34, Ordinance 03-06)

By contrast, Article 38 of Ordinance 66-57 requires that the owners of the described or seized items receive a copy of the order and, when necessary, a copy of the document confirming the posting of the security. Failure to do so renders the request void and gives rise to a claim for compensation (Article 38, Ordinance 66-57 of 19 March 1966 on factory and commercial marks, as amended by Ordinance 03-06) It is therefore clear that the legislator did not address this point in Article 34 of Ordinance 03-06, unlike the earlier text.

From Article 34, we understand that any owner of a registered trademark may request protective measures to establish an infringement—whether by imitation or unlawful use—even before filing a lawsuit. Yet this request is subject to specific conditions.

B. Conditions for Applying Protective Measures

Article 34 of Ordinance 03-06 indicates that certain conditions must be met before protective measures can be ordered. These conditions can be summarized as follows:

- The measure must be requested by the trademark owner. It is optional and may be waived.
- The owner must prove that the mark is registered with the Algerian National Institute of Industrial Property, established by Executive Decree No. 98-68. This proof is provided through the registration certificate issued by the Institute (Executive Decree No. 98-68 of 21 February 1998, establishing the Institute and defining its statutes, Official Gazette No. 11, 1998)
- The request must be submitted to the president of the competent court.
- A security deposit may be required. It is not mandatory, but the judge may order it if the seizure is confirmed.

- The applicant must bring the case before the competent court within one month of requesting the protective measures. Failure to do so renders the measures void by operation of law (Article 35, Ordinance 03-06 on trademarks)

When these conditions are met, the protective measures may be carried out. They consist mainly of the following:

• **Detailed Description**

This measure involves preparing an official report that records and describes in detail the machines and tools used, or suspected of being used, in the commission of the offense. It also covers the products, goods, packaging, labels, documents, imported goods, and any other items on which the infringing mark or indication appears (Samet, 2011, p. 174)

• **Seizure**

Seizure involves placing the above-mentioned items under the authority of the court. The judge may appoint one or more experts to assist the bailiff in carrying out the procedure. The purpose of the seizure is to preserve evidence that might otherwise disappear (Samet, 2011, p. 176)

Conclusion

This study examined the offense of trafficking in counterfeit goods and sought to clarify its elements and the penalties imposed to combat it. The findings show that the Algerian legislator has given significant attention to addressing this phenomenon. This is clear from the legal provisions that criminalize counterfeiting, beginning with the general rules set out in Article 170 of the Penal Code. These rules aim to ensure compliance with the standards governing products intended for export, including their quality, type, and specifications. The legislator also adopted special texts, such as Ordinance 06-03, which repealed Ordinance 66-57 on factory and commercial marks.

Despite these efforts, the counterfeiting of goods continues to rise. This may be linked to the methods used in enforcing penalties and imposing fines.

The main findings of this research can be summarized as follows:

- The Algerian legislator imposed a range of sanctions on counterfeiters. Counterfeiting is treated as a complete criminal offense. For this reason, Ordinance 03-06 and the Penal Code provide for principal penalties, such as imprisonment and fines, in addition to complementary sanctions, including closure, confiscation, and destruction.
- Although replacing Ordinance 66-57 with Ordinance 03-06 was a positive step, the legislator did not fully address the shortcomings that justified the repeal in the first place. Ordinance 03-06 omitted several procedures and rules that existed in the earlier text.
- Despite the legislator's attempts to ensure effective protection of goods, this protection remains incomplete because it does not keep pace with the technological developments that shape counterfeit practices today.
- Ordinance 03-06 did not include any provisions on aggravating circumstances, mitigating circumstances, or recidivism. These matters were left to the Penal Code, as reflected in Article 32.
- The penalties established for counterfeiting are uniform. They should have been differentiated to match the nature and seriousness of each act.

Based on these findings, and in support of better protection for goods and products, the following recommendations are proposed:

- The legislator should address the gaps related to acts of counterfeiting, especially electronic counterfeiting, which reflects modern technological developments. Clear and deterrent legal provisions should be introduced.
- All acts that constitute counterfeiting should be clarified. Specific legal provisions should define these acts and establish appropriate penalties, rather than leaving the matter under broad formulations such as "anyone who commits the offense of counterfeiting..."

- Combating counterfeiting is not the sole responsibility of the legislator. It also requires the involvement of consumers and all relevant authorities, including customs, law-enforcement units, and other bodies connected to the national economy and the trade sector.

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