The Impact of Modern Media on Commercial Advertising.

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Abstract:

Competition law refers to the set of legal and regulatory provisions applied to institutions in their market activities, with the aim of regulating competition between them. It should be noted that the market, in the context of competition law, does not refer to the physical places where trade is carried out, but rather to the economic concept itself, as defined in Article 3 of Decree 03/03 on Competition, as amended.

Commercial advertising has requirements and principles that must be respected in light of Law 04-02, which includes rules applicable to commercial practices and how the public authority deals with deceptive commercial advertising methods, especially those related to social media networks.

Keywords: Competition law, consumer protection law, commercial advertising, advertising on social media networks, law on rules applicable to commercial practices.

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Introduction:

The term competition refers to the economic rivalry between different institutions offering the same goods or services within a single market, with the aim of making a profit or avoiding a loss. This situation contrasts with a state of monopoly, whether it is a monopoly on the same necessities, where each institution has an equal interest in the benefit of the state, making competition rules inapplicable. On the other hand, if the monopoly or quasi-monopoly serves the interests of a particular institution, it represents an economic dominance that does not allow the conditions of free competition. On this basis, competition law refers to the set of legal and regulatory provisions applied to institutions in their market activities with the aim of regulating competition between them.

It should be noted that the market in the context of competition law does not refer to the physical concept of places designated for trade. Rather, it is the same market in economic terms, as defined in Article 3(b) of Law 03/03, approved by Law 12/03: "Any market for goods or services subject to restrictive competitive practices, as well as those which consumers consider similar or substitutable, in particular because of their characteristics and prices, and their intended use, in the geographical area where the institutions offer the goods or services in question". It is important to distinguish between competition law and consumer protection law, as the latter regulates the relationship between the institution and the consumer, including protective provisions for the

benefit of the consumer, while the intervention of competition law concerns the relationship between institutions within a single market. However, the two laws overlap in some areas.

According to the liberal school of economics, the free competition guaranteed by competition law is in itself in the interest of the consumer, as it contributes to achieving the best balance between price and quality.

Some of the provisions that are inherent in the Consumer Protection Law are the guarantee of fair competition, the regulation of the disclosure of prices and the conditions of sale, as laid down in Law 02/04, which includes the rules applicable to practices.

First axis: the concept of competition law:

In order to explain the concept of competition law, it is necessary to look at the origin of this branch of law, both at the international and national level, then to explain its sources and finally to justify its existence as an independent branch.

The emergence and development of competition law:

A distinction can be made between its international context and its context in Algeria.

The emergence and development of competition law at the international level can be traced back to the late 19th century in the United States. This period saw the enactment of laws prohibiting monopolistic and anti-competitive practices, in particular with the adoption of three laws known as the antitrust laws. The first of these, known as the Sherman Act, was passed in 1890 to outlaw monopolies. This was followed in 1914 by the Clayton Act, which prohibited discriminatory pricing practices. In the same year, the Federal Trade Commission Act was passed, establishing the Federal Trade Commission to regulate unfair competition practices[1].

In Europe, competition law is relatively new, having coincided with the establishment of the European Common Market in 1958 under the Treaty of Rome in 1957. However, the implementation of competition law in France was delayed until 1986, when the Decree of 1 December incorporated Article 410 and subsequent articles into the French Commercial Code. Prior to this, French courts recognised actions for unfair competition based on principles of tort liability, as well as criminal liability, in particular for acts such as diverting customers by imitating the products or trademarks of competing operators[2].

The emergence and development of competition law in Algeria:

are closely linked to the adoption of a free market economy, of which competition is an essential component. Therefore, it was not expected that competition law would exist in Algeria before the 1990s, given the dominance of socialist ideology and an economic system in which the State controlled distribution and production activities without much involvement of private economic entities.

[1]- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Official Journal L 144, 04.06.1997, p 123

[2]- Zroug Youssef, "Civil Consumer Protection from Contract Risks - A Comparative Study", Dafater Al-Siyasa Wal Qanoon Journal, Issue 09, June 2013, p. 24.

The first competition laws in Algeria were enacted in 1995 by Law 95-06, which was later replaced by Law 03-03 on 19 July 2003. Under this law, the Algerian legislator distinguished between commercial practices, which were regulated by Law 04-2002 on the rules applicable to commercial practices, and competition law, which was devoted to provisions relating to the principles of competition and the Competition Council.

B- Content and purpose of the competition law:

Competition law is a manifestation of economic liberalisation, which presupposes the existence of freedom of competition between economic agents and freedom of access to customers. However, this situation can only be achieved if the conditions for ideal competition are available to all economic agents, in particular freedom to enter the market, fair commercial and industrial practices and a level playing field for all competing entities. These conditions are often difficult to achieve in practice, which makes it necessary for the State to intervene to regulate the relationship between competing economic agents by means of legal provisions that serve a variety of purposes and objectives.

Content of competition law:

Ensuring a minimum level of free competition requires legislative intervention to correct certain situations which, if allowed to continue, would undermine the equality of economic operators within the market in terms of access to customers. This intervention is achieved through two categories of objective and formal provisions.

The objective content of competition law:

According to this view, competition law is a law that regulates the behaviour of economic agents within the market by prohibiting practices that hinder competition.

It applies to the prohibition of practices that restrict competition, including those provided for by Law 03/03, and in particular those that prevent prices from being set in accordance with market rules by artificially promoting price increases through monopolies or price reductions through floods, as well as discriminatory practices (discriminatory practices) that apply unequal conditions to business partners for the same services, and practices that restrict competition (restrictive practices), in particular those that limit access to the market or the exercise of commercial activities. It also applies to the monitoring of economic concentrations and their prohibition if they lead to a reduction in the scope of competition[3].

The formal content of competition law:

In addition to intervening to regulate the behaviour of economic agents, the Competition Law contains provisions that deal with structural aspects of the organisation of competition.This is manifested in the establishment of the Competition Council as the administrative authority responsible for ensuring the proper functioning and promotion of competition, by granting it certain powers, in particular the supervision of economic concentrations and their effects on

[3]- Zroug Youssef, "Previous Reference", p. 25.

competition. It also includes the ability to express an opinion on certain matters related to competition, in particular regulatory texts related to competition.

It also has the power to investigate the scope of application of the provisions of the Competition Act and the purposes of the Act.

The scope of the Competition Act is not limited to its original purpose of protecting competition in the market, but also extends to the protection of competing economic entities and consumer protection.

First branch: Protection of competition:

The importance of competition law in the protection of the principle of free competition itself is evident, since it entails the protection of the market as the arena for this competition. This protection is manifested in the prohibition of restrictive practices, as set out in Chapter 2 of Law 03/03. The prohibition applies to these practices regardless of their actual effects on the market, as stated in Article 6 of the Competition Law: "Practices and concerted actions, explicit or implicit agreements, are prohibited if they have as their object or are likely to have as their object the prevention, restriction or distortion of free competition in the same market or in a substantial part of it".

Protection of competitors:

By protecting the principle of free competition, the legislator protects economic agents within the market, in particular against certain actions that are prohibited. These include the prohibition of abuse arising from a position of economic dominance, as referred to in Article 7 of the Competition Act, and the abuse of economic dependence, which may take various forms, as referred to in Article 11 of the Competition Act. These forms include unjustified refusal to sell, tying or discriminatory practices, making the sale subject to a minimum purchase, imposing resale at a lower price, and severing business relations solely on the grounds of refusal to deal.

Submission to unfair commercial terms:

Consumer protection:

Competition law differs from consumer protection law in terms of its scope. Competition law focuses on the regulation of relations between economic agents in the market, while consumer protection law regulates relations between professionals and consumers.However, the protection of competition or market participants necessarily entails the protection of consumers.This is evident in the prohibition of monopolistic practices aimed at raising prices and selling at a loss, which may hinder competition and potentially lead to the withdrawal of economically weaker economic agents. As a result, it may lead to the dominance of economically stronger players in the market, which may result in unjustified price increases.

C - Sources of competition law:

Competition law in Algeria does not differ from other branches of the Algerian legal system in terms of its official sources. However, international sources play an important role in the field of

competition and business in general, and it is therefore possible to distinguish between national sources and international sources of competition law.

National sources of competition law:

The Algerian legislator has dedicated a specific law to competition through Law 03/03 on Competition. However, the diversity of the content of this branch of law allows its application to be extended to other provisions relating to economic and contractual activities. In this regard, the general principles of obligations, and in particular the provisions relating to civil liability, may be applied. Furthermore, commercial law cannot be disregarded as the general legal framework for the commercial activities of economic agents. Law 02/04 on the rules applicable to commercial practices, in particular its provisions on fair practices and price regulation, and Law 04/03 on the general rules applicable to import and export operations are also relevant in this context.

International sources:

International sources refer to international agreements related to business in general, especially partnership and common market agreements. In this context, it is important to mention the Mediterranean Partnership Agreement between Algeria and Europe, signed in Valencia on 22 April 2002 and ratified by Algeria on 27 April 2005. This agreement establishes a free trade area between Algeria and the European Union, which means that the Algerian market is integrated as a competitive area within the European market. The same is true of the Arab Common Market, even if its legal structure is not yet complete from the Algerian point of view.

The second aspect: The scope of competition law:

The scope of application of competition law is determined on the basis of two criteria: economic activity and the nature of the practices themselves.

A- The scope of application of competition law in relation to economic activity:

The concept of economic activity, as defined in Article 2 of the Competition Act, does not necessarily imply a financial consideration for the activity. The focus is on the impact of the activity on the market for goods and services. This is illustrated by the French judiciary's ruling that "the loan of fuel storage tanks by fuel producers to authorised distributors without financial compensation is subject to the provisions of competition law". The scope of competition law can also extend to non-profit associations, such as trade unions and cooperatives, if their activities have an impact on the market for goods or services. For example, a decision by a trade union to boycott a particular product may be considered a concerted practice under the law if it aims to prevent or distort competition by influencing demand. Similarly, agreements between health care institutions on the prices of medical services are considered business practices and may fall under competition law. The criterion for the application of competition law is therefore the extent to which the economic activity affects the market.

The criterion of the effect of an economic activity on the market as the basis for the enforcement of competition law ensures that certain economic activities are subject to competition law only if they have an effect on the market that merits protection. This includes export agreements if the

agreement is directed at markets outside the domestic market, even if the agreement is concluded between national economic agents[4].

In summary, competition law provisions are generally based on the concept of freedom of competition, which the legislator seeks to establish in law by means of provisions aimed at minimising restrictions on economic activity. However, absolute freedom cannot be exercised if it could have effects on the market that could undermine the purpose of its establishment.Therefore, the legislator has tried to adapt these provisions to the specificities of certain activities and situations that may not achieve the ultimate goals of free competition.On this basis, we will consider the provisions of competition law in terms of their ultimate objectives, distinguishing between those that aim to restrict competition and protect the business as such from competition, and those that aim to establish freedom of competition while ensuring market protection.

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Special provisions for the protection of the institution:

The customer element is considered the essence of any institution's activity and the purpose of its existence. Competition between institutions in the market revolves around either retaining their own customers or attracting customers from other institutions by legitimate means. However, there may be legal prohibitions aimed at protecting the interests of the institutions concerned. Protection of the institution can be achieved through non-compete agreements or protection against unfair competition or commercial interference[6].

Non-compete agreements:

With regard to non-compete agreements, we will explain their meaning, scope and conditions for their effectiveness.

Definition of non-compete agreements:

A non-compete agreement is one of the important aspects that deviate from the principle of freedom of enterprise and contract.It refers to an agreement between two parties in which one party undertakes not to engage in a particular activity that competes with the activity of the other party. This obligation is usually established by a clause in a previous contract between the parties. Such a non-compete clause is therefore called a "clause de non-concurrence". The condition of

[4]- Amir Farag Youssef, "Globalisation of Electronic Commerce, Its Contracts, and Methods of Combating Electronic Commercial Fraud", 1st edition, Modern University Office, Alexandria, Egypt, 2009, p. 26.
[5]- Zroug Youssef, "Previous Reference", p. 30.
[6]- Amir Farag Youssef, "Previous reference", p. 27.

non-competition is fulfilled in various situations, in particular in the transfer of commercial establishments. In such cases, it is common for the parties to include a clause prohibiting the transferee from engaging in the same activity within certain limits and for an agreed period. This is based on the understanding that the customer element is the most important aspect of the transferred business and that the continued exercise of the same activity in the same territory by the assignee may deprive the new owner of this element, given the potential attachment of those customers to the business. However, the potential risks of this condition in terms of freedom of competition require the imposition of certain conditions. Such conditions may also be included in employment contracts, to take effect after the expiry of the contract, in order to prevent the employee from soliciting the employer's customers on the basis of prior knowledge. The same applies to distribution contracts, in particular commercial licence contracts, commercial representation contracts, commercial agency contracts or commercial concession contracts[7].

Conditions for the validity of non-competition agreements:

The potential risks that non-compete agreements pose to competition have made it necessary to intervene in order to limit them with conditions and to specify their application in cases where it is necessary to protect the interests and rights of institutions that may be affected by the freedom of competition.

Non-competition agreements cannot be enforced absolutely and without conditions, as this would be contrary to the essential elements of economic freedom, in particular the freedom of entrepreneurship. According to Article 6 of Law 03/03, "the restriction of access to the market or the exercise of commercial activities constitutes a form of restriction of competition". Therefore, the scope of such agreements should be defined to the extent necessary to protect the institution from unlawful diversion of its customers[8].

Comparative jurisprudence has contributed significantly to the development of the theory of unfair competition by establishing numerous provisions that have become established principles in this regard. It is unacceptable for a non-compete clause or agreement to be extended indefinitely, as this may constitute a complete waiver of the debtor's freedom to contract, work or carry on business. Such an extension would violate the basic forms of economic freedom.

In this respect, we can distinguish two conditions for the validity of a non-competition clause: the definition of the scope of the clause and its justification[9].

Defining the non-compete agreement:

The definition of the agreement involves setting a temporal and spatial framework for refraining from engaging in activities that fall within the scope of the agreement. Outside these limits, the debtor is entitled to regain his freedom of contract, work and business.However, this condition is subject to judicial control as to its appropriateness to the nature of the interests to be protected.The condition should not be longer than the creditor's interests require or be excessive. In this respect, the French courts ruled on the case of the Thalassotherapy Centre, where an agreement was

[7]- Amir Farag Youssef, "Previous Reference", p. 29.
[8]- Zroug Youssef, "Previous reference", p. 30.
[9]- Moufaq Hammad Abdel, "Civil Protection of Consumers in Electronic Commerce Contracts - A Comparative Study", 1st edition, Zein Al-Adab and Legal Library, 2011, p. 55.

concluded for the transfer of shares in a centre specialising in thalassotherapy, including a condition that the transferee refrain for a period of 20 years from working in the company's field of activity or any related work, in particular from providing advice in this field.The French Court of Cassation annulled this condition on the grounds that it prevented the debtor from engaging in any activity related to his professional expertise.The French Court of Cassation annulled this condition on the grounds that it prevented the debtor from engaging in any activity related to his professional expertise.The French Court of Cassation annulled this condition on the grounds that it prevented the debtor from carrying out any activity related to his professional expertise[1].The French Court of Cassation annulled this condition on the grounds that it prevented the debtor from carrying out any activity related to his professional expertise[10].

2- Justification of non-competition clauses:

The purpose of a non-compete clause is to protect the interests of the creditor, particularly those relating to the customer base. Therefore, it cannot be determined independently but must be attached to a main contract such as an employment contract, a distribution contract or a business transfer contract. It should be proportionate and related to the interest to be protected. In this respect, a non-competition clause will be considered invalid if the activity covered by the agreement is distinct from the main contract. For example, the French judiciary has ruled that a non-competition clause for a period of three years and a radius of thirty kilometres, imposed on a taxi driver in favour of a company providing customer contact services to taxi drivers, is invalid[11].

Second, unfair competition:

Freedom of competition requires that economic agents be allowed to reach customers by all available marketing or legal means, as long as they do not resort to unlawful or illegal methods. Therefore, the freedom of competition has limits that must be respected, especially in situations that do not correspond to the expected fairness in business practices. Unfair competition, if it meets the conditions, can be the subject of legal action through what is known as an unfair competition claim[12].

Forms of unfair competition:

In this context, four forms of unfair competition can be distinguished:

1- Defamation of the economic agent of the competitor

As stated in the first paragraph of Article 27 of Law 02/04 on unfair commercial practices: "Defamation of the reputation of a competing economic agent through the dissemination of negative information concerning his person, products or services...". It seems that the purpose of defamation, as described in the previous article, is to unlawfully divert customers from the competitor concerned, which can only be achieved by fulfilling the following conditions

[10]- Moufaq Hammad Abdel, "Previous Reference", p. 56.
[11]- Moufaq Hammad Abdel, "Previous Reference", p. 56.
[12]- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Official Journal No. L144, 04/06/1997.

Dissemination of derogatory information about a competing establishment or its products or services, regardless of the accuracy of such information, the criterion being the extent of the impact of such information on the competitor's customers. For example, claiming that the establishment does not meet cleanliness standards, or that its service prices are high, or that it is being sued for trademark infringement. Defamation can be positive, by spreading the information among customers and clients, or negative, by remaining silent when a customer questions the truth of what is being spread about the competitor's lack of compliance with cleanliness standards[13].

Defamation: This refers to the dissemination of information to the public, or the intention to disseminate it to the public. However, if the information is given privately or by telephone in a way that does not imply a desire to disseminate it to the public, defamation is not established in this situation.

The information should be specific to a competitor. General information cannot be considered defamatory, but it is not necessary to specifically identify the institution implicated by the defamatory information, as long as the implication is sufficient, unless there is room for doubt as to the intended institution.

This information should relate to a competing establishment, otherwise the conditions for defamation as unlawful competition are not met[14].

Perhaps one of the most common forms of defamation is comparative advertising, where the trader compares his products or services with those of a competing establishment, particularly in terms of quality. However, with regard to price, the requirements of price transparency, as one of the components of the freedom of competition, can prevent advertising from being defamatory, as the French Court of Cassation held in the Carrefour case[15].

2- Creating doubt in the consumer's mind as to the identity of the establishment:

This condition is mentioned, as already mentioned, in the second paragraph of Article 27 of Law 02/04, where the legislator includes in the unfair commercial practices: "Imitation of the distinguishing marks of a competing trader, or imitation of his products or services, or advertising aimed at attracting the customers of that trader by sowing doubts and illusions in the mind of the consumer". In this case, sowing doubt in the mind of the consumer is the opposite of defaming the reputation of the economic agent, and it is achieved when the economic agent appears in the guise of a competing economic agent by imitating its trademark, trade name or any element of its industrial property. In this context, it should be noted that the level of doubt created in the mind of the consumer varies depending on whether the industrial property rights are registered or unregistered. If the rights are registered, they enjoy double protection, as they can be the subject of two separate actions: an action for trademark infringement and an action for unfair competition. However, if the trademark is unregistered, the economic operator concerned cannot benefit from an action for unfair competition[16].

[13]- Slim Saadawi, "Consumer Protection in Algeria as a Model", 1st edition, Dar Al-Khaldoonia for Publishing and Distribution, 2009, p. 85.
[14]- Slim Saadawi, "Previous reference", p. 87.
[15]- Slim Saadawi, "Previous Reference", p. 88.
[16]- Slim Saadawi, "Previous Reference", p. 89.

3- Disruption of the organisation of a competing establishment :

This is dealt with in paragraph 5 of the aforementioned Article 27, in the context of unfair commercial practices. It includes: "disrupting the organisation of a competing trader, diverting its customers by unfair methods such as destroying or sabotaging its advertising means, misappropriating cards or orders and engaging in illegal brokering, as well as disrupting its distribution network". These actions may be intentional or unintentional, as the focus is on their impact on the commercial strength of the competitor, which may result in customers being illegally diverted. It should be noted that customers do not belong to anyone in the first place and are associated with the entity most able to attract them at any given time. However, it is prohibited to attract customers by unfair means, even if these means are not specifically defined. Nevertheless, the following significant practices can be distinguished:

A. Solicitation of employees of a competing establishment: Freedom of competition should not lead to the abolition of freedom of employment for workers, as they have the right to move to other jobs that may offer better working conditions. The same applies to the employing company, which is looking for skilled workers to improve its competitive position in the market. However, poaching employees who are bound by a non-compete clause with a competing entity may constitute unfair competition. In addition, the intensive recruitment of employees from a particular department or workshop of a competing establishment may affect its market position. Even the simple act of directing a job offer to them may disrupt their system. The assessment of such matters falls within the competence of the competent judges with regard to their impact on fair competition between competing establishments[17].

B. Disruption of the production system of a competing enterprise: In this case, disruption occurs when an economic operator uses unlawful means to obtain, by trickery and industrial piracy, professional knowledge, production methods and production systems of a competing economic operator.However, the use of professional knowledge, manufacturing methods and production systems cannot be the basis for a claim of unfair competition if the affected economic operator himself publishes, discloses and disseminates them.It should be noted that this does not apply to intellectual and industrial property rights, which are protected by registration.If these rights are infringed, the matter does not fall within the scope of fair competition, but rather within the scope of the protection of intellectual and industrial property rights[18].

4- Creating market disruption in general:

What distinguishes the creation of disruption in the market in general from the creation of disruption in the organisation of a competing establishment is that, in the former case, the unlawful acts that contribute to the disruption are not specifically directed at a particular establishment, unlike in the latter case. Instead, the damage is inflicted on all establishments within the market, as stipulated in Article 7/27 of the Law on the Rules Applicable to Commercial Practices. It states that unfair commercial practices include "disrupting the organisation of the market and causing disturbances therein, violating laws, legal prohibitions and, in particular, evading the obligations

[17]- Hadi Muslim Yunus Al-Bashkani, "Legal Regulation of Electronic Commerce - A Comparative Study", Doctoral Thesis, Dar Al-Kutub Al-Qanuniya Publishing House, Egypt, 2009, p. 25.
[18]- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Official Journal No. L144, 04/06/1997.

and necessary conditions for establishing and carrying out a business activity". This situation is realised through certain practices prohibited by law, in particular those specified in article 19 of the aforementioned law, which relates to the resale of goods at a price lower than the real cost, including the purchase price, fees and transport costs. The same applies to misleading advertising, as provided for in Article 28 of the same law. In general, all illegal practices aimed at unlawfully diverting customers within the market, including tax evasion, fall within the scope of acts that disrupt the organisation of the market and may affect the principle of equality between competing establishments.

Axis 3: Requirements for commercial advertising and the obligations to be respected under the aforementioned laws and Law 02/04, which contains the rules applicable to commercial practices, and how the competent authority deals with misleading methods of commercial advertising, especially those related to social media networks.

A. Requirements for commercial advertising:

Unlawful competition claim: With regard to the unlawful competition claim, it is necessary to determine, on the one hand, its legal nature and, on the other hand, the conditions and procedures for initiating such a claim.

1. Legal nature of the claim for unlawful competition

Jurists have divided into two categories in determining the legal nature of the claim of unlawful competition. The first category believes that it is independent from other claims, while the second believes that it is a form of claim for tortious liability[19].

The claim of unlawful competition as an independent claim: The French lawyers Roubier and Ripert take the position that the claim of unlawful competition is an independent claim, separate from other claims, in particular the claim of tortious liability. This uniqueness is due to the belief that the purpose of the claim for unlawful competition is not to compensate for damages, as is the case with the claim for tortious liability, but rather to recover the customer element as part of the commercial establishment and to punish the competing establishment for practices incompatible with fair commercial practices and to stop such practices.

Those in favour of this position, in particular the jurist Blaise, argue that the first position overlooks the fact that the element of customers cannot be mixed with the commercial establishment, but is merely an element of it, subject to change, so that customers are not temporarily tied to it. If this were the case, it would be a reason to invalidate competition itself. Even if it is legitimate to assert the uniqueness of the claim of unlawful competition, in particular with regard to its connection with unfair commercial practices, this uniqueness does not justify asserting its independence from the claim of tortious liability.

This position is supported by the French judiciary, which subjects the claim for unlawful competition to the provisions of Article 82 of the Civil Code relating to tortious liability, even though it treats this type of claim with due regard for its uniqueness[20].

[19]- Zeina Ghanem Abdul Jabbar, "Unfair Competition", 2nd edition, p. 16.
[20]- Abdelmalek Ben Ibrahim, "Unfair Competition", Master's thesis, Naif University, 2007, p. 25.

1. Requirements for an Unfair Competition Claim: In order to establish an unlawful competition claim, the following objective conditions must be met: fault, damage and a causal link between the two.

2- Fault: In the case of an unlawful competition claim, fault refers to the use of unfair practices that are contrary to trade usage, whether intentional or due to negligence. It is important to distinguish between an unlawful competition claim based on tortious liability and a non-competition claim based on contractual liability arising from a non-competition agreement between the parties[21].

- Damage: Damage refers to the economic loss suffered by the affected economic operator as a result of the fault of the responsible party. For example, it could be the loss of a significant proportion of the customers acquired by the affected economic operator, leading to a reduction in the volume of business. Damage can also be established by depriving the affected economic operator of the opportunity to increase the number of customers, which would necessarily lead to an increase in business volume. This corresponds to the concept of lost opportunity in general theory, provided that it can be shown to have occurred. The specificity of an unlawful competition claim may be manifested in this case by considering the judicial decision to cease the unlawful competition and the mere compensation for the damage.

- Causal link: Although it is difficult to establish a causal link between the fault and the damage in the context of an unlawful competition claim, the judiciary generally associates the fulfilment of the conditions for unlawful competition with a decrease in business volume. Even if the assessment of the damage in this situation is not based on a specific measure, the judiciary may take into account the decrease in the business volume of the affected agent or the profits made by the infringing party[22].

3- Initiate an action for unfair competition:

Filing an unlawful competition claim involves addressing three issues: who is entitled to file an unlawful competition claim, which court is competent to hear the claim, and the content of the judicial decision issued on the unlawful competition claim.

Claimant in an unlawful competition claim: In general, any interested party has the right to file a claim. In an unlawful competition claim, only the economically affected party, whose economic interests are protected by competition law, can be harmed by unfair competition practices. This includes cases where the reputation of a competing economic actor is damaged by another economic actor engaging in unfair competition. It is not necessary for the party concerned to have the status of a trader; the focus is on the exercise of an economic activity, regardless of its nature. This includes tradesmen who are connected to the relevant market and who are economically affected by the unfair competition practices. However, unconnected persons or parties not involved in the relevant market, such as the employees of the affected trader or his customers, cannot bring an action for unlawful competition[23].

[21]- Abdelmalek Ben Ibrahim, "Previous Reference", p. 25.
[22]- Abdelmalek Ben Ibrahim, "Previous reference", p. 25.
[23]- Bouhlaiss Elham, "Specialisation in the Field of Competition", Master's thesis, 2005/2004, p. 52.

Competent court for unlawful competition claims: The general rule for jurisdiction in unlawful competition claims is that the commercial division of the court is competent, as it has jurisdiction to hear commercial disputes under Article 531.

Civil and administrative proceedings: Normally, economic operators must prove their status as traders.However, there may be exceptions in cases where a non-merchant, such as a craftsman, a civil company or a self-employed person, files a claim.In such cases, jurisdiction may be transferred to the Civil Division.

Content of judicial decisions:Judicial decisions on unlawful competition claims can be divided into two categories.One category includes compensatory judgments, which aim at compensating the economic agent harmed by the unfair competition, considering it as a form of tortious liability. The other category includes court orders prohibiting the behaviour constituting unfair competition, in particular through the imposition of fines[24].

Commercial parasitism:

Definition of commercial parasitism:

Commercial parasitism, also known as "parasitisme commercial", can be defined as a set of practices by which an economic actor intervenes in another economic system with the aim of obtaining the economic benefits resulting from the skills and professional knowledge invested and developed by the parasitic economic actor, without the latter's consent or involvement in this investment or effort. However, these skills should not be among the rights protected by specific legal provisions, such as patents or registered industrial property rights. In addition, the parasitic economic agent should not be a direct competitor of the economic agent on which it is parasitic and its actions should not constitute unfair competition[25].

Algerian legislation prohibits commercial parasitism under Article 27(3) of the Law on Rules Applicable to Commercial Practices. Among the unfair commercial practices listed in the law is the use of "distinctive technical or commercial skills without the authorisation or consent of the owner".

Commercial parasitism can take several forms, including the use of a reputable trademark in one market and its adoption for a product or service in another market. This was illustrated by the French Court of Cassation's decision in the Pontiac case, where a company specialising in household appliances manufactured refrigerators under the same brand name as a type of car. The ruling concluded that the conditions for an unfair competition claim were not met because the two manufacturers did not belong to the same market. However, the white goods company was considered to have engaged in commercial parasitism, which allowed it to gain unjustified economic and competitive advantages without the possibility of customer deflection due to the lack of belonging to the same market.

[24]- Samia Hassane, "Violation of Consumer Protection and Attack on the Distinctive Mark through Commercial Interference", Journal of Judicial Dedication, University of Biskra, 2017, p. 25.
[25]- Samia Hassane, "Previous Reference", p. 26.

The use of advertising campaigns or even advertising formats by an economic operator without the authorisation or consent of the economic operator concerned is also considered to be commercial parasitism.

Such practices involve the use of these campaigns or formats to promote the products or services of the parasitic economic operator without the consent of the affected economic operator[26].

The legal nature of liability for commercial parasitism:

There are two positions on the legal nature, based on the concept of unjust enrichment and negligence liability.

1. Commercial parasitism as unjust enrichment: This position argues that commercial parasitism is a form of unjust enrichment, based on the idea that the parasitic economic actor benefits at the expense of the parasitised economic actor. However, this position is not necessarily valid because the conditions for unjust enrichment are not met in cases of commercial parasitism. Unjust enrichment requires good faith on the part of the enriched party, which is unlikely in the case of the parasitic agent. In addition, one of the conditions for unjust enrichment, according to general theory and Algerian civil law under Article 141, is the enrichment of the assets of one party and the impoverishment of the assets of the other party. This condition does not necessarily apply to commercial parasitism, as its effect on the financial situation of one of the parties is not a condition for proving it to be an unfair commercial practice. It is considered unfair regardless of its financial effect, or at least its effect on the parasitised agent.

2. Commercial parasitism as a form of negligence liability: This position suggests that commercial parasitism is merely an application of the principles of negligence liability, since it can only be established if all its conditions are met. This justification of liability for commercial parasitism seems more accurate, although it may need to be adapted.

The specific nature of commercial practices in general and of competitive relations between economic operators in particular varies according to the legal system of each country and the specific rules in force[27].

Conditions for establishing liability for commercial interference:

Establishing liability for commercial interference requires what is generally required to establish liability in tort. Accordingly, three conditions can be distinguished:

1. Fault: The fault arising from commercial interference consists in the unjustified diversion of the investments of the affected economic operator without a legitimate reason, in particular by means of agreements or laws, irrespective of the intention of the interfering economic operator to cause damage. The enjoyment of the efforts of others is a fault in itself, and the norms and fair trade practices dictate that the commercial reputation should be the result of investments made for that purpose, not by unjustified benefit from the investments and efforts of others[28].

[26]- Samia Hassane, "Previous Reference", p. 26.
[27]- Samia Hassane, "Previous Reference", p. 26.
[28]- Samia Hassane, "Previous Reference", p. 28.

2. Harm: In terms of commercial interference, we cannot discuss customer diversion as a potential harm for this type of practice because the economic agents involved are not competitors. Otherwise we would be dealing with unfair competition rather than commercial interference. However, the real harm to the affected economic operator may be the infringement of the commercial status of the trademark subject to the interference. For example, as the French Court of Cassation pointed out in a decision concerning the use of scarves of a well-known trademark as lottery prizes, this was considered to be a detrimental commercial interference with the trademark subject to the interference. Moreover, this position of the French court does not exclude the possibility that the damage may be purely financial, especially since the predominant use of the trademark by others is often compensated[29].

3. Causation: The causal relationship between the fault of the interfering party and the resulting damage to the interfered party generally follows the general principles, in particular with regard to its presumption when the fault and the damage coincide, and its negation with the same criteria established for the general theory, even if it is possible to highlight the specificity of commercial interference with regard to the general provisions, taking into account the nature of the business world, in particular with regard to non-material damage, such as the infringement of the market status of the trademark. In this regard, it is necessary to verify that this harm is due to the interfering activities and not to other considerations, such as fluctuations in the status of the trademark due to factors unrelated to the commercial interference. This includes factors such as a decline in the quality of the service or product, a reduction in promotional activities or even a failure to keep pace with market developments compared to other competing agents[30].

Conclusion:

Despite the state's efforts to protect consumers from commercial advertising violations and the existence of legal texts and mechanisms, the situation remains largely out of control, as acknowledged by the former Prime Minister and Minister of Information. This is particularly evident in the use of social media platforms such as Facebook, search engines such as Google and others. Alternative solutions need to be considered.

Finally, it must be acknowledged that the Algerian legislature has been criticised for the delay in adopting a specific law to regulate e-commerce. However, it is commendable that steps have been taken to enact such a law in order to fill the legal gaps that hinder e-commerce, including the protection of electronic consumers who may be exposed to violations and attacks due to their lack of knowledge and experience in electronic contracting methods.

In conclusion, we recommend the following:

- We urge the Algerian legislature to reconsider the warranty period for electronic products, which is currently set at 4 days for hidden defects.

- Organise seminars and training courses for judicial staff to equip them with the necessary knowledge and awareness to keep up with developments in e-commerce.

[29]- Samia Hassane, "Previous reference", p. 29.
[30]- Abdelkarim Tafraquinit, "The Right to Information in Algeria", published in the newspaper "Al-Fajr", 10/08/2008.

- Organise national workshops and seminars led by experts to explain the rights of electronic consumers and the mechanisms for their protection.

- Promote the culture of online shopping to bridge the time and space gap and achieve an informed society.

- Introduce courses on e-commerce and electronic contracts in universities to educate students on the ways and means of protecting electronic consumers.

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Recommendations of the National Forum:

1. The need for a law that clarifies the use of electronic media and tools as evidence.

2. The need to review the legal rules relating to writing and signatures and their validity in evidence.

3. The importance of legislative attention to the necessary legal coverage of electronic transactions, characterised by their intangible nature, from the moment of their formation to the stage of dispute and the need for proof.

4. The establishment of a comprehensive legal framework for electronic evidence, as traditional rules are no longer able to keep pace with modern electronic transactions.

5. The need to establish a specialised judicial body to deal with consumer protection disputes in relation to modern media.

6. The activation of legal texts related to consumer protection in general and consumer protection in relation to modern media in particular.

7. Strengthen the role of the state in monitoring illegal e-commerce as a means of protecting consumers.

8. Intensifying the establishment of a consumer culture in the field of electronic commerce by raising consumer awareness through various television and radio programmes dedicated to this important topic.

9. Organising numerous scientific events on the subject of consumer protection in electronic commerce, given its rapid expansion and the risks involved.