

THE CRIMINAL AND CIVIL PROTECTION OF INDUSTRIAL DESIGNS AND MODELS IN THE PALESTINIAN LAW

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ABSTRACT

Industrial designs are considered the results and creations of the human brain, including innovations in the form of goods and products, and are moral rights that represent a financial value that deserve to be protected the same as the rest of the rights of the industrial property.

It gives its owner an exclusive right to face everyone as well as giving him the right of exploitation and the right to prevent anyone from cloning or using without the permission of the original creator. However, this kind of protection is not given to industrial designs and models unless they are officially registered in the competent departments according to the laws of each country.

This essay will discuss the subject of legal regulations for industrial designs and models in Palestine in a comparative study with Jordanian and Egyptian legislation.

Keywords: Industrial Designs and Models, Counterfeit, Innovation, Industrial Property.

INTRODUCTION

Industrial designs and models are essential elements of industrial and commercial property. This importance stems from the role they play for their owner and in providing distinctiveness to the good or product making it different and distinctive from other products (Sharma et al., 2011). Industrial designs and models are of great practical use in industrial and commercial competition, which prompt the right-holders to invent attractive designs and models for consumers. Therefore, the basis for protecting industrial designs and models is the aesthetic aspect (Arafeh, 2014).

The design is related to the visual and aesthetic appearance of the product *"in terms of form and structure, rather than functional considerations"* (Abbas, 1979). Industrial designs and models are called *"visual intelligence"* because they are used in all exterior designs including traditional crafts, consumer electrical appliances, carpets, antiques, printing or engraving on the industrial material produced, as in the case of decoration and painting on furniture (Alkswani, 1997). The 1883 Paris Convention and 1925 Hague agreement were perceived as providing possible bases for international consensus on key points for the protection of design and model. The Hague agreement is considering a mechanism to file a request for an international application for registration of an industrial design and model that allows obtaining legal protection for design and model in several countries.

Jurisprudence defines design as:

“Every arrangement or shape of an object in color or non-color for use in industrial production by mechanical, manual, or chemical means” (Alnsehour, 1967).

Another aspect of jurisprudence defines design saying:

“Industrial drawing is each line arrangement used to give goods or products a beautiful or attractive form that distinguishes them from others similar goods or products” (Alqloubi, 2016).

Industrial models are defined by some jurisprudence as the new external template in which products and the new line-up on the surface of products are made in color or non-color, the purpose of which is to beautify industrial products, as the ideal view states that it is not separated from the products (Albyati, 2002).

The problem of this study arises from several fundamental questions that we have decided to research, represented by:

“To what extent does the criminal and civil protection of industrial designs contribute to preserving the rights of the owner of the latter in Palestinian law?”

RESEARCH METHOD

The comparative approach constitutes the basis that provides this study with its various requirements and fulfills the purpose to achieve the desired results. We will discuss the Jordanian patents and designs law No. 22 of 1953 in force in the Palestinian territories. In addition to the Jordanian Designs and Models Law of 2000 in force in Jordan, and the Egyptian Law of Intellectual Property of 2002, as well as international and comparative legislations (Alsamah, 2002).

RESULTS AND DISCUSSION

Legal protection is achieved as soon as the legal event is registered and accordingly, the registrant's right to industrial designs and models of legal protection will become effective. Therefore, there are two types of legal protection for those who have registered the design or model: The first section is concerned with the criminal protection of industrial designs and models (I), and the second section is concerned with the civil protection of industrial designs and models (II).

Criminal Protection

The owner of the industrial designs or model acquires the right to protection after registration. This prevents the other, who did not obtain the original owner's approval from manufacturing products that are identical or similar to his original product *“Substantial similarity”* (Lfrouji, 2002). The determination of similarities is referred to the judge's discretionary authority or a committee of experts delegated by the judge to verify this.

Criminal Protection Conditions

To provide penal protection conditions for the industrial design and model, it is necessary for the latter to be registered (Aldin, 2012) with the competent authorities and the infringement of the industrial design or model shall exist, whether through forgery or imitation.

The crime of forgery is defined as a complete verbatim transfer of the designs and models without change so that the forged mark is identical to the original mark (Alhkouli, 1967).

As for Counterfeiting, it is defined idiomatically as every manufacturing of a product in a manner that makes it appear similar to an original product with the intention of deception (Cusumano, 2013). Egyptian jurisprudence also defined it as a direct or indirect attack on an intellectual property right (Nadia, 2003). It also means an industrial design or model similar to the design or model that has been registered, and it is a crime based on changing the truth. In addition, it includes a blatant assault on the designs or model's ownership rights (Alnaghi, 2009).

Moreover, the crime of counterfeiting is realized whether it is deliberately imitating the industrial design or model, whether by literally transferring it without making any change or adding some changes, that do not completely change the imitated model or design and allowing the deception of the public (Akhlouli, 1967). Therefore, the legislator imposed original and supplementary sanctions on the perpetrator of the crimes of infringing industrial designs and models.

Types of Penalties

The original penalties

The original penalties are the penalties defined by law, which are: Imprisonment or fine. The Algerian legislator was satisfied with the fine penalty in his punishment for the crime of counterfeiting industrial designs and models; Article 23 of the Algerian design and model law, (Clements, 1966). He did not impose imprisonment except the case of recidivating the offense. Likewise, the Egyptian legislator, who took the same approach in Article 134 of the Egyptian Intellectual Property Law, stipulated the condition of recidivism to achieve the imprisonment penalty.

The Palestinian Act of 1953 penalizes anyone who imitates or falsifies an industrial design or model only with a fine without imprisonment. Article 37 stipulates:

“.....Anyone who violates this Article shall expose himself in every violation to pay an amount not exceeding fifty Dinars to the Owner of the registered design as an agreed-upon damage”.

On the other hand, the same law also penalizes with imprisonment of not more than one year or a fine of not more than one hundred dinars in the case of the person presenting forged papers to the register of designs and models claiming to be contrary to the truth (Article 53 of the Palestinian design and model law).

In our view, it would have been more appropriate under Palestinian law to impose a custodial sentence along with financial penalties, similarly to comparable laws, since the assault on industrial design models constitutes a crime that must be punished physically and financially as sanctions are imposed on all intellectual property rights. We, therefore, call upon the Palestinian legislator to work to amend that section of the law.

Contrary to Arab laws and legislations, Western laws imposed a custodial sentence against anyone who forges or imitates industrial designs and models for three years, imprisonment, and a fine of 300,000 Euros. In the case of recidivism, imprisonment was increased to seven years and a fine of 750,000 Euros (Article 521/10 of the French intellectual property law).

Ancillary Penalties

Additional penalties related to the infringement of designs and models mean confiscation and destruction, so that a person is deprived of money ownership or the possession of certain things related to a crime that has occurred or he fears its occurrence (Alsararia, 2013). Therefore, the court has the right to order the confiscation and destruction of all tools used in imitating or forging designs and models. The confiscation and destruction penalty is considered a permissible additional penalty for the judge, which is a required court ruling. (Article 17/c of the Jordanian Designs and Models Law).

In addition, most of the legislations imposed the penalty of closing the factory or the shop to those committing a crime against the owners of industrial designs and models (Amar, 1993). Still, it linked the closure penalty to the crime of counterfeiting or forgery, which means that this penalty can't be ruled until the accused is convicted, whether he is a natural or moral person. However, committing the crime of forgery or imitation of industrial designs and models is often related to the existence of a facility prepared to commit the crime, such as possessing devices and machines that are used in the assault (Awad, 1975).

Civil Protection

Article 42 of the TRIPS Agreement stipulates that member states of the World Trade Organization must allow civil judicial procedures to holders of intellectual property rights, in which they can resort to the judiciary. Those procedures cover all intellectual property rights stipulated in the TRIPS Agreement, including industrial designs and models.

Unlawful Competition is characterized as crowding out against clients or customers by using means contrary to law, religion, customs, traditions, commercial integrity, or professional honor (Amarah, 2015). In addition, the Unlawful Competition is considered a transgression in using the freedom to practice commercial activity that is not forbidden in the first place, if it is done by using the proper methods adopted in commercial dealings (Wahbeh, 1990).

The French jurisprudence defined Unlawful Competition as harming your competitors directly by using forbidden means such as an attempt to (confuse, defame and transfer parts or use information illegally), using ways to adhere to secrecy or using indirect ways to disrupt propaganda campaigns, such as converting an advertising campaign or flooding the market with goods (Jones & Vascellaro, 2012).

Unlawful Competition, in our personal opinion, means that a merchant commits wrongful actions against another merchant, which leads the latter to have a financial and customer loss.

As for the concept of unlawful competition in international conventions; the Paris Convention for the Protection of Industrial Property of 1883 is the only legal instrument that defined unlawful competition. Article 10/Second of the Paris Convention on Industrial Property confirms that:

1. The Union States are obligated to ensure effective protection for the other Union States against the unlawful competition.
2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unlawful competition.
3. The following shall be prohibited, in particular:
 1. All acts that may cause confusion by any means with the facility, products, or industrial or commercial activity of a competitor;
 2. Allegations contrary to the truth of practicing the trade, which aims to distrust a competitor's facility, products, or industrial or commercial activity;
 3. Indications or allegations whose use in trade would mislead the public regarding the nature of the goods, the manufacturing process, the characteristics, the suitability for use, or the quantity.

Here, we see that the agreed criterion to achieve unlawful competition is to carry out actions that do not comply with the rules of integrity and honor in commercial transactions. Bad faith is not necessary to consider the competition to be unlawful; it is sufficient that this competition leads to harm to others' trade.

It is necessary to address the tort liability that depends on three pillars, which are the harmful act, the harm, and the causal relationship (Clements, 1966).

The lawsuit filed by the American giant Apple against the Korean company Samsung is one of the largest compensation cases concerning the infringement of industrial design rights. The Supreme Court of the United States of America, on 6/12/2016, imposed a fine of 500 million US dollars as compensation in favor of Apple Company (European Commission, 2002). The arbitral tribunal found that the Korean company Samsung had violated three designs registered in the name of Apple Company, which are the cover of its phone is rounded corners, the phone's front edge, and the user-viewed icons network. (<https://edition.cnn.com/2020/03/02/tech/apple-lawsuitsettlement-slow-batteries/index.html>).

CONCLUSION

To conclude, industrial designs and models are essential elements of industrial property, as they play a main role in the product's external appearance, which attracts customers and brings financial benefits for the owner of such designs.

We have explained the concept of designs, models and similar subjects of industrial property and the legal means to protect them, after reviewing the various aspects of the legal system of industrial designs and models relying on designs and models Law of 1953 in force at the Palestinian territories and the comparative laws. We pointed out our most important findings and recommendations:

1. The legislation regulating industrial designs and models applied in the Palestinian territories had not been amended for decades. It has become necessary for the Palestinian legislature to amend the Jordanian patents and designs Act of 1953, which is applicable in the Palestinian territories.
2. The patents and designs Act of 1953, in force in the Palestinian territories, contains no provision for exceptions to industrial design protection, as do international conventions (article 26 of the TRIPS Agreement) or comparable national laws.
3. The State of Palestine has acceded to the various international conventions on industrial designs, in particular The Hague Convention for the Protection of industrial designs and Models and the Locarno

Convention. In addition, it has acceded to the Paris Convention for the Protection of Industrial Property of 1883, as well as the TRIPS Agreement on Trade aspects of Industrial Property Rights of 1994.

4. The patent and designs Act of 1953, in force in the Palestinian territories, ignored the principles of conflict resolution included in the TRIPS Convention, so we suggest adding specific articles in this regard.
5. The Patent and Designs Act of 1953, in force in the Palestinian territories, did not address the bases of data and accelerated procedures for industrial designs, as the TRIPS Convention did. Thus we suggest adding provisions in this regard.
6. The Patent and Designs Act of 1953, in force in the Palestinian territories, did not address the basis for maintaining penal sanctions, as the TRIPS Convention did concerning the imitation drawings and models; but it merely imposed civil penalties.
7. Reproduction of combat counterfeit goods and tighten controls on crossing points and borders.
8. Increasing the penal penalty to deter anyone who imitates and frauds drawings and models.
9. Raising awareness of the importance of industrial property in all sectors, through media, conferences, seminars, research, and studies in order to protect both the consumer and the producer.
10. Supporting and developing the police services concerned with intellectual property rights. Promoting their material and technical capabilities, raising the human element's efficiency, and enhancing them scientifically and technically

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