

## **Cases of Unfair Competition under the Unfair Competition and Trade Secrets Law and the Jordanian Judiciary**

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### **Abstract**

*Prior to the year 2000, the definition of unfair competition, also known as unfair competition cases were not clear in Jordan. But after the passing of unfair competition and trade secrets Jordanian Law No. (15), things become clearer, especially since the law came out of trying to define unfair competition, some cases of unfair completion were identified, which paved the way for the judiciary in the adapted works and in determining which are cases of unfair competition. This clarity undoubtedly reflected positively on the decisions of the courts in Jordan specifically the Court of Cassation which issued many important decisions.*

**Keywords:** unfair competition, commercial and industrial activities, a trademark.

### **Introduction**

The principle of free trade is one of the economic principles that are based on various legislations, but this freedom is also linked to another principle, which is the principle of free competition among traders so that each trader can use its resources to promote legitimate trade. The basic principle is that competition may exist between people on the basis of the rules of honor, honest practices and business habits; therefore, if any area is facing unfair competition it is necessary to protect the victim. The method of protection for consumers is filing a lawsuit. In fact it is difficult to find a specific and clear definition of unfair competition, the reason is related to blurry line between what is legitimate and what is illegitimate. It is very difficult to define precisely what is legitimate and what an illegitimate practice is. It is difficult to detect the borderline between what is legitimate or illegitimate. This leads us to resort to customs and commercial habits, which may vary from one place to another and from one time to another.

This explains our observation that most commercial laws do not give a comprehensive definition of unfair trade practices but rather we find most of these laws talk about cases of unfair competition or unfair methods of competition. The question whether a practice is unfair competition was clear in the mind of the Jordanian legislator especially since it tried to define actions that are considered unfair competition when they reviewed some of the cases, and whether the unfair competition was clear to the Jordanian judiciary.

### **Definition of unfair competition**

Competition law in the broad sense comprises two branches: antitrust law which introduces a prohibition of abuse of economic dominance, i.e. the law relating to restrictive practices, monopolies and mergers, and the law of unfair competition which relates to a wide range of trade practices.<sup>1</sup> Unfair competition appears to have been used at first in connection with the efforts of the courts to protect trade-marks.

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<sup>1</sup> Haloush Haitham, 2009, A Practitioner Guide To The Unfair Competition Law In Jordan, The Open Law Journal, 2, 1-7.

When the law relating to trade-marks was specifically defined by statutes and by judicial decisions, unfair competition started as the phrase to designate the unethical practice of a trader who attempts to pass another trader's goods as his own, but recently the legal definition of unfair competition has been extended to include not only the passing off of goods for those of another but also any conduct on the part of one trader which tends unnecessarily injure another in his business.<sup>2</sup>

On this basis we can say that unfair competition is a term which may be applied generally to all dishonest or fraudulent rivalries in trade and commerce. Article (2) of Jordanian Law No. 15 of 2000 on Unfair Competition and Trade Secrets states that: A. Any competition contradictory to the honest practices in the commercial and industrial activities shall be deemed one of the unfair competition and particularly the following:

1. The activities that may by its nature cause confusion with an entity, products, commercial or industrial activities of one the competitors.
2. False claims in practicing trade, whereby causing deprivation of trust from one of the competitors' entity, products or industrial, commercial activities.
3. The data or facts that are used in commerce that may mislead the public in respect to the product's nature, methods of manufacturing, properties, amounts, and availability for use.
4. Any practice that damages the product's reputation, causes confusion in respect to the product's general shape or presentation, or misleads the public on determining the product's price or the method of counting thereof.

B. If the unfair competition is related to a trademark used in the kingdom, that is either registered or not and misleads the public in regards to provisions of paragraph (A) of such article shall be applied.

C. The provisions of paragraphs (A) and (B) of this article shall be applied on services as necessary.

It is noted that the definition of unfair competition was too broad regarding the concept of unfair competition<sup>3</sup>, but we find that the Jordanian legislator avoided setting a specific definition of unfair competition because defining the concept of unfair competition would make this concept more rigid, in the sense that a rigid definition of unfair competition cannot keep up with the evolution in competition and innovative methods by traders.

The proof that the Jordanian legislator did not define unfair competition is it took to clarifying only some cases of unfair competition in the same article, in the sense that they reported these cases, for example, not specifically.<sup>4</sup>

In this case, we find some jurists argue, saying that unfair competition is an act perpetrated by the trader in bad faith to the acquisition of another dealer's clients to the detriment of reconciliation, using illegal means or violation of commercial practice or principles of honesty and honor of the professional conduct of merchants.<sup>5</sup>

While we find that there is justification of jurists' argument that it is not a requirement to consider the component of the competition linked to the illegal act of bad faith. It is sufficient if the error is committed by a person, even if well-meaning, it is not necessary to be the aggressor in bad faith, but enough to be skewed as unusual behavior for a person to be considered a positive error of responsibility.<sup>6</sup>

So the determination of whether a particular business practice is unfair necessarily involves an examination of its impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer.

In brief, there must be a balance between the utility of the wrongdoer's conduct against the gravity of the harm to the injured.<sup>7</sup>

Commenting on the previous views, we find that the Jordanian legislature have developed and under Article (2) general controls that ensure the survival of competition within the legal fold, meaning that to prevent any behavior that contradicts the habits and honest practices if practice exceeded this circle, whether the aggressor is in bad faith or good faith, will be considered unfair competition.

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<sup>2</sup> Hines Charles, 1919, Efforts to Define Unfair Competition, The Yale Law Journal, 29, 2.

<sup>3</sup> Qalioubi Samiha, (2007) ALwasseet to explain the Egyptian trade law, part 1, Cairo, Dar Al-nahda Publication Ltd, p.625

<sup>4</sup> It is noted that the text of Article (2) of the Jordanian unfair competition and trade secrets law is based on the text of Article (10) of the Paris Convention for the Protection of Industrial Property of 1883 and the Convention was adopted in final form under the Stockholm Act of 1967.

<sup>5</sup> Michel de Juglart, Benjamin pplito, Cours de droit commercial, Montchrestien, paris, 1999, p. 356

<sup>6</sup> Aukaili Aziz, (2007), Commercial Law In Jordan, Amman, Dar- Al Thaqafa Publication Ltd.

<sup>7</sup> Arkins Sharon, (2005), The Unfair Competition Law after Proposition 64: Changing the Consumer Protection Landscape, 32 western state university law review, 162.

### ***Cases of unfair competition according to Jordanian law and Jordanian judiciary***

The cases of unfair competition are too numerous to count, therefore we find that the Jordanian legislature has resorted to enumerate some cases. For example, businesses that cause confusion with a competitor's facility or its products or those acts that discredit a competitor's establishment or make false allegations which mislead the community. It is noted that the Jordanian legislator issued in Article (2) may develop a comprehensive inclusive standard of what is unfair competition without specifying a particular situation, which is all competition contrary to honest practices in industrial or commercial activities is considered unfair competition. Thus, it is up to the court to decide whether an act is legitimate or illegitimate.

And we will examine the following cases in the Jordanian law:

*First case: The activities that may by its nature cause confusion with entity, products, commercial or industrial activities of one of competitors.*

Even these actions constitute unfair competition that lead to confusion or cause confusion among customers about the merchant or his products or his activity so that the customers switch from his goods and go to a competing merchant. For example, the merchant puts on his goods data set by another merchant, Or tradition of the industrial design, Or releasing him on the opponent's trade name or business address previously used for another shop.

In this regard, The Jordanian court of cassation noted that (Taken advantage of articles (2 / a) and (3 / a) of the Unfair Competition Law and Article (5) of the Companies law and Act (2) and (4) and (5) and (6) of the brand-name law that the first plaintiff, a registered company since the date of 05.27.2002 and the owner of the trade name of the Grand Optics in Jordan and that the Prosecutor's second company registered since the date of 06/29/97 and owner of the trade name Grand Optics Center in Jordan and the respondent registered company with limited liability at the end of 2003 as a foreign company was registered (Grand Optics Jordan).

And that the respondent has opened commercial shops next to the shops in the commercial market Amman Mecca Mall and showed itself to consumers and the public along with the packaging and the advertising, marketing and brand name of Grand Optics. Since the first company and the second company used the brand name coupled with the English Grand Optics verbally (GRAND OPTICS), Since 2000, it gives them a right to protection and commercial property Name (GRAND OPTICS) And that the use of this name is permitted and legitimate and that of precedence in the registry and the national deployment and proven trading exclusively for using the English word for the primacy of the registration and use. Respondent and that the use of commercial name coupled with the English Grand Optics verbally (GRAND OPTICS) is illegal and an infringement and unfair competition in accordance with the provisions of Article (2 / a) of the Unfair Competition).<sup>8</sup>

*Second case: False assumptions in practicing trade, whereby causing deprivation of trust from one of the competitors' entity, products or industrial or commercial activities.*

Are acts of unfair competition intended to provide trade data contrary to the fact and the intent is to harm the reputation of the merchant or challenge a rival's character or patriotism by claiming their rival is on the verge of bankruptcy or a drug addict? Acts can also broadcast false information intended to degrade the value of the goods sold by the merchant as poor goods or claim that the goods are fake, or unfit for consumption or harmful to the health of consumers. On this basis, the competition up to the stage of comparison between similar products in terms of quality of products, price and conditions of sale and to show their advantages, which leads to distortion and abuse by this comparison.<sup>9</sup> And the trader's rival achieves this purpose by different means such as a distribution of publications or publication in newspapers or magazines or make notes to various administrative bodies or to other radio and publishing methods.

*Third case: The data or assumptions which used in commerce may mislead public in respect to the product's nature, methods of manufacturing, properties, amounts, and availability for use.*

This group differs from the advanced Group in its data and claims are not directed to competitor products or dealer facility, but focus on product merchant himself. So a merchant may put on his products that (made in sic) (manufactured under license from sic), Or claims that products will be fit for use contrary to fact, Or by putting incorrect data on the materials used in the product installation or ratios of materials used in the installation which will mislead customers who buy these products based on this data.

<sup>8</sup> The Jordanian court of cassation, case No 2734/2008, www.adaleh.com.

<sup>9</sup> Qayed Mohammad, (1991), Commercial Law, Dar Al Nahda Al Arabia, Cairo

The most prominent of the common examples of this kind of assumptions, the data that are placed on many food products as natural products, or data that purports to be free of fat or low-fat and while this is not the case, or data contained on cigarette packs on nicotine and tar ratios while it is correspond with the truth. On this basis, we find that the Jordanian Court of cessation came in its place and agreed to correct of the law as stated in decision (If the plaintiff has a brand The baby shop, It is registered its name with the trademark registered on 10.16.2002 In the name of children's clothing and shoes, The defendant registered the same trademark within Class 25 for clothing foot Services and The plaintiff objected to it in front of trademark registration. These acts constitute unfair competition for the trademark owned by the plaintiff in accordance with Article (2 / a / b) and Article (3 / a) of the Unfair Competition Law, as the trademark used by the defendant used in Jordan and would mislead the public and incur confusion among the public)<sup>10</sup> Also the Jordanian Court of cessation stated that (if the plaintiff claims that the smoke imported by The defendant under the brand (Ghamdan) filled casings, cardboard and similar containers to the extent of matching the bottles and cardboard sleeves distinctive for its smoke under the brand (Ghamdan) and smoke imported by The defendant and holds false statements, the work constitutes unfair competition within the meaning of Article 2 of the Unfair Competition Law)<sup>11</sup>

*Fourth case: Any practice that damages the product's reputation, causes confusion in respect to the product general shape or presentation, or misleads the public on declaring the product price or the method of counting thereof.*

One of the cases of unfair competition that can be faced by courts is the outer appearance of the product, the application of that came in the decision of the Court of Cassation Jordan(Article 2 of the unfair competition law and trade secrets No. (15) For the year 2000, considered in paragraphs [a, b], that any exercise may damage the product's reputation or cause confusion in respect to the external appearance, or if the acts related to a trademark, this is considered unfair competition in commercial affairs. And because it is proven that the defendant has marketed and stored the goods bearing the plaintiff company's brand name and so that it has therefore engaged in acts unfair competition.)<sup>12</sup>

In fact we find that the acts set in this paragraph, which may constitute acts of unfair competition does not provide too much details about the acts mentioned in the preceding paragraphs except in relation to misleading the public about the price of the product or the method of counting thereof. So we find that it was most effective if Jordanian legislator adds it to any of the preceding paragraphs without being singling out this particular paragraph. Here it must be noted that the Jordanian legislator explained specifically in paragraph (b) of Article (2) that any assault on a trademark used in Jordan, either being registered or not and leads to misleading the public is a case of unfair competition, And thus it shall apply the provisions of paragraph (a) of Article (2) shall be applied. And unfair competition achieved here by using the same trademark that belongs to others and putting it on a rival dealer or a false claim that the trademark is registered in Jordan. In application of that the Jordanian Court of Cassation said that (The use of a trademark has been used by and with wide acclaim in Jordan, whether registered or unregistered leading to cheating and misleading the public is one of the cases of unfair competition, in accordance with the provisions of Article ( 2/b)of Unfair Competition law)<sup>13</sup>

Also the Jordanian Court of Cassation stated that (and as the subject of unfair competition related to the tradition of a trademark and where the plaintiff is the owner of the trademark (Winston) got a trademark of cigarettes (Winston) where it became responsible for trading it in Jordan. And where it was three set Containers for cigarettes seized in the port of Aqaba shows that the existing cigarettes are (Winston red and smoke Winston white) for the purpose of exporting cigarettes to Iraq, and was found after examining these samples to be counterfeit samples, and since the papers presented in the lawsuit prove that the goods did not enter the Hashemite Kingdom of Jordan, and the plaintiff did not provide any evidence to prove the use of cigarettes inside the Hashemite Kingdom of Jordan, but that the plaintiff asserts that the containers that were the subject of trademark counterfeit were seized in the port of Aqaba. Accordingly, the conditions in paragraph (b) of Article 2 of the unfair competition law are not available and the plaintiff's claim is devoid of legal corroboration)<sup>14</sup>

<sup>10</sup> The Jordanian Court of Cessation, Case No 2564/2014, [www.adaleh.com](http://www.adaleh.com).

<sup>11</sup> The Jordanian Court of Cessation, Case No 248/2004, [www.adaleh.com](http://www.adaleh.com).

<sup>12</sup> The Jordanian Court of Cessation, Case No 3388/2008, [www.adaleh.com](http://www.adaleh.com).

<sup>13</sup> The Jordanian court of cassation, case No 453/2012, [www.adaleh.com](http://www.adaleh.com).

<sup>14</sup> The Jordanian court of cassation, case No 3547/2006, [www.adaleh.com](http://www.adaleh.com).

## **Conclusion**

As a result, we note that Article 2 of Jordan Law No. 15 of 2000 on Unfair Competition and Trade Secrets was a complete likeness to the Article 10 of the Paris Convention for the Protection of Industrial Property of 1883 and its amendments. The article reads as follows:

(1) The countries of the Union are bound to assure the nationals of such countries effective protection against unfair competition. (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. (3) The following in particular shall be prohibited: (i) all acts of such a nature as to create confusion by any means with the establishment, the goods, or the industrial or commercial activities, of a competitor; (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; (iii) indications or allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

The only acts expressly proscribed by Article 10bis are those that create confusion with the business of a competitor, those that falsely discredit a competitor's business, and those that mislead the public as to the characteristics of the goods being offered. All three of these activities involve deception," which is the basis for the doctrine of passing off as recognized in common law jurisdictions.<sup>15</sup>

In this regard, we say that the Jordanian legislator has done well by not putting a specific definition of unfair competition, but a general rule of what could be considered unfair competition valuable commercial and industrial area, and then it identified some cases of unfair competition mode, which means to provide protection for all elements of the business and industrial activity of any wrongful conduct and this result gives the courts broad space for the protection of this activity.

It must be pointed out that the definition of unfair competition was quite clear in the mind of the Jordanian legislator and did not directly determine the concept of unfair competition, so that it helps to keep pace with the evolution in competition among traders as well as the methods that can be invented by them. So we find that the Jordanian judiciary and through many of the judgments that we listed did not seek to establish a definition of unfair competition. Proof of this is that the Jordanian legislator census only some cases of unfair competition, in other words it did mention some common situations, for example, rather than sticking exclusively to a definitive definition. The evidence that the law did not ask for bad faith when doing such acts, which would give the important role of the Jordanian judiciary in this area, which leaves the door wide open in front of the judge in adapting these acts and whether these acts are unfair competition or not.

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<sup>15</sup> Lafrance mary(2011), Passing Off and Unfair Competition: Conflict and Convergence in Competition Law, Michigan State Law Review, Vol. 2011:1413,1421.

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