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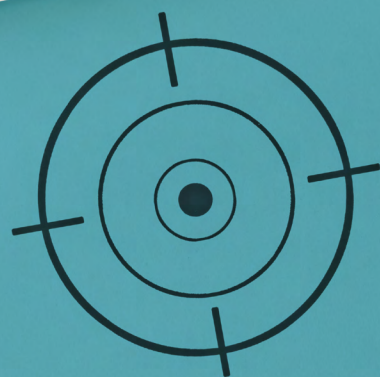
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TRADEMARK RIGHTS IN THE CROSSHAIRS

DECODING INVESTMENT BOYCOTTS AND JUDICIAL DYNAMICS IN ALGERIA

By Vera Albino & Inês Monteiro Alves



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According to the UNCTAD's World Investment Report for 2023, North Africa experienced a 58% growth in investment during 2022. While this result is noteworthy, it does not fully offset the 47% decrease in the overall investment value across the continent, as outlined in the same report.

Investment in African countries remains insufficient. And, despite the potential for economic growth and development, the hesitancy among investors to engage fully in African markets persists. It is as though the impenetrable Africa – vividly depicted in Joseph Conrad's masterpiece, *Heart of Darkness* – continues to linger in our collective imagination.

The investors' reluctance is often related to the political instability of African countries, the outdated laws, including those in the field of intellectual property (IP), and because there is a prevailing perception that the judicial system is ineffective. In essence, the fear of investment is grounded in three main causes: political, legislative, and judicial. These factors can individually or collectively contribute to an environment of uncertainty that may affect both investment and the protection of IP.

If we take Algeria as an example, the country saw its FDI drop from \$870 million to \$89 million in 2022, even though the legal and regulatory procedures are deemed consistent with international norms. In this case, two significant factors impact its attractiveness to foreign investors. The political instability, which may have an impact on IP rights. The Algerian boycott of Spanish products is an illustration of this. And, the potential effectiveness of the

protection of IP rights may be compromised by contestable judicial decisions.

The impact of boycotts on trademark rights

Following Spain's support to Morocco's "autonomy plan" for Western Sahara, the President of Algeria, Abdelmadjid Tebboune, gave order to "freeze direct debits and foreign trade transactions in products and services to and from Spain as of 9 June 2022". The consequences of this decision on Spanish companies were immediate, namely on IP rights. The impact of boycotts on IP rights is multifaceted.

Firstly, if a company or trademark becomes a specific target of a boycott, its reputation may suffer significant damage. Consumers associating the trademark with negative perceptions can result in a diminished value for the trademark.

Secondly, negative sentiments can pose challenges in maintaining or enforcing trademark protection, as consumers may actively avoid or reject products associated with the boycotted entity.

Thirdly, companies involved in licensing agreements or partnerships may encounter difficulties, as partnerships with entities subject to boycotts may become less desirable, impacting the commercial potential of the IP.

Additionally, market restrictions or exclusions affect the ability to exploit IP rights, and competitors may exploit the situation to challenge the validity or enforceability of



IP rights. On one hand, if trademark rights holders use their trademarks during a boycott, competitors can allege violations related to the boycott circumstances. On the other hand, if IP holders do not use their trademarks, competitors can invoke the revocation of their trademarks for non-use.

The current Algerian law (Order No. 03-06 dated July 19, 2003) on trademarks stipulates that non-use leads to the revocation of the trademark, except in the following cases:

- When the lack of use does not last for more than three uninterrupted years.
- When, before the expiration of this period, the holder provides evidence that serious circumstances justified the lack of use. In this case, an extension of the deadline not exceeding two years is granted to the trademark owner.

Since Algeria has normalised its diplomatic relations with Spain after 19 months of interruption, the three-year deadline was not reached, and the revocation of rights was not possible. However, one may ponder the potential implications if the boycott were to extend beyond five years.

While it's unquestionable that boycotts qualify as circumstances justifying the lack of use – making trademark holders eligible for the two additional years provided by IP law – there remains room for discussion on whether boycotts can excuse non-use for even longer durations.

Indeed, in Algeria, non-use does not automatically lead to the invalidation of trademark rights, as it may be justified in cases of force majeure. This raises the question: is a boycott considered a case of force majeure that justifies non-use?

Algerian IP law does not explicitly address force majeure, leaving the determination of its applicability to the judges. It is at the discretion of the judges to decide whether the requirements of force majeure – unpredictability, irresistibility, and externality – are met in each specific case, raising the importance of the effectiveness of the Algerian judiciary.

Protection of IP rights through judicial decisions

Regardless of political measures taken by the Algerian Government, Spanish companies have continued to seek protection and the enforceability of IP rights in the jurisdiction.

One example of this is an ongoing case between a reputed Spanish company and an Algerian company. After an administrative dispute between the two players, the Algerian Trademark Office has decided to grant a trademark filed by the Algerian company, that in the view of the Spanish company collided with its trademark registration.

The trademark was filed in 2020 by the Algerian company to cover products and services in classes 29, 31 and 35. The Spanish company has then filed an appeal against the decision before the Algerian Court claiming that the Trademark Office has granted the trademark without taking in consideration the opponent's claims, in particular, the fact that the decision should have been based on the analysis of the figurative element of the two marks.

The court denied the claims of the Spanish company by stating that there was no visual or phonetic resemblance between the word

element of the trademarks in question. In the view of court, the word element combined with the figurative element distinguishes the two marks in accordance with Articles 5 and 6 of the Trademark Ordinance. The Court ruled that since the two brands are distinctive, the consumer could not be mistaken.

Considering this, the Spanish company filed an appeal of the Court decision stating that it was based on the figurative element of the two marks that the judge had to make the decision, which was not done. The main purpose of the Spanish company was to obtain the cancellation of the figurative element (logo) of the Algerian mark which imitates the figurative element of the first and not the name of the mark. The Spanish company has argued that the Judge, contrary to their request, did not rule whether the figurative element was imitated or not.

A decision from the Appeal Court is yet to be issued at the time of writing of the article, however, it should be noted that the Algerian system can be described as efficient, considering that the trademark in question was filed in 2000 and after all the administrative

proceedings, the case is already waiting for a second instance court decision.

In conclusion, Spanish companies such as the one mentioned above, have faced a setback in Algeria during the boycott, leading to a loss of profits. Nevertheless, the company chose to

uphold its rights, and irrespective of the court's ruling, which is questionable, it is noteworthy that the judicial system demonstrated a comparatively prompt response. This efficiency is particularly commendable when juxtaposed with the performance of legal systems in other countries including developed countries.



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