

# THE LEGAL SYSTEM FOR UNFAIR COMPETITION LAWSUIT TO PROTECT THE TRADE NAME

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## ABSTRACT

*This research aims at identifying the legal system for claiming unfair competition to protect the trade name, because it is known that the trader has ownership right over his trade name, whereby he can prevent others from using it in the same type of trade he practices, and the trader who attacked his trade name by any act of Acts of Unfair Competition To file a claim called "Unlawful Competition" to claim for damages. The success of this case requires the availability of several conditions, and if these conditions exist and the court proves that there is an actual attack on the trade name, which would cause confusion and confusion among customers, the court may decide what it deems appropriate. In order to initiate an unfair competition, there must be a competition, the competition must have been conducted in an illegal manner, and that would cause harm to others.*

**Keywords:** Legal system, Unfair Competition, Trade Name Protection, Merchant, Trade

## INTRODUCTION

Competition is the essence of trade, and the engine of economic freedoms for individuals and groups, because just as it is between merchants and producers in the field of trade and industry, it is also between people and nations and it is necessary for the progress of production in various fields and the growth of internal and external trade. Competition is one of the pillars on which free economy is established and which countries seek to develop. The element of dealing with customers is also considered the strength and essence of a store, the more customers means more growth and prospers, so every merchant seeks to attract the largest number of customers and retain them even if this leads to competition from other merchants, as long as the means that used are legitimate. Competition in commercial activity is a right established based on the principle of the freedom to practicing business.

Competition encourages merchants to improve production and lower prices to attract and satisfy customers, by offering them the best and making improvements to the goods they produce or sell, and this leads to the prosperity in commercial activity. The merchant may resort to attract the largest number of customers through illegal means and methods represented by a number of forms, including infringe on the trade name, this is through using a similar trade name or violating the commercial reputation by publishing false information about a merchant such as bankruptcy or having intention to sell or transfer the store, or infringing the trademark by imitating or forging, which would lead to harm their interests or lowering the selling prices. It should be noted that reducing prices will be in the interest of customers, as they usually search for high quality products at the lowest prices, and therefore if a merchant reduces the price to attract customers, it will achieve their interest, but at the same time it will harm competing merchants if the reduction exceeds reasonable limits, which means an existence of interests conflict. Reconciliation between these interests is by allowing prices to be reduced to the usual limits, and if the merchant exceeds these limits, then he will be selling at a cost price or less, then it will be unfair competition, and these means are violating the law and not approved by commercial standards (Abbas, 1971).

## **Study Problem**

The problem of this study is the increased cases of illegal commercial competition, which poses a threat to the freedom of trade and legitimate competition between merchants, and the ineffectiveness of the laws applied to limit the acts of unfair competition, and this problem raises a number of questions, including:

1. What is the extent of protection provided by the Jordanian Law on unfair competition and trade secrets for the economic system and the national freedom of trade?
2. How effective is the unfair competition lawsuit in protecting the victim of unfair competition?

## **Importance of Study**

The importance of the study lies in the global economic development and the emergence of free economy and the flourishing of trade and the domination of large enterprises over economy, which led to harmful effects on commercial competition, which is no more two competing individuals, yet an entire economic sector. The importance of this study also shows the threats of illegal competition over the store, the freedom of trade, the economic sector and society, and the guarantee of legitimate competition that contributes to the flourishing of trade, and the necessity to lay down more rules to reduce the risk of unfair competition.

## **STUDY APPROACH**

The descriptive approach was adopted by tracking related texts to the study's subject, as well as the analytical and comparative approach through the analysis of legal texts and through related studies and researches (Ahmed, 1931).

## **First Topic**

### **Definition of the Trade Name and Unfair Competition**

We must start with the definition of the trade name and unfair competition, because defining the trade name and being familiar with in all aspects is extremely necessary, because the topic of this research revolves around protecting the trade name, as well as unfair competition, and this is explained in the following two requirements:

#### **First: Definition of the Trade Name**

Most of the jurisprudential definitions of the trade name came close to each other, as <sup>1</sup> Yamelke defined it: "the name that the merchant gives to his store to introduce it to the public and attract customers, which the merchant usually takes as a sign to attract attention to his store". Qalioubi defined it as: "That name the merchant choose for his commercial store to distinguish".<sup>2</sup> And the Al Fiqhe defined it as: "A distinctive sign that the trader gives to his commercial or industrial project to distinguish it from other similar projects" (Ajwa, 2007).<sup>3</sup> Nassif defined it as: "The name used by a trader as an individual or company in practicing trade and distinguishing commercial establishment from others".<sup>4</sup> In the Jordanian Trade Names Law, Article 2 : "It is the name that a person chooses to distinguish commercial place from others, which consists of an innovative designation, the name of the person, his title or from all of them and with any addition related to the type of trade or the activity he practices".<sup>5</sup> It appears from the previous text that the trader must follow certain methods when creating a trade name, including:

1. The merchant adopts a unique name: the merchant may take a name or some favorable phrase in order to attract the attention of customers and urge them to approach and deal with his shop and to distinguish it from other shops.<sup>6</sup>
2. The merchant adopts a name for his business from his personal name or surname: the merchant may take his personal name, surname or family name to distinguish his business, but without any addition related to the type of his trade or the activity he practices such as Hussain & Muhammad al-Qadi Sweets, this situation creates confusion between the commercial name and the business address, according to the law, it did not distinguish between the business address and the commercial name (the Jordanian Law Interpretation Bureau Decision No. 10 of 1970)<sup>7</sup> and thus may lead to the same function to indicate the owner of the commercial store and the commercial store itself.<sup>8</sup>
3. The merchant takes a name for his business from the two previous methods together with any addition related to the type of the trade or the commercial activity practiced, that is, for the trader to take his personal name and surname in addition to an innovative name with any addition related to the type of his trade or the activity he practices written on the sign of his shop.<sup>9</sup> In the judiciary, the Jordanian Court of Cassation defines the trade name as “the name and surname used in any trade, whether in the capacity of a regular company or otherwise, and it is not used except in trade to define the store. On the condition of registration in accordance with the provisions of the Trade Name Registration Law No.30 of the year 1953, the trader has the right to take all legal measures with it.”<sup>10</sup>

Through the previous definitions of the trade name, the researcher believes that it is possible to define a trade name as: “a commercial ownership right, which is an intangible element that can be valued with money, The merchant may consider it to distinguish his business from other similar ones, and it consists of an innovative designation with an addition of the type of trade or commercial activity that he practices (Al-Arini, 1998).

## **The Second Requirement (Definition of Unfair Competition)**

The jurisprudential definitions of unfair competition varied. A jurisprudential opinion went to define unfair competition as “the merchant’s use of methods contrary to laws, regulations, customs, or honor.”<sup>11</sup> Supporters of this trend argue that the illegality of competition is based on the illegality of the competitive method, meaning that competition turns into illegal work if dishonest means are used (Al-Baroudi, n.d.).

However, they differed in determining the guideline for the illegality of the means, some of them see it in violation of laws, some of them see it in violation of commercial or professional customs and habits, and others see the standard in the illegality of the method represented in the merchant's use of methods that contradict principles and ethics, and some of them collect all standards.<sup>12</sup> Others defined it as “bypassing the legitimate means by a merchant, and using methods contrary to law or customs or against honor in order to attract others customers”.<sup>13</sup>

An opinion went on to say that "if competition deviates from the law, it is no longer a means of mastery and innovation, but rather aims to acquire customers who are accustomed in dealing with another place, then this work is not permissible because it includes risk to the commercial activity of others and is considered unfair competition".<sup>14</sup> What is unacceptable about this trend that it focuses on the goal of using these means (Alia, 1987), which is to attract customers of others, in addition harming competitors and causing confusion between facilities.<sup>15</sup>

The Jordanian legislator did not mention in the law of unfair competition and trade secrets a definition of unfair competition, so what was mentioned in Article 2 paragraph A and B of the same law is mentioning some cases that considered unlawful competition, for example:

1. Any competition that conflicts with honest practices in industrial or commercial fields is considered an act of unfair competition, in particular the following:
2. Businesses that by their nature cause confusion with a competitor's establishment, products, industrial or commercial activity.
3. Contradictory allegations in practicing trade, which may cause a loss of confidence in a competitor's facility, products, industrial or commercial activity.

4. Statements or allegations that may mislead the public regarding the nature of the products, the method of their manufacture, characteristics, quantities, or their validity for use.
5. Any practice that may undermine the reputation of a product or cause confusion regarding external appearance or display method, or may mislead the public when announcing the product's price.

It is clear from the previous article that the Jordanian legislator has followed the approach of international agreements, as Article 2 of the law of unfair competition and trade secrets is considered a literal quotation from Article 10 of The Paris Convention for the Protection of Industrial Property 1883.<sup>17</sup>

What the Jordanian legislator did when he did not set a specific definition for unfair competition, being aware of the continuous developments and changes that would occur in the commercial and industrial environment, especially at a time of globalization, which makes it unable to keep pace with these developments, in the face of a rigid definition of unfair competition. Whereas the Egyptian legislature defined illegal competition in Article (66/1) of the Trade Law as "every act that contravenes customs and principles observed in commercial transactions. This includes, in particular, aggression on others trademarks, trade name, patents, or against industrial secrets".

The second paragraph of the same article adds, "Every unlawful competition obligates its perpetrator to compensate for the damage caused by, and the court may decide - in addition to compensation - to remove the damage and to publish a summary of the judgment at the expense of the convicted person in a daily newspapers."

The Jordanian judiciary did not address the issue of defining unfair competition, as what was stated in many of decisions is but mentioning cases that are considered unfair competition. Whereas the Egyptian Court of Cassation defined it as: "Committing acts against law or customs or using dishonourable means and transactions, whenever intended to cause confusion between two commercial establishments or create disturbance of one of them and it was liable to attract clients of one of the two establishments to the other or dismiss them."<sup>19</sup>

## **The Second Topic**

### **The Legal Basis for an Unfair Competition Lawsuit**

The jurisprudence differed in determining legal basis for unfair competition lawsuit, which led to the emergence of several trends in this regard, so an opinion went to the establishment of unfair competition lawsuit on the basis of tort (harmful act), while another went to consider this lawsuit as one of theoretical applications abuse, while a third opinion went to establish a lawsuit for unfair competition on the basis of the right to property (Al-Jaraara, 2005). Therefore, it is imperative to review each of these opinions in details in order to demonstrate their compatibility and with unfair competition lawsuit:

#### **First Requirement: Tort (harmful act) as the basis for unfair competition lawsuit:**

Some of the jurists<sup>20</sup> in Jordan went to establish unfair competition lawsuit on the basis of liability for the harmful act, as Article 256 of the Jordanian Civil Law No. 43 of 1976 states that "every harm to others is required from the perpetrator, even if not an adult, to recoup the harm. "However, some other jurists did not accept attributing this lawsuit to the basis of the harmful act (Al-Khashroum, 2005), Article 256 of the Jordanian Civil Code, and this is because Article 256 requires proof of harm, while the lawsuit of unfair competition stipulates an unlawful act, meaning a mistake.<sup>21</sup>

#### **Second Requirement: Abuse of the right as a basis for unfair competition lawsuit:**

The general provisions regarding tort liability (the harmful act) fail to be the basis for the unfair competition lawsuit, and in response to this, a part of jurisprudence tried<sup>22</sup> to establish unfair competition lawsuit based on abuse of the rules of the right, given that freedom of competition is considered a right for every trader except that this right is restricted and not absolute,<sup>23</sup> meaning that the trader has to use this right in a way that law granted and authorized, but without exceeding the content of this right, so the right holder exceeds those limits is considered arbitrary to use it, and then his competition is considered unfair.

This view was advocated by the French jurist Joceran,<sup>24</sup> where he saw that the right of free competition, like other personal rights, has a social purpose, and this right must be exercised in accordance with this goal, in a manner consistent with the requirements and integrity of commercial relations, and that any excessive use of this freedom is considered an abuse of the right. This opinion has been subjected to many criticisms, and perhaps the most important criticism directed at it is the following:

**First:** The criteria for the theory of abuse of the right cannot be applied to the provisions of unfair competition lawsuit.<sup>25</sup> It is imperative to review these standards in Jordanian law<sup>26</sup> to demonstrate their applicability and the provisions of unfair competition lawsuit (Al-Khouly, 1964).

1. Criterion (intent to infringe) or (intent to harm): This criterion means that a person uses his right in unlawful manner, with the intention of causing harm to others, without having an interest in this use. Perhaps the most important criticism directed at this standard in unfair competition is that "the trader who carries out the acts of unfair competition often has the intention to harm his competitor, rather, this intent exists in cases of legitimate competition and is the purpose of it"<sup>27</sup>. Adopting this standard implies that it makes filing a lawsuit for unfair competition easy, as anyone harmed by competition can file a lawsuit and claim compensation even if this competition was carried out by legitimate acts. In addition, it will be difficult to prove the harm suffered by the person affected by unfair competition acts, as it is required to prove the competitor's bad intention, although this is not necessary given that the jurisprudence and the judiciary are agreed that bad intention and intent to harm are not required in unfair competition lawsuit.<sup>28</sup>
2. The illicit interest criterion: It states that when the desired interest in the act is unlawful, then the right holder is considered abusive in the use of his right, and among the criticisms directed at this criterion is that there is a difference between the goal the trader seeks to achieve and the means used for that, however, these means that used to achieve these goals will be called "unfair", that means this criterion fails to apply to the case of unfair competition.<sup>29</sup>
3. The criterion of disproportion between the benefit from the use of the right and the harm that befalls others: - The legislator assesses the legality of using the right or not, on the basis of a balance between the interests that a right holder seeks and the interests of others that this use may affect, the reason for non-applicability of this criterion is that harm that befalls others as a result of acts of unfair competition may be much less than the benefit accruing to the aggressor, as the latter will achieve huge profits while the moral harm may be caused to others and may be probable.<sup>30</sup> Based on the foregoing, it can be said that the theory of abuse of the right is not suitable as a basis for the unfair competition lawsuit, due to the inability to activate the three previous criteria for application in unfair competition. We believe that the criterion of overriding what is customary<sup>31</sup> is more appropriate to apply, as indicated in Article 2 of the Unfair Competition Law.

**Second:** The penalty for the abuse of the right is the guarantee, as Article (66/1) of the Jordanian Civil Code stipulates that "Whoever uses his right in illegally must be guaranteed." However, this text did not specify the forms of this guarantee nor did it specify its conditions And its cases, which requires a return to the provisions of tort liability, which brings us back to the same criticisms directed at the foundation based on liability for the harmful act.<sup>32</sup>

**The Third Requirement:** The right of ownership as a basis for the unfair competition lawsuit:

With the inability of the tort lawsuits (harmful act) and the abuse of the right to be the basis for the unfair competition lawsuit, some jurists went on<sup>33</sup> to declare that it is somewhat closer to property claims that give the property owner full authority, basing their opinion on what he enjoys. There is a right of ownership over his shop (Al-Qalioubi, 2009), or in particular

the right to preserve customers, as it is one of the most important elements of the commercial store, but the lawsuit of unfair competition was found to protect this element from any assault that would divert them from the commercial business, as a result of the aggressor's unlawful acts,<sup>35</sup> but this idea was subjected to many criticisms, "and Roubier was one of its most prominent critics, as he saw that it contradicts the nature of things in its view of customers as a wholeness that falls under the right of ownership (Al-Sarhan, 2009), despite their being moving and unstable element and the law cannot guarantee its stability and continuity, while the right of ownership presupposes money with fixed and specific nature, which is entirely at the disposal of its owner."<sup>35</sup> Likewise, the trader has no ownership right over his clients, as we mentioned earlier, as he cannot prevent them from dealing with other merchants, or forcing them to continue dealing with him<sup>36</sup>, and on the other hand there may be unfair competition acts without current assault on the customers (Al-Sharqawy, 1986), for example the incitement of a worker to quit his job in a competing merchant's workplace<sup>37</sup>, this act constitutes an act of unfair competition (Dewidar, 1993).

One of the jurists<sup>38</sup> believes that the unfair competition lawsuit cannot be established on the basis of guaranteed protection for the ownership, unless we accept that the commercial shop is the only element of contact with customers, so any assault on this element means an assault on the shop itself. However, the customer contact element is not the only element in the commercial store, but rather one of several as a financial unit, which confirms that the unfair competition lawsuit does not aim to protect the moral ownership of the shop as an independent unit (El-Feki, 2007).

From the foregoing, we believe that none of them can be relied upon as a legal basis for this lawsuit, due to the difference in its rulings and their inconsistency and conformity with any of these opinions. However, it is agreed upon and what the judiciary has settled on is that the lawsuit is of a special nature and this is what we support in this regard (Hana, 2011).

### **The Third Topic**

#### Conditions and effects the unfair competition lawsuit

I will divide this topic into two demands, the first is an explanation of the conditions of the unfair competition lawsuit, and in the second the effects of the unfair competition lawsuit and its legal system, as follows:

#### **The First Requirement - Conditions for unfair competition lawsuit**

In this requirement we deal with the conditions of unfair competition lawsuit, as follows:

##### **First-The existence of an act of unfair competition:**

Jurisprudence for the establishment of the unfair competition lawsuit requires the establishment of a state of real competition between projects, and that this competition takes place through unlawful methods, so it is natural that the primary goal behind competition is to attract clients from one firm to another, which means that there are two activities at the time of doing the work, and that this work was done for the sake of an activity at another expense, which assumes that the two activities are identical,<sup>39</sup> such as if competition occurs between two people who trade clothes, provided that the two activities are not required to be completely identical, rather it is sufficient to have some kind of affinity between them so that each of them has an effect over the other's clients,<sup>40</sup> as if one of the dealers was manufacturing and selling the commodity, and the other was only selling it, in this case it can be said that there is competition. Likewise, it is not required that the total similarity in the sum of the activities carried out by both parties to be complete, the activity practiced by one of them may be more diverse than the activity practiced by the other merchant, in this case, it can be said that there is a competition

over the type of the same activity between them.<sup>41</sup> If the subject of the two commercial activities is different, then there is absolutely no room for saying that there is competition, as both can have the same customers as long as they do not practice the same type of activity. There is no doubt that the issue of similarity or convergence between activities is an objective matter that can be appreciated by the judiciary.<sup>42</sup>

We will be facing unfair competition even if the competitor has not yet practiced a commercial activity, but is being prepared to practice it, as if the user instigates the customers of the shop in which he works by using fraud and defamation methods, intending by this to turn these customers to his favor, when he opens his own shop in the future.<sup>43</sup> Since the goal of competition is to attract customers in order to increase the volume of sales, it cannot be said that there is competition if the activity does not aim to achieve profit, as in the case with charitable and cooperative businesses that do not aim b to achieve profit but rather provide a service only for its members.<sup>44</sup>

The existence of competition is not enough to file a lawsuit for unfair competition, but it is also required that this competition to be unlawful, that is, it was carried out by using methods that contravene laws, commercial customs and honor (Helou, 2004).

The act of unfair competition is varied and numerous, and does not fall under restriction that can be built on in the future, but must be left to circumstances, as a result of the development of commercial environment and the merchants 'endeavour to invent modern methods that may not be known before.<sup>45</sup>

However, jurisprudence<sup>46</sup> tried to refer these actions to different types, including those related to mixing shops or products, or actions that require demeaning the value of others or the amount of the goods that are traded, or causing disturbance in the project of the opponent or in the market, for example, the Jordanian legislator mentioned cases of unfair competition in Article 2, Paragraph A of the Unfair Competition Law, in which it states: "A- An act of unfair competition shall be deemed an act that contradicts honest practices in industrial or commercial affairs."

**Second:** Damage is achieved as a result of an act of unfair competition: The existence of unlawful act is not considered sufficient for the unfair competition lawsuit to take place, so this act must result in damage to the competing merchant, whether the damage is material or moral, but the damage in unfair competition is usually the diversion or departure of customers from the shop they are accustomed to deal with to the place of the person who committed the competition or to other places. The occurrence of damage is necessary to judge compensation. However, the judiciary has tended toward compensation to whose right to compete has been violated in cases in which no harm has been proven, and this can be explained by the fact that the judiciary does not base its rulings on the rules of liability for the harmful act and apply them literally to the lawsuit of unfair competition, in terms of proving the occurrence of damage and compensation for it. This justifies the fact that this lawsuit, that is, the unlawful lawsuit, has a special nature, as its purpose is not only to repair the damage, but rather -sometimes- to protect the business from unfair competition in the future.<sup>47</sup>

Some jurists have argued<sup>48</sup> that it is sufficient for the damage to be probable, as it is permissible for every trader exposed to competition to institute a case just because there is a potential harm that may inflict if these acts are dishonorable, this is in contrast to the civil liability general rules, which require that the damage to be happened in order for compensation to be decided.<sup>49</sup>

As for estimating the damage that can be built upon to claim compensation and how it can be measured, the judiciary faced many difficulties in this area, so that one of the jurists believes that this may be impossible.<sup>50</sup> It is difficult for the trader affected by competition to prove the maintenance of his customers if these actions that he claims are not the cause of his loss, because the merchant has no authority over his customers, and they cannot be forced at all to continue dealing with him for it is a moral right (Joseph, 1991).

### **Third - The Existence of a Causal Link between the Wrongful Act and the Harm:**

For the unfair competition lawsuit to be instituted, there must be a causal link between the unfair competition act and the harm merchant suffered by, based on general rules in civil liability that require that there must be a causal link between the act and the damage, but there are exceptions to this principle, in case no harm results, then it's not a requirement for the existence of a causal link in the unfair competition lawsuit except in cases where harm actually existed as a result of these unlawful acts.<sup>51</sup> The complainant must prove that the damage was caused by an illegal act or against commercial customs or breach of honor.<sup>52</sup>

However, the issue of proving the causal link between the illegal act and the harm is very difficult, especially in the case of probable harm or in the event that the act of unfair competition leads to general turmoil in the market, so there is no room for speech or proof the harm, nor to search for the causal link between them, for it is difficult to be proved, since the damage falls on all merchants practicing the same type of activity, and not on a particular merchant (Mahrez, 2007).

### **The Second Requirement**

**Effects of Unfair Competition Lawsuit:** The unfair competition lawsuit is like any other lawsuit that requires a complainant, a litigant, a competent court, and legislation protecting this lawsuit.

### **First - Parties of the Case:**

Paragraph (1/3) of the Unfair Competition and Trade Secrets Law states that "Every business owner may claim compensation for the damage he suffered as a result of any unfair competition."

Looking at this article, it becomes clear that unfair competition lawsuit - like all other cases - must be submitted by a related person,<sup>53</sup> as no application will be accepted before the judiciary unless its owner has an existing interest recognized by law.<sup>54</sup> Undoubtedly, whoever has an interest in filing unfair competition lawsuit in this research is the one affected by the act of competition represented by assaulting the trade name, whether it is artificial or legal person, and the law entitles him to file a personal lawsuit in his behalf or through a deputy or legal representative to claim compensation.<sup>55</sup> This is what was confirmed by the Egyptian Court of Cassation in one of its decisions, where it states: "... a lawsuit based on unfair competition is accepted by everyone who suffered harm because of it and to everyone who participated of this damage when its conditions are fulfilled, which are the fault and the damage, and the causal link between fault and damage existed."<sup>56</sup>

The Jordanian Court of Cassation ruled in one of its decisions that "if the complainant's claim of the defendant is in fact a claim for compensation for the harm suffered by the complainant in a personal capacity, on the presumption that this is proven as a result of the unfair competition by the defendant against the complainant, and therefore the litigation is available between the complainant and the defendant, therefore, its decision to appeal is appropriate and in accordance with the provisions of Article Three of the Unfair Competition and Trade Secrets Law No. 15 of 2000."<sup>57</sup>

If, however, the victims of these acts are numerous, then each of them may file a lawsuit demanding the cessation of the infringement or compensation for personal damage.<sup>58</sup> The lawsuit shall be brought against who committed the unfair act and whoever helped him, provided that the latter was aware of the illegality of the act or was able to be informed of its illegality<sup>59</sup>, for instance a printing press owner who prints cards bearing a counterfeit trade name or trademark<sup>60</sup>, but if not aware of this then it's considered good intention and cannot be held accountable (Mehrez, 1998).

Likewise, a lawsuit may be brought against the legal person directly, as in the case of a commercial company engaged in a trade similar to that of the complainant with competing actions, using illegal means (Qalioubi, 1999), and these actions were based on a decision issued by the board of directors or the general assembly, in some cases company is asked about indirectly about actions committed by its representatives on the basis of the employer's responsibility for the actions of employees.<sup>61</sup>

It is also possible to file a lawsuit against workers who leave their job in an agreement with the competitor to work for him, with the intention of attract clients of their previous workplace or divulging its secrets.<sup>62</sup>

## **Second - The Competent Court**

The Jordanian legislator has not specified in the Unfair Competition Law the competent court to hear disputes related to unfair competition business, which requires referring to the Civil Procedure and its Amendments Law No. 24 /1988<sup>63</sup> and the Magistrate Courts Law and its Amendments No. 15/ 1952<sup>64</sup> as both are relevant laws (Taha, 1973).

We find that the Jordanian Magistrate Courts Law and its Amendments stipulate in Article 3/3 that "Magistrates may consider damage claims, provided that the value does not exceed seven thousand dinars". Article 30 of the Code of Civil Procedure stipulates says "The First Court of Instance shall have the jurisdiction to consider and decide cases that do not fall within the jurisdiction of another court under any law in force. It is also competent to consider and decide urgent requests related to the main one, regardless of their value or type."

Based on these two articles, it can be said that the competent court in the unfair competition lawsuit in which the value of the claim does not exceed the amount of seven thousand JDs is the Magistrate's Court within jurisdiction the domicile of the defendant is located, as for the unfair competition cases in which the claim value exceeds seven thousand JDs, the first court of instance is the court competent to hear them. And it was stated in one of the decisions of the Jordanian Court of Appeal that "As for the second, fourth and sixth reasons, which revolve around the lack of jurisdiction of the Magistrate Court to hear the case, and therefore it is not competent to impose the seizure. we find in this regard, and by referring to the list of the appellant's case submitted to the Court of Magistrates, we find it based on the damage caused to the complainant (appellee) on the imposition of proof due to unfair competition and the amount of this damage for the purposes of fees in the amount of one hundred JDs. by Article 3 of the Unfair Competition Law previously mentioned, we do not find it specifying a specific jurisdiction for a specific court to hear this type of lawsuit, and thus it is not a lawsuit that has no value, but a claim for the value of the damage that may be assessed for the purposes of fees, and as long as the appellee has limited the value of his claim to the amicable limit, therefore (Tariq, 1990), he is not restricted to that".<sup>65</sup> While we find that the Jordanian Trade Names Law has defined the Court of First Instance as a court competent to hear disputes arising from infringement of a trade name, which means the contradiction in determining the competent court between the Trade Names Law and the Unfair Competition Law in case the lawsuit value is less than seven thousand JDs (Yamlik, 1998).

It would have been better for the Jordanian legislator to specify in its articles the competent court in the law of unfair competition. In Egypt, the commercial court has jurisdiction to hear disputes related to acts of unfair competition in a case where the defendant was a merchant and the acts of unfair competition occurred while practicing trade (Yunus, 1980), according to the theory of mercantilism by dependence. If the defendant is not a merchant, the civil court shall have jurisdiction to hear the case.<sup>66</sup>

## **Third - Civil Penalties Resulting from the Unfair Competition Lawsuit**

When it is proven to the court that the conditions of the unfair competition lawsuit are met, "it must award appropriate compensation, based on the text of Article 3, Paragraph A of the Unfair Competition Law and Trade Secrets which states that every business owner has the right to claim compensation for the damage caused as a result of any unfair competition. Article 66/2 of the Egyptian Trade Law stipulates says "Every unfair competition obliges its perpetrator to compensate the damage caused by it, and the court may decide - in addition to compensation to remove the damage - and the judgment shall be published at the expense of the convicted person in a daily newspaper (Zain Al-Din, 2007).

Based on the foregoing, compensation is one of the most important civil penalties that can be adjudicated for anyone who suffers damage as a result of an assault on his trade name, and the aim is to remove the damage so that the affected person is restored to the state before the damage.<sup>67</sup> The court may award monetary compensation, and it may also award compensation in kind or both, with a fine for each day the aggressor delays the execution.<sup>68</sup>

The court shall not award monetary compensation except for the actual damage suffered by the complainant as a result of the assault on trade name until the judgment is issued in the lawsuit, and the complainant has the burden of proving this damage. If this abuse continues after the issuance of the compensation ruling, it is considered a new mistake that will result in future and it may be compensated for by a new lawsuit<sup>69</sup>, as for potential damage, it is not permissible to compensate for, but only to require measures to be taken to prevent it in the future, since the Jordanian legislator did not specify compensation for the damage arising from acts of unfair competition, in terms of determining the conditions for compensation and the basis for its assessment, which requires referring to the application of general rules in Jordanian civil law. The compensation - according to the general rules - is estimated by the amount of damage and loss, provided that this is a natural consequence of the harmful act, that is, the result of the act of infringement of the trade name owned by others. There are many cases in which it is difficult for the judiciary to estimate the value of the damage to be compensated for. If a merchant took a trade name similar or identical to a trade name owned by others, and the latter filed a lawsuit to claim compensation for the damages suffered, it becomes difficult for to prove the amount of damage represented by the loss of clients or determining their number, because the customer component - as we mentioned earlier - is not a fixed and capable material element, and it is difficult to assert that they diverted from it as a result of imitating his trade name, and not for any other reason. In such cases, the courts assess the value of the compensation arbitrarily, and it is not taken into account in determining that the value of the damage is equal (Ziada, 1996).

Although this method is inconsistent with the general rules for compensation, the Egyptian Court of Cassation approved it in one of the decisions that stated, "The lack of elements for estimating this compensation. The court considers that its estimation is arbitrary in the amount of one hundred pounds ...".

Because of the difficulties facing the courts in estimating the compensation value, we find that in many cases they seek the help of people of expertise and competence in this field, and this is confirmed by the Jordanian legislator in Article 3/e of the Unfair Competition Law, which states that 'the court may seek assistance in all conditions with expertise and competence "However, the court is not obligated to take the expert opinion to base its judgment upon.

If there are many persons responsible for the wrongful act, then it is evident that they are equally or together responsible for compensation for the damage, unless the judge assigns the share of each of them. In article 265 of the Jordanian Civil Law that states "If there are many persons responsible for a harmful act, each one of them is liable in proportion to his part, and the court may judge equally or jointly between them." The court may award compensation in kind, whenever it finds that the monetary compensation alone is not sufficient to redress the damage, based on article 269/2 of the Jordanian Civil Code which stated: "The money is estimated by that the court may, depending on the circumstances and upon the request of the complainant, order the return of the case, to what was or to rule for the performance of a specific order related

to the harmful act by way of inclusion.” However, compensation in kind cannot take the form of prohibiting the practice of the profession except in cases of prohibited competition only.

Accordingly, the court may order measures to be taken to stop the abuse of the trade name and prevent the continuation of the illegal situation, and it has broad authority in this regard, such as ordering the addition of some amendments, for instance adding grandfather's name or a reference to the name, which denies the occurrence of confusion between the two names, or ordering the name to be written in letters and sizes that differ from the letters in which the first name was written, or adding the opening date of the two stores with the same name, or other additions.

In addition, the court may order the cancellation of the trade name from the register records, as the law grants the registrar of trade names the authority to delete it based on a decision of the competent court if it considers that this name violates the provisions of the law.

In order to oblige the aggressor to abide by its decision and implement it, the court may sentence him to threatening fines for every day in which he delays the implementation. The court may order the publication of the ruling issued in the unfair competition lawsuit in the newspapers at the expense of the person who imitated the trade name, the goal behind this is to draw the customers' attention to the illegal methods used by the aggressor against the trade name.

The court may also decide, upon the request of a complainant when instituting civil lawsuit related to unfair competition or during the consideration of this lawsuit, to order the defendant to stop practicing competition, or to sign precautionary attachment on related goods and products wherever they are found, or take necessary measures to preserve the relevant evidence, and this is what article 3/b of the Unfair Competition Law has confirmed. The court may also decide to confiscate the products subject to unfair competition and the materials and tools used as a kind of compensation in kind, and the court may decide to destroy any of them or disposing of it for any non-commercial purpose P3/F. Based on the foregoing, it becomes clear that the penalty in the unfair competition lawsuit may take multiple forms. It may rule for monetary compensation - even if this is the dominant form - and it may also be compensation in kind, and the court may also decide to cancel the trade name or add any amendments to it, also it has the power to publish the judgment at the expense of the convicted person. The court has discretionary authority to determine the form and method of compensation.

In conclusion, we must point out that these penalties can be adjudicated together. Whenever the court finds it necessary, the court may issue a decision to compensate for the damage caused, in addition to stop the infringement or the act of unfair competition, in order to avoid potential harm, given that unfair competition lawsuit has a preventive character.

## CONCLUSION

### **Results and Recommendations**

#### **First - Results:**

1. The trade name is one of the commercial property rights and it is an intangible element that can be evaluated with money, and the merchant may take it to distinguish his commercial place from other similar shops, and it consists of an innovative designation with the addition of the type of trade or activity that is practiced.
2. When the Jordanian legislator has not set a specific definition for unfair competition, in recognition of the continuous developments and changes that will occur in the commercial and industrial life, especially in the globalization in which we live, which makes it unable to keep pace with these developments, in terms of setting a solid definition of unfair competition.
3. The theory of abuse of the right is not suitable as a basis for a lawsuit of unfair competition, due to the inability to activate the three criteria preceding application in the field of unfair competition.
4. The jurisprudence to institute the lawsuit of unlawful competition requires the establishment of a state of real competition between enterprises, and that this competition takes place by unlawful methods,

5. It is natural that the main goal behind the competition is to attract customers from one firm to another, which means that there are two activities at the time of doing the work, and that this work has been done for the sake of one activity at the expense of another.
6. It is not sufficient to have a competition in order to file a lawsuit for unfair competition, but it is also required that this competition be unlawful, that is, it was carried out by using methods that contravene laws, commercial customs and honor.
7. The existence of an unlawful act is not considered sufficient to initiate the unfair competition lawsuit. This act must harm the competing merchant, whether the harm is material or moral. However, the damage in unfair competition is usually the diversion or departure of customers from the shop who are accustomed dealing with to another store or to other places.
8. The issue of proving the causal link between the wrongful act and the harm is very difficult, especially in the case of potential harm or the cases of unfair competition to provoke general turmoil in the market, so there is no room for speech or to prove the occurrence of the damage nor to search for the causal link between them, so it's difficult to prove, therefore, the damage falls on all merchants practicing the same type of activity, and not on a particular merchant.

## **Second - Recommendations:**

1. It would be preferable if the Jordanian legislator had taken more effective penalties to achieve the main goal of eliminating illegal competition.
2. The Jordanian legislator must create prior control that works on estimating the value of the commodity according based on the market prices, thus give no opportunity for the competing merchant to commit an act of unfair competition and other forms of illegal competition.
3. Setting criteria to determine the degree of similarity or contrast between trademarks that lead to misleading the public, so that it is possible to know the similarity between trademarks or not.
4. Spreading the legal culture with regard to commercial competition, especially the illegal ones, by holding seminars and conferences specialized in this topic.

## **ENDNOTES**

1. Al-Qalioubi, Samiha (2009), Industrial Property, Arab Renaissance House, Cairo, 8/761.
2. Article (2) of the Jordanian Trade Names Law No. 9 of 2006.
3. Abbas, Muhammad Hosni, Industrial Property and Commercial Store, Dar Al-Nahda Al-Arabiya, Cairo, 1971, p. 411.
4. The Jordanian Law Interpretation Bureau Decision No. 10 of 1970, published in the Official Newspaper on 5/1/1970, No. 2239, p. 721.
5. Al-Jaraara, Rola Abdullah, Trade Names and Their Relationship to Web Site Names, published master's thesis, Mu'tah University, 2005, p. 5.
6. Discrimination Rights 14/68, p. 1267, Year 1988, Legal Principles of the Court of Cassation in Human Rights Cases, Adalah Publications, dated 3/1/1986; Rights Discrimination 87/431, p. 257, year 1990, Legal Principles of the Court of Cassation in human rights cases, Adalah Publications, 06/20/1987.
7. Yunus, Ali Hassan, Commercial Papers, House of Arab Thought, Cairo, 1980, p. 139.
8. Tariq Ziada and Victor McCrill, Maritime Transport Contract, North House; The Modern Library, Beirut: Tripoli, Lebanon, 1990, p. 104.
9. Article 10 of the Paris Convention for the Protection of Industrial Property states that:
10. The countries of the Union are obligated to guarantee to the citizens of other countries of the Union effective protection against unfair competition.
11. An act of unfair competition is every competition that conflicts with honest initiatives in industrial or commercial affairs, and the following is prohibited in particular:
  - A. All acts of a nature to create, by any means, confusion with the establishment, products, or industrial or commercial activity of a competitor.
  - B. Allegations contrary to the truth in the practice of trade and which is the nature of the removal of confidence from a competitor's establishment, products, or industrial or commercial activity.
  - C. Statements or allegations whose use in trade would mislead the public regarding the nature of the goods, the method of their manufacture, their characteristics, their powers of use or their value.
12. The decisions of the Jordanian Court of Cassation in its legal capacity No. 3388/2008 (a five-year body), dated 9/7/2009, as well as decision No. 1916/2008 (a five-year commission), dated 2/6/2009, Adalah Center Publications.
13. Egyptian Cassation No. 62 years 25 BC session 25/6/1959, Q10, p. 505, referred to in Ahmed Hosni, Commercial Court of Cassation, the principles decided by the Court of Cassation in fifty years (1931-1981), Ma'arif Institute, Alexandria, p. 29.

14. Ziada, Ahmad and Ibrahim Al-Amoush, Al-Wajeez in Jordanian Legislation, 1st Edition, Wael Publishing, 1996, p. 112.
15. Which has become a “permanent” law according to the declaration that temporary law no? (43) Of 1976 shall be considered permanent law, which was published on page No. 829 of the Official Newspaper No. 4106 dated 3/16/1996 AD.
16. Helou Abu Helou, “The Unlawful Competition Lawsuits in Jordanian Law No. 15 of 2000,” p. 46.
17. Al-Baroudi, Ali, Principles of Commercial and Maritime Law, [dt], University Press, Alexandria, [dt], p. 180.
18. Helou Abu Helou, “The Unlawful Competition Lawsuits in Jordanian Law No. 15 of 2000,” p. 42.
19. See: Josserand: n172; Lalou: p.503 sq., Referred to by Joseph Samaha Nakhleh, Unlawful Competition: A Comparative Legal Study, i. 1, Ezz El-Din Foundation for Printing and Publishing, Beirut, 1991, p. 130.
20. Joseph Samaha, Unlawful Competition: A Comparative Legal Study, p. 130.
21. Article (66/2) of the Jordanian Civil Code stipulates these standards by saying, “The use of the right is unlawful a- if the intent to infringement is present, b- if the desired interest from the act is unlawful. C- If the benefit from it is not proportional to what happens to others D- If what happened to him exceeds custom and habit”.
22. The Jordanian Court of Cassation confirmed this meaning as it ruled, “If the holder of the right to use it in a way that has nothing other than harming the other contractor or obtaining a benefit in a manner tainted with bad faith, it is considered arbitrary in the use of his right”, Discrimination Rights No. 168/78, Adalah Publications.
23. Yunus, Ali Hassan, *ibid*, p. 135.
24. Hamdan, Maher Fawzi, Trademarks, University of Jordan Publications, Amman, 1999, p.73.
25. Yunus, Ali Hassan, *ibid*, p. 146, Helou Abu Helou, *ibid*, p. 43.
26. Helou Abu Helou, *ibid*, p. 43.
27. Al-Ghazzawi, here going, *ibid*. P. 48.
28. The Egyptian legislator did not stipulate this criterion, but rather it was mentioned by the Jordanian legislator only, as he considered that the right holder had transgressed what was customary and customary when using his right as arbitrary.
29. Rana Ajwa, “Civil Protection of the Corporate Elements of the Business from Unlawful Competition in Jordanian Law Compared to International Agreements”, PhD Thesis, Amman Arab University for Graduate Studies, Amman, 2007, p. 195.
30. Joseph Samaha, *ibid*, p. 132, Alia, Samir, Fundamentals of Commercial Law, Edition 2, University Foundation for Studies, Publishing and Distribution, Beirut, 1996, p. 327.
31. Helou Abu Helou, *ibid*, p. 39.
32. Roubier: *Ibid*; Mermilliod: *Ibid*, citing Joseph Samaha, *ibid*. P. 132.
33. Yunus, Ali Hassan, *ibid*, p. 18.
34. Joseph Samaha, *ibid*, p. 133.
35. Dewidar, Hani, Introductions to Commercial Law, Artistic Radiation Library, 1993, No. 278, p. 264.
36. Yunus, Ali Hassan, *ibid*, p. 138.
37. Al-Arini, Muhammad, Muhammad, and Wafa Galal, Commercial Law: Business - Merchants Commercial Shop, University Publications House, Alexandria, Egypt, 1998, p. 388.
38. Yunus, Ali Hassan, *ibid*, p. 139.
39. Joseph Samaha, *ibid*, p.88.
40. Yunus, Ali Hassan, *ibid*, p. 139.
41. Al-Ghazzawi, here, *ibid*, p. 30.
42. Yunus, Ali Hassan, the *ibid*, pp. 139-140, Taha, Mustafa Kamal, Commercial Law, the *ibid*, pg. 561, Al-Arini, Muhammad Farid, and Muhammadin, Wafa Jalal, Commercial Law, *ibid*, p. 390.
43. Al-Arini, Muhammad Farid, Muhammad, and Wafa Jalal, Commercial Law, *ibid*, p. 394.
44. Yunus, Ali Hassan, *ibid*, p. 148.
45. The Authority is considered the subject of the lawsuit and a condition for its acceptance, and no appeal is accepted from a person who has no interest, who is not sentenced ....” Jordanian Court of Cassation (Rights) Decision No. 3059/2011 (Five-Year Commission) dated 01/23/2012, Adalah Publications.
46. Article 3/1 of the Code of Civil Procedure and its amendments, No. 24 of 1988, published on page No. 735, of the official newspaper No. 3545 dated 4/2/1988, Adalah's Publications.
47. Civil cassation: 6/10/1956 year 17 No. 101, p. 723, referred to in Samiha al-Qalioubi, *ibid*, p. 414.
48. The decision of the Jordanian Court of Cassation in its legal capacity No. 1057/2006 (a five-year body) January 19 2006 Adalah Center Publications.
49. Mustafa Kamal Taha, *ibid*, p.625.
50. Al-Qalioubi, Samiha, *ibid*, p. 413.
51. Alia, Samir, *ibid*, p. 326.
52. Published on page no. (735) of the issue of the official newspaper No. (3545) dated 2/4/1988, and its latest amendments are Law No. (16) of 2006 published on page No. (752) of the number of the official newspaper No. (4751) on 3/16/1996. Adalah Publications.
53. Published on page no. (135) of the number of Official newspaper No. (1102) dated 3/16/1952, and its latest amendments are Law No. (30) of 2008 published on page (2031) of the number of Official newspaper No. (4910) on 1/6/ 2008. Adalah Publications.

54. Amman Court of Appeal Decision No. 38/2003 (Tripartite Commission), dated 2/6/2003, Adalah Center Publications.
55. Al-Sarhan, Adnan, and Khater, Nuri, *Explanation of Civil Law: Sources of Personal Rights (Obligations): A Comparative Study*, House of Culture, Amman, 2009, p. 466.
56. Al-Qalioubi, Samiha, *ibid*, p. 414.
57. Helw Abu Helou, *ibid*, p. 273.
58. Article (266) of the Jordanian Civil Law, corresponding to Article (221/1) of the Egyptian Civil Code, which states that "If compensation is not determined in the contract or stipulated in the law, then the judge is the one who assesses it, and compensation includes the loss owed to the creditor, Provided that this is a natural result of failure to fulfill the obligation or delay in fulfilling it ...".
59. Joseph Samaha, *ibid*, p. 101.
60. Ziada, Tariq, and Victor Mukarbal, *ibid*, p. 113.
61. Al-Khouli, Aktham, *ibid*, p. 395.
62. Al-Arini, Muhammad Farid, Muhammad, and Wafa Jalal, *ibid*, p. 396.
63. In terms of comparative legislation, Article 169 of the Egyptian Civil Code stipulates that "if there are multiple persons responsible for a harmful act, they are jointly committed in their obligation to compensate the damage, and the liability is equal between them, unless the judge determines each of them's share in compensation."
64. Corresponds to Article (2/171) of the Egyptian Civil Code and its amendments no. (131) for the year 1948, in which it is stated: "Compensation in cash is estimated that, depending on the circumstances and based on the request of the injured, the judge may order the restoration of the situation to what it was, or decide to pay A specific matter related to the unlawful act as compensation," Adalah Publications.
65. Al-Khouli, Aktham, *ibid*, p. 494.
66. Article (11) of the Jordanian Trade Names Law.
67. Yunus, Ali Hassan, *ibid*, p. 273.
68. Article 3 of the Unfair Competition Law and Trade Secrets permits the business owner to request precautionary seizure on relevant materials as long as there is a possibility that the evidence of competition may disappear or be destroyed, as long as the appearance of the environment presented by the appellant proves this danger ... and precautionary seizure occurs in the case of allegation of unfair competition for all the allegedly counterfeit materials and products in accordance with Article 3 of the Unfair Competition Law, and as long as the Court of First Instance took this into account, therefore its decision is correct ..."Jordanian Court of Appeal Decision No. 38/2003 (Tripartite Panel) Date 2/6/2003, Adalah Center Publications.
69. Joseph Samaha, *ibid*, p. 119.

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