

*Dr. Eng.  
Nader Riad*

**PROTECTION OF INDUSTRIAL & INTELLECTUAL PROPERTY  
A GUARANTEE FOR CONSUMER RIGHTS**

**BY DR. NADER RIAD**

**Supplement of 10/4/1995 Edition**

## **CONSUMER PROTECTION & COMMERCIAL FRAUD**

### **1- Consumer Protection:**

Protection of consumers in its simplified sense is the protection of their body and soul, by freeing commodities of all kinds of risks and hazards, such as:

Electrification by electric appliances, food-poisoning, gas-suffocation from cookers and water boilers, suffering lifetime infirmity, or even death, due to gas cylinder blasts or explosion of fire extinguishers, ... etc.

Protection of consumers also means protection of their money from waste and squander, and guaranteeing that commodities are functioning and lasting for proper periods, with possible maintenance and repair. Also, consumers should have access to electrical appliances that are power-saving and the like.

Protection of consumers extends to cover protection of industrial and intellectual property rights and writing. Only the owner is entitled to attribute to himself an industrial or intellectual property right.

Here, he should be protected from any violation. Only he is entitled to introduce amendments or changes. Anyone else needs a prior written consent from the owner, in order to do so.

Only the owner is entitled to benefit from proceeds of his idea or invention. Upon his death, only his heirs become entitled to continue benefiting. Protection of inventors, writers, artists and scientists covers many classified items, such as engineering designs, all sorts of books, paintings, engravings, sculpture, architecture, plays, geographical maps, manuscripts, scientific theses including studies and researches, computer programmes, lectures, articles, poetry, prose, music, ... etc.

## **2- Concept of Commercial Fraud & its Incrimination:**

In general, fraud means any alteration, modification or mutilation of the essence of a substance or commodity, or its natural formation, before putting it on sale, leading to altering its basic characteristics, hiding its defects, or rendering it similar to another different commodity, all with the aim of making a material profit.

Jurisprudence and justice both agree that fraud is any change, befalling a commodity or product, whether by:

- (1) Introducing new elements to its natural or original composition, or mixing it with other substances of lesser quality, such as mixing mineral water with tap water;
- (2) Altering the form of the commodity;
- (3) Reducing the weight of the commodity, or extracting one of its basic elements.

Both national and international laws seek to protect human beings from such fraud through the incrimination of commercial fraud in all its forms.

However, laws alone cannot provide full protection to consumers, particularly in developing countries, where rates of illiteracy are high. Here, naiveté and good intentions lead often to falling victims for fraud and exploitation.

Moreover, the scope and realm of distributing fraudulent commodities surpass the simpletons and reach circles of people of certain intellectual levels, besides those lacking in culture and basic knowledge.

### **3- Impacts of Commercial Fraud:**

Commercial fraud has its grave consequences and negative impacts on both individuals and society. Fraudulent commodities and products are highly hazardous to the health and integrity of the Egyptian consumer, as well as to his security and safety.

Commercial fraud causes serious harm to the entire society, jeopardizing its growth and progress, especially when the phenomenon is aggravating. Then, it should be confronted at all official and popular levels.

The widespread phenomenon of commercial fraud is of a main concern to those involved with human health.

The phenomenon has greatly increased, due to material greediness among tradesmen, workshop owners, factory owners, distributors and agents, especially in the light of the many modes of fraud.

### **4- Expanding Circle of Commercial Fraud in Egypt**

In recent years, the circle of fraud in Egypt has expanded to cover a long list of commodities, starting from meat, all the way up to table salt, as well as milk and dairy products, flour, tea, cement, iron, electric wires, brake pads, fire extinguishers, gas cylinders, car filters and other items, apart from violations of writing, invention, creation and design rights.

Within the past three years, a significant increase has occurred in number of court cases of commercial fraud, amounting to nearly seven thousand, yearly.

Some unscrupulous elements, devoid of any professional or ethical principles, have imagined that free economy means chaos and the liberation of economic activities by the state means a free hand to jeopardize the health, integrity, security and safety of citizens, with doors open wide to dump the market with high-profit commodities, at the expense of harming our national economy, as well as honest citizens, tradesmen and producers.

Matters have reached a point that can neither be ignored, nor taken lightly, given what is befalling our patient people. Silence in this case is as big a crime as that committed by fraudulent elements that have lost their conscience.

Each day, we read in papers about bloodcurdling cases of commercial fraud in every item .. thousands of tons of meat and foodstuff not fit for human consumption .. elementary pupils, in the prime of their life, falling victims of bad food .. medication sought by the sick, only to prompt their death .. table salt, which is essential in every plate, being extracted from stagnant water and offered to people, leading to kidney failure and other fatal diseases .. even the formaldehyde used for preserving corpses in hospital morgues being added to milk and dairy products to extend their expiry date .. both the dead and the living to these frauds are the same.

Lists of fraud cases that have been discovered are endless, including other items, such as car spare parts and brake pads, which are the safety valve for drivers and pedestrians, alike. Also, we hear of blasting stoves and gas cylinders, leading to the death of many innocents.

## **5- Shura Council Report**

A short while ago, the Shura Council decided to study this phenomenon and how to protect the consumer. According to the report prepared by Shura Council Committee for Financial & Economic Affairs, most recent data, derived from minutes of control agencies, during the month of October, were as follows:

- 26,357 police reports, with confiscated items worth EGP 14,168,804.-
- Confiscated food commodities alone worth EGP 7,599,940.-
- During October alone, 16,508 police reports were made in markets: 991 for commercial fraud, 1994 for selling at higher prices than quotations, 5985 for failing to advertise and 2667 for lapsed expiry dates.

Concerning foodstuffs, during the same month, 2332 tons of flour, 160 tons of sugar, 725 tons of rice, 720 tons of macaroni, 70 tons of dairy products, 24 tons of tea and 2431 tons of table salt were all confiscated for being unfit for human consumption.

Concerning non foodstuff commodities, 91 tons of petroleum substances, 1000 tons of reinforced iron & cement, 49,560 meters of electric wires & cables, 54,338 car spare parts and 1593 liters of detergents were all confiscated for not complying with standard specifications, given hazards arising from their use by consumers.

The Shura Council report emphasizes the importance of Ministerial Arrêté No. 113 for 1994, issued by the Minister of Supply on 21/9/1994.

This arrêté is a basic instrument for confronting the phenomenon of fraud and corruption of foodstuff and other commodities, hence, providing protection for consumers. It aims at achieving public interest for everybody, through the

protection of the national production and national income. It prohibits circulation of commodities of unknown sources, or those lacking certificates of origin. Thus, it has become compulsory for the Commercial Sector to deal in legitimate imported commodities, or locally produced commodities of known sources. Furthermore, the arrêté obliges the Trade Sector to verify the integrity of circulating commodities. It also aims at protecting national production and raising its quality, through the prohibition of handling items of unknown sources that are produced by non-licensed factories, or items produced under names and trade marks that belong to others.

Among other objectives of Arrêté No. 113 is to protect honest tradesmen and importers from those seeking to make illicit profits, without abiding by professional ethics.

There remains the more sublime objective of this arrêté, namely the protection of the consumer. Unfortunately, in Egypt and in many other developing countries, the consumer remains to be the weaker party in this situation. Through this arrêté, the consumer will be able to obtain fine commodities, fit for human consumption and complying with specifications.

## **6- Amendment of Commercial Fraud Law**

The People's Assembly has agreed to amend the Commercial Fraud Law, introducing altogether new texts and provisions with harsher punishments for this atrocious crime, committed against the Egyptian people. A hand of iron should strike against any fraudulence, in protection of consumers, good tradesmen and honest factories, while purging the market and society of a long-lasting corruptive and corrupted mafia.

## **7- Main Reasons Leading to Spreading of Commercial Fraud**

- 1- Non-licensed productive sites that exercise many activities characterized by fraudulence, simulation and low-standard manufacturing, away from the know-how of the industry. Hazards of such sites include:
  - Production of low-quality commodities that do not comply with specifications;
  - Production of products that pose hazards on health, integrity, security and safety of consumers;
  - Production of products that harm the reputation of our local products;
  - Production of products that compete dishonestly with good products and obstruct their circulation;
- 2- Productive sites that have obtained preliminary consent and are producing without the minimum degree of technical capacities and commercial and financial cadres that could qualify them to produce commodities and products complying with specifications. These sites are no less dangerous than the previous ones;
- 3- Importation through illegitimate channels;
- 4- Lack of awareness among the majority of consumers;
- 5- Low incomes and higher livelihood burdens, falling on a large category of consumers and making them seek the cheaper, regardless of quality;



- 6- Bad exploitation and mal-application of state policies and concepts aiming at developing the national economy, facilitating free trade and encouraging investment;
- 7- Confining standardization to security-, safety- and general health commodities, although this should apply to all raw materials and products.

### **8- Laws for Protection of Industrial & Intellectual Property**

- The Trade Mark Law was enacted in 1939, followed by Law for Industrial Designs, Models & Patents in 1949. Ever since then, these laws have not been updated to keep abreast with commercial and industrial developments witnessed on the international arena. This matter calls for redress, in order to catch up with advanced countries;
- Consequently, there is conflict between some articles of laws and executive statutes applicable in Egypt and articles of international agreements, to which Egypt has acceded and has become committed to (GATT – TRIPS ) (protection period, for example);
- There are some proposals for a better performance of this department, namely:

#### **A- Trade Marks**

- 1- Systems for filing information and documents need to be updated, while resorting to trained labour in this concern, in order to render operations of inspection, research, classification and documentation swifter and more accurate;

- 2- Holding more training courses and workshops for employees, inside and outside Egypt, in order to acquaint them with the latest amendments in laws and concepts of industrial property, worldwide;
- 3- Employees handling trade marks and models should master the French language, while those handling patents should master the English language. Reinforcement courses could be held in this domain, to guarantee an appropriate standard of external correspondence and communication with countries acceding to the Paris Convention.

#### B- Patents

There is a draft law for the amendment of the Patent Law, including the following:

- 1- Expanding the concept of protection, in order to include realms of modern technology, such as genetic engineering and bio-technology;
- 2- Introducing “utility models”, which are second-class patents that are not subject to the provision of invention, although it does include partial innovation. Here, manufacturing processes are cut down, or a machine is made to function better, a matter that will be beneficial for the Egyptian inventor, as it promotes technological developments;
- 3- Setting the protection period at twenty years from the date of applying for a patent;
- 4- Protecting the final product, together with its mode of preparation.

#### C- Industrial Designs & Models

The currently applied system does not include inspection. The Department functions in the same way as our Real Estate &

Documentation Department, where applications for patents are received, certificates automatically issued within two weeks and publication made in the gazette, without publishing the structure of the model, for the sake of confidentiality. No model could be perused without a court order. Plaintiffs could resort to court and prove their seniority in registration;

Some simulators have manipulated this situation to carry out commercial fraud and illegitimate competitiveness, by registering the patents of others;

There is a draft law for the amendment of the Law for Designs & Models, in order to introduce an inspection system that allows objection, and to extend the protection period up to ten years;

We opt for the proposal of unifying all three departments into an independent body, chaired by one person at the level of a minister. This body is to be designated “The Egyptian Authority for Industrial Property Protection”, same as in most countries of the world, where one department covers patents, industrial models and trade marks.

### **Judiciary Litigations**

Slackness of judiciary procedures in courts has become a national problem, not only in the field of protecting industrial property, but also in undermining the reverence of the judiciary system itself.

It is useless to amend laws and modernize departments, so long as the owner of the trade mark, model or patent is not well protected, where his rights

get lost in courts, while the owner of the fake item is distributing it and making a fortune.

It is impelling to have strict and deterrent court rulings, in order to avoid such criminal acts. The matter calls for reconsideration of penalties stipulated in current laws for protection of industrial property in Egypt. These laws need to be harsher, same as in case of the law for protecting writers, where fines have been lifted from EGP 200 to EGP 10,000, and up to EGP 50,000 upon recurrence, together with an imprisonment sentence.

We should also lay down a future plan for reducing the litigation period. In case of industrial property, in particular, we propose the following:

- 1- Establishing specialized court departments for litigations over industrial and intellectual property;
- 2- Opening the field in front of the National Institute for Training Judges to specialize in laws and concepts of industrial property;
- 3- Expanding in teaching laws of industrial property protection in Egypt and their relation with the outside world, through international agreements, in curricula of faculties of law and commerce in Egyptian universities;
- 4- Introducing this field of specialization in curricula of higher studies in faculties, together with diplomas in this field;
- 5- Holding seminars and conferences that would host organizations and agencies specialized in this realm, a matter that would raise awareness on the importance of industrial property.

### **Role of Industrial Property Protection in Promoting Development**

Egypt, which has been the first among Arab countries to accede to international agreements, and which has set various laws for the protection of industrial property more than fifty years ago, is today way backward in its awareness of the importance of such protection in developing the national industry and national economy;

Many intellectuals and officials are not aware of the importance of this protection, thinking that these laws were enacted to protect interests of industrial states, at the expense of the poorer states. This is totally against what Egypt should strive to do. It should participate in international activities, as a full-fledged partner, who is qualified and keen to apply economic discipline, internally, and to urge other countries to also abide by that, in accordance with the "Principle of Reciprocity".

### **For the Promotion of Egyptian Industries**

It is necessary to plan for utilizing information obtained from abroad, by virtue of international agreements, and collected at the Bureau of Patents, where they become state property upon the lapse of ten years;

It is necessary to extend bridges of mutual knowledge between research centres in our universities and the Bureau of Patents, in order that Egyptian students may get acquainted with the latest developments of the human mind, in fields of science and technology, all over the world;

It is important for industrial centres to benefit from patents that become public property or that are subject to compulsory licence;

Finally, if we want Egypt to play a future leading role in the realm of technology, it is necessary to set a comprehensive reform plan for education. For a new generation of inventors to emerge in Egypt, it is necessary to raise the standards of education. Within this context, we propose the following:

- 1- Reviewing all curricula and methods of the educational process, where those depending on memorization and dictation are to be minimized and replaced by deduction and discovery;
- 2- Developing capacities of observation, conclusion and creativity in Egyptian children, from infancy;
- 3- Encouraging inventions, through holding contests, inside schools and outside in science clubs and youth centres;
- 4- Raising awareness, in all educational stages, on concepts of industrial property and its close relation to economic growth;
- 5- Linking between inventions and national industry needs, where industrial centres would finance and direct researches towards fields leading to industrial development and better performance.

This is what Far East countries did, when they set technological development as their national goal and laid down short- and long-term plans. This has ended in a flourishing economy, multiplied resources and a powerful stance vis-à-vis Western countries that have been monopolizing these fields, ever since the industrial revolution.

## **9- Means of Protecting Consumers**

- 1- One of the axioms for the protection of consumers is to verify the soundness of advertisements on products, be they audio-visual or printed. Owners of commodities pull all kinds of tricks and illusions, displaying their advertisements in a scientific or informatory framework, as if issued by state officials or verified press coverage.

Undoubtedly, verifying the soundness of advertisements is not easy, but, still, it is not impossible. This could be done through abiding laws to both advertising and advertised parties.

Such laws exist in many developing countries, not only in advanced countries.

- 2- Stipulating the necessity of having certificates, experimental results or laboratory analyses, to which the public has access, or else the possibility of referring matters to trustworthy scientific authorities for verification of data and product components. Quality certificates from the acknowledged national authorities concerned should be a prerequisite for putting products on the market, or even advertising for their appearance;

An important example of this is commodities related to health, integrity, security and safety of the Egyptian consumer, such as foodstuffs, electrical appliances, fire extinguishers, gas cylinders, paints, detergents, ... etc.

- 3- Scientific and national authorities concerned should succeed in acquainting the public with results of inspections and tests on

commodities, which are directly used by consumers and that could be hazardous to them;

- 4- The government should apply stricter control measures on production and distribution outlets, and should spread them throughout the country, not only in the capital and big cities. This could only be done by enhancing these outlets with technical, human and material assistance that would help them spread;
- 5- Considering crimes touching the health and integrity of citizens, as well as all kinds of commercial and industrial fraud, as dishonourable crimes. Perpetrators punished for such crimes should have their names published in papers. Such cases should fall within the competence of special courts of swifter legal proceedings;
- 6- Establishing a higher council for consumer protection, involving all authorities concerned, and encouraging the formation of associations for consumer protection, all over the country;
- 7- Reconsidering Law No. 354 for 1954 for protecting writers, amended by Law No. 14 for 1968 and Law No. 34 for 1975, with the aim of imposing harsher punishments and penalties, in line with the widespread and aggravated assaults on literary work and invention rights.



### **Recommendations**

- 1) The widespread phenomenon of commercial fraud in Egypt poses a threat on the integrity and progress of our society. Hence, it is necessary to confront it, not only at the official level, but also at the popular level;
- 2) All media channels are to be mobilized, in order to highlight this phenomenon and its impacts, while raising the awareness of consumers;
- 3) Setting control measures on advertising, in order to guarantee the validity and accuracy of data and information contained in advertisements;
- 4) Considering crimes jeopardizing the health and safety of citizens, as well as all sorts of commercial and industrial fraud, as dishonourable crimes. Perpetrators punished for such crimes should have their names published in papers and in audio-visual media channels. Such cases should fall within the competence of special courts of swifter legal proceedings;
- 5) Establishing a higher council for consumer protection and encouraging the formation of associations for consumer protection, all over the country;
- 6) Reconsidering laws pertaining to protection of literary works and inventions;
- 7) Governmental control should cover the whole country, not only the capital and big cities. Control authorities should be assisted in implementing their role.