

**Legal Protection for the Aggrieved Party Against Unfair Comparative
Product Experiments
(An Analytical Study)**

**Proteção jurídica da parte lesada contra experiências comparativas
injustas de produtos
(Um estudo analítico)**

Farsat Rasool Ahmed

Assist. Lecturer of Law, Faculty of Law, Political Science and Management

Soran University

Soran, Erbil-Kurdistan, Iraq

farsat.ahmed@soran.edu.iq

<https://orcid.org/0009-0009-8426-9069>

Bashdar Abdullah Mohammed

Lecturer of Law, Faculty of Law, Political Science and Management

Soran University

Khalifan - Soran, Erbil-Kurdistan, Iraq

Bashdar.muhammed@soran.edu.iq

<https://orcid.org/0009-0004-7808-4459>

Bzhar Abdullah Ahmed

Assist. Prof. Dr., Lecturer of Law, Faculty of Law, Political Science and Management

Soran University

Soran, Erbil-Kurdistan, Iraq

Bzhar.ahmed@soran.edu.iq

<https://orcid.org/0000-0002-4365-8529>

Talib Braim Sulaiman

Prof. Dr., Lecturer of Law at Faculty of Law, Political Science and Management

Soran University

Erbil-Kurdistan, Iraq

Talib.sulaiman@soran.edu.iq

<https://orcid.org/0009-0007-2512-4391>

October 2025

ABSTRACT: Comparative experiments involve research and laboratory studies that evaluate different products performing the same function in the market. These analyses are typically carried out by specialized and accredited institutions—such as industry publications or consumer protection organizations. They serve as a vital tool for providing consumers with objective and accurate information about available products. These comparisons are conducted for informational and educational purposes, not commercial gain, enabling consumers to make informed purchasing decisions.

However, when comparative experiments lack neutrality or impartiality, their credibility is undermined. In Iraq and the Kurdistan Region, no national organization currently conducts such tests to educate consumers or protect them from substandard quality and commercial fraud. Additionally, there is an absence of legislative regulation covering comparative testing, whether within a dedicated legal framework or under broader consumer protection laws. Therefore, the study aims to clarify the concept of comparative experiments and identify the legal basis of compensation claims, as well as their application according to legal standards. To this end, the study follows an analytical deductive approach to analyze legal texts and jurisprudential opinions and to derive the legal basis for compensation claims. The study concludes with a set of findings and recommendations. The most important findings are: The legal basis for compensation lies in tort liability (fault-based) and Unfair competition also serves as a basis for compensation when there is agreement or collusion between the authorities conducting the comparative tests and the production companies. It is also revealed that comparative experiment in the EU is not regulated under a standalone law, however its conduct and use are indirectly regulated through various frameworks. Among the key recommendations, the study urges that the Iraqi legislature regulate provisions concerning comparative testing—either by integrating them into private law or by adding several paragraphs to Article 5 of the Consumer Protection Law—ensuring both formal and substantive requirements are met.

KEY WORDS: comparative experiments; comparative advertising; products; commercial fraud; unfair competition; compensation.

RESUMO: As experiências comparativas envolvem pesquisas e estudos laboratoriais que avaliam diferentes produtos que desempenham a mesma função no mercado. Essas análises são normalmente realizadas por instituições especializadas e acreditadas, como publicações do setor ou organizações de proteção ao consumidor. Servem como uma ferramenta vital para fornecer aos consumidores informações objetivas e precisas sobre os produtos disponíveis. Essas comparações são realizadas com fins informativos e educativos, e não para obter ganhos comerciais, permitindo que os consumidores tomem decisões de compra informadas.

No entanto, quando as experiências comparativas carecem de neutralidade ou imparcialidade, a sua credibilidade é comprometida. No Iraque e na região do Curdistão, nenhuma organização nacional realiza atualmente tais testes para esclarecer os consumidores ou protegê-los contra produtos de qualidade inferior e fraudes comerciais. Além disso, há uma ausência de regulamentação que abranja os testes comparativos, seja dentro de um quadro jurídico específico ou no âmbito de leis mais amplas de proteção ao consumidor. Portanto, o estudo visa esclarecer o conceito de experiências comparativas e identificar a base jurídica dos pedidos de indemnização, bem como a sua aplicação de acordo com as normas jurídicas. Para tal, o estudo segue uma abordagem analítica dedutiva para analisar textos legais e decisões jurisprudenciais para extrair o fundamento jurídico dos pedidos de indemnização. Termina com um conjunto de conclusões e recomendações. As conclusões mais importantes são: A base jurídica para a indemnização reside na responsabilidade civil (baseada na culpa) e a concorrência desleal também serve de base para a indemnização quando existe acordo ou conluio entre as autoridades que realizam os testes comparativos e as empresas produtoras. É também revelado que a experiência comparativa na UE não é regulamentada por uma lei autónoma, mas a sua realização e utilização são indiretamente regulamentadas através de vários quadros. Entre as principais recomendações, o estudo insta o legislador iraquiano a regulamentar as disposições relativas aos testes comparativos — seja integrando-as ao direito privado, seja acrescentando vários parágrafos ao artigo 5.º da Lei de Proteção ao Consumidor —, garantindo que os requisitos formais e substantivos sejam cumpridos.

PALAVRAS-CHAVE: experiências comparativas; publicidade comparativa; produtos, fraude comercial; concorrência desleal; indemnização.

TABLE OF CONTENTS:

- 1. Introduction
 - 1.1. Research Topic and Its Importance
 - 1.2. Statement of the problem
 - 1.3. Research Questions
 - 1.4. Literature Review
 - 1.5. Research Scope
 - 1.6. Research Methodology
 - 1.7. Structure of the Research
- 2. The Essence of Comparative Experiments
 - 2.1. The Concept of Comparative Experiments
 - 2.1.1. Definition of Comparative Experiments
 - 2.1.2. Conditions for Comparative Experiments
 - 2.2. The Extent to Which the Results of Comparative Experiments Can Be Used in Comparative Advertising
 - 2.2.1. Distinguishing Comparative Experiments from Comparative Advertising
 - 2.3. The Possibility of Using Experimental Results in Comparative Advertising
- 3. Legal Protection of the aggrieved parties from Unlawful Comparative Experiments
 - 3.1. The Compensation Claim Against Entities Conducting Comparative Experiments
 - 3.1.1. The Legal Basis for a Compensation Claim Against Comparators
 - 3.1.2. Elements of the indemnity claim
 - 3.2. Compensation for the Aggrieved Party for Damages Resulting from Unlawful Comparative Experiments
 - 3.2.1. Monetary Compensation
 - 3.2.2. Non-Monetary Compensation
- 4. Conclusion
- List of References

1. Introduction

1.1. Research Topic and Its Importance

Nowadays, the world has experienced fast and important developments across various commercial, industrial, and service sectors. This progress has provided businesses with vast opportunities for expansion, empowering them to enter new markets and found a global presence. The growing diversity of products, coupled with the lessening differences in quality and pricing, has established a pressing need for effective strategies to promote and assess these products.

It is beyond doubt that the comparative method of carrying out scientific experiments to compare products or services is one of the modern and advanced approaches, as its aim lies in safeguarding the consumer and how to make the right decision in selecting products according to full conviction without being affected by deception, misinformation, confusion and vagueness. It also safeguards against commercial fraud by companies producing goods and providing services, and pushes companies towards innovation and continuous enhancement, and as the productive market continues to develop, the significance of comparative experiments will continue to increase, and this is the subject of our study, which will be examined later in this study.

The subject of comparative experiments is of great importance. Firstly, it is closely related to our daily lives, especially in the field of consumption and product usage. Its significance lies in educating consumers and safeguarding them from commercial fraud by production and distribution companies. Consequently, most countries now have national bodies and laboratories devoted to thoroughly examining and regulating goods and services in the market. These institutions assess product quality and ensure compliance with international standards. The findings from these examinations are then published in newspapers and specialized magazines to raise consumer awareness and promote informed decision-making.

1.2. Statement of the problem

The importance of these experiments lies in educating consumers about the goods and services available in the market. This highlights the need for professional national organizations devoted to consumer protection, defending consumer rights, and inhibiting commercial fraud. Nonetheless, Iraq and the Kurdistan Region currently lack a national organization that carries out such experiments to notify consumers and protecting them from low-quality products and fraudulent practices. This absence presents a pressing issue, particularly given the region's and Iraq's transition to a market economy and the growing role of the private sector in the production and distribution of goods and services. A more critical concern is the lack of legislative regulation regulating comparative experiments. Providing consumers with reliable

information about market offerings is vital for enabling informed purchasing decisions. This regulatory gap exists either as a result of the absence of an independent legal framework or insufficient provisions within existing consumer protection laws, such as Iraq's Consumer Protection Law No. (1) of 2010, which mainly relies on general legal principles. Tackling these issues and proposing suitable solutions will be the focus of our study in this modest endeavour.

1.3. Research Questions

The issue of the legal regulation of comparative experiments in Iraqi law raises several questions at both legal and practical levels. This research seeks to address the following key questions:

1. What is meant by comparative experiments, and what are their necessary conditions?
2. To what extent could the results of comparative experiments be employed in comparative commercial advertisements?
3. What legal safeguards are available to aggrieved parties against illegal comparative experiments?
4. What is the legal basis for compensating an aggrieved party for damages resulting from comparative experiments?
5. What are the possible ways to compensate those harmed by the consequences of unlawful comparative experiments?

1.4. Literature Review

After thoroughly researching the title of this study and related subjects, we were unable to find any identical or similar researches in either Arabic or foreign languages. This, in our view, underlines the importance of our study, as it serves as a foundational study on the comparative experiments of products in the market.

1.5. Research Scope

The scope of this research is restricted to the legal regulation of comparative experiments in Iraqi law and EU law, particularly in light of the general provisions of the Iraqi Civil Code No. (40) of 1951 and the specialized regulations outlined in the Iraqi Consumer Protection Law No. (1) of 2010. The research also takes French law into account where relevant and necessary.

Accordingly, criminal laws and other legal provisions falling within the domain of public law are beyond the scope of this study.

1.6. Research Methodology

This research relies on an analytical approach to investigate legal texts, the legal foundations of comparative experiments, and the opinions of jurists insofar as they relate to the subject of the research. Moreover, the research adopts a deductive approach to derive the legal basis for these aspects and their impacts on the general rules and provisions of the Consumer Protection Law relevant to our study.

1.7. Structure of the Research

To accomplish the intended objectives and address the issue at hand, the research is structured as follows: after the introduction, it is divided into two main articles followed by a conclusion.

The first chapter examines the nature of comparative experiments through two key aspects. The first explores the concept of comparative experiments, while the second differentiates them from comparative advertising and assesses the possibility of employing experimental results in such advertising.

The second chapter examines the legal protection of aggrieved parties from unlawful comparative experiments through two key aspects. The first section addresses the right to claim compensation for damages resulting from such experiments, while the second focuses on the methods of compensating aggrieved parties for these damages. The study concludes with a summary of key findings and a set of recommendations.

2. The Essence of Comparative Experiments

Comparative experiments serve as an essential tool for providing consumers with precise information about goods and services, allowing them to make informed choices among available choices. They also play a critical role in safeguarding consumers from commercial fraud by production companies. Comparative experiments have a distinct concept that sets them apart from other forms of comparison.

European Directive 2005-25 of 11 May 2005 on unfair commercial practices under Article 2 defines consumer as “any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession”.

However, it should be noted that the European legislator has excluded from the definition of “consumer” any legal person acting for non-professional purposes, even though such persons may still require protection in their dealings with professionals.

Paragraph (5) of Article 1 of Consumer Protection Law No. 1 of 2010 defines the concept of “consumer” as: “a natural or legal person who purchases goods or services for the purpose of benefiting from them.”

To explore this subject, this chapter is divided into two key sections. The first section examines the concept of comparative experiments, while the second section emphasizes on distinguishing comparative experiments from comparative advertising and assessing the possibility of employing experimental results in comparative advertising.

2.1. The Concept of Comparative Experiments

To explain the concept of comparative experiments, this section is divided into two sub-sections. The first section examines the definition of comparative experiments, while the second section focuses on the conditions essential for carrying out such experiments.

2.1.1. Definition of Comparative Experiments

Comparative experiments comprise the use of scientific methods to compare products (both goods¹ and services²). The primary purpose of this approach is to safeguard consumers and enable them to make well-informed purchasing decisions based on full conviction, free from deception, misinformation, confusion, or ambiguity.³

The opinion defines comparative experiments as:⁴ “Scientific or laboratory studies conducted on goods and services placed on the market from different brands, with the aim of evaluating their performance and functions.” However, it is worth noting that this definition does not provide a legal description of the entities conducting comparative experiments, nor does it fully clarify the purpose of such experiments.

¹ Commodities are defined as physical items that could be bought or sold. Goods, as a subset of commodities, involve any tangible products such as clothing, electronics, cars, and food that can be stored and transported from one place to another.

² Services are activities or actions that a particular entity provides to individuals or companies in exchange for a fee. Unlike goods, services are not physical objects; instead, they are processes or actions, such as providing internet services, electricity, water, haircuts, maintenance, and so on. These services cannot be stored and are consumed at the moment they are provided.

³ HELAN ADNAN AHMED MOHAMMED AL-JUBOURI, “Misinformation and Deception or Lying in Commercial Media,” *Journal of the College of Law for Legal and Political Sciences*, 2014, p. 322.

⁴ MOHAMED YASSIN AHMED, *Consumer Protection*, first edition, Khartoum, Dar Al-Kultura, no year, p. 115.

Another definition describes comparative experiments as:⁵ "The comparison of products and services offered, carried out by independent financial and administrative bodies, to assess these products in order to protect the consumer, ensure their rights, and demonstrate the elements of these products along with their feasibility and benefits on an objective and scientific basis." While this definition is more accurate than the previous one, it is still not comprehensive, as it does not reference the publication of comparative experiment results in consumer protection journals.

Among other definitions, comparative experiments are described as:⁶ "Research and laboratory studies conducted on products in the market that perform a single function, sourced from different origins and producers, carried out by consumer protection organizations or specialized bodies such as industry-specific newspapers. The purpose of these studies is to determine which of these products best meets the needs and desires of consumers when the results are published."

This definition is clearer and more accurate compared to the ones previously mentioned. It highlights two key dimensions of comparative experiments:

First: In terms of the entity conducting the comparison, this process is carried out by public or private organizations, as well as by associations dedicated to protecting consumers from deception, misinformation, confusion, or ambiguity.⁷

Second: In terms of the purpose of comparing products available on the market, these comparisons are often conducted for testing or experimentation, with the results being published in specialized journals that focus on consumer affairs.⁸

Regarding the position of the Iraqi legislator on the definition of comparative experiments and their feasibility in Iraq, the Iraqi Consumer Protection Law No. (1) of 2010 does not provide a definition of comparative experiments. Despite the United Nations Guidelines for Consumer Protection (as expanded in 1999), Section II – General Principles (3/f) stipulates: "Freedom to form consumer groups or organisations and other relevant organisations, and the opportunity for them to express their views in decision-making processes affecting consumers." Additionally, no national organization is currently equipped to conduct similar tests in Iraq to educate and protect consumers from substandard, imitation, or fraudulent goods and services that are prevalent in the market. Although the Ministry of Higher Education and Scientific Research established the Center for Market Research and Consumer Protection in 1997⁹ as an official institution to address market and consumer issues at the University of Baghdad, and

⁵ HELAN ADNAN AHMED MOHAMMED AL-JUBOURI, op. cit. p. 320.

⁶ AHMED SAMI MARHOON, "Civil protection resulting from comparative commercial advertising", research published in the *Faculty of Law Journal*, Al-Nahrain University, Vol. 14, No. 2, 2012, p. 4.

⁷ These organizations include: National Laboratoire essais'd et Metrologie in France. The specialties and tasks of this laboratory can be found on its official website <<http://www.lne.eu/index-en>>: Accessed 8/10/2024.

⁸ LAITH AL-RUBAIE, "The Role of the Research Center and Civil Society Organizations in Consumer Protection," a study presented at the *Consumer Legal Protection Symposium held at the House of Wisdom*, Baghdad, 2002, p. 9.

⁹ This center was established in Iraq on 21/8/1997 by order of the Ministry of Higher Education and Scientific Research, under Order No. 212/5542, in accordance with the Regulation of Scientific Research Centers in the Ministry of Higher Education and Scientific Research No. 1 of 1995. For more details about this center and its activities, please refer to the following website: <https://mracpc.uobaghdad.edu.iq> / (accessed 10/10/2024).

despite its goal of developing production and marketing for consumer needs, the center does not actively engage in comparative tests or inform consumers about the advantages and disadvantages of products and services available in the market.

In addition, regarding EU Law, comparative experiment is not defined as a standalone legal concept, however, the notion appears implicitly through rules on conformity assessment, notified bodies, and accreditation, which guarantee that experiments and certification are impartial, competent, and free from conflicts of interest.

Based on the above, it is clear that comparative experiments are one of the most important means of providing consumers with accurate and objective information about the products available in the market. The purpose of such comparisons is not commercial, but rather to inform consumers, enabling them to make informed purchasing decisions. This is achieved through comparative experiments and the publication of their results in specialized consumer protection journals.

From this perspective, we urge the legislator to add a new paragraph to Article (1) of the Consumer Protection Law that includes the definition of comparative experiments. The definition could be as follows: “It is an objective, scientific, and impartial comparison of products in the market from different brands that perform the same function, conducted by independent bodies or associations in the field of production and distribution. The results of these comparisons should be published with the aim of educating consumers, helping them select the appropriate goods or services, and protecting them from commercial fraud.”

2.1.2. Conditions for Comparative Experiments

It could be concluded from the definitions in the first section that, for comparative experiments to be regarded true experiments, the following conditions must be met:

First: Conducting Comparative Experiments on Goods and Services

Comparative experiments include academic or laboratory investigations of goods or services offered by various brands in the market that serve the same function, such as cell phones, televisions, heating systems, food, etc. The goal of these experiments is to determine which brands are most suitable for consumers.¹⁰

¹⁰ ABDULRAHMAN YAHYA MAHMOOD, *The Legal Framework of Comparative Advertising*, Doctora, Soran University, 2023, pp. 84-85.

Secondly: existence of Comparison Element Between Products

Comparative experiments must contain elements of comparison between goods or services from different brands in the market that serve the same function. The purpose is to identify the best option for the consumer, based on various criteria. These criteria may include factors such as price, intrinsic characteristics, product composition, safety aspects, advantages of the product, taste (if the product is food-related), and so on. If these experiments do not involve a comparison of these elements between different brands performing the same function, they are not considered comparative experiments but rather ordinary experiments.¹¹

Third: Impartiality and Independence

The principle of impartiality and independence stipulates that the bodies conducting comparative experiments on goods and services should be completely independent of the production entities. All comparisons carried out by consumer protection associations or national standards, metrology, and quality bodies that involve criticism of goods or services must be published in newspapers and magazines dedicated to consumer protection. Such criticism should be issued by bodies that are entirely independent of the fields of production and distribution, ensuring that their results are neutral and objective. The results of comparative experiments thus serve as a critical source of information for consumers, helping them understand the reality of goods and services available in the market by evaluating their advantages and disadvantages through direct comparison.¹² These organizations and associations must carry out their tasks in an objective manner, free from any personal or subjective influence, in order to protect the interests of consumers and prevent unfair competition. Therefore, vague or subjective comparisons must be avoided, as they do not meet the criteria for objectivity.¹³

However, if these organizations or associations deviate from their neutrality and show bias in favor of one party at the expense of another, undermining the goal of providing consumers with honest and objective information about the advantages and disadvantages of market goods and services, they may incur legal liability and their results may be challenged.¹⁴

It is noteworthy, EU Regulation (EC) No 765/2008 has reiterated this requirement under Article 8/2 which states that "it shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.

¹¹ BAKHTIAR SABER BAEZ, "Comparative Commercial Advertising and its Legality," *Journal of Sharia and Law*, No. 76, 2018, p. 448.

¹² See close to this meaning: BAKHTIYAR SABIR BAEZ, op. cit., pp. 470-471.

¹³ BATOUL SARAWAH ABADI, *Misleading Commercial Advertising and its Impact on the Consumer*, Beirut, Halabi Law Publications, 2011, p. 88.

¹⁴ AHMED ALI SULAIMAN, *Consumer Protection*, first edition, Alexandria, Dar Al-Kitab for Publishing and Distribution, 2004, p. 421.

Fourth: The Purpose of the Comparison is to Protect the Consumer

Consumers have an inherent right to be informed not only by producers but also by consumer protection organizations and associations. The information provided by these organizations is crucial, as they monitor the compliance of products with legal and regulatory requirements and specifications. This information can be disseminated through various means, such as the preparation and distribution of leaflets in newspapers and magazines, or via radio, television, and internet platforms. The ultimate goal is to protect consumers by ensuring they have access to accurate, reliable information that helps them make informed purchasing decisions.¹⁵

Comparative experiments are typically conducted by independent organizations or associations specializing in consumer protection, which do not seek to make a profit. This is essential, as every merchant tends to claim that their product or service has superior quality compared to their competitors, who may offer similar goods or services at a lower price to gain more profit. By providing criticism of goods and services and highlighting both their positive and negative aspects through comparative experiments, these studies help foster fair competition.¹⁶ Therefore, the purpose of these experiments is to benefit the consumer, not to deceive, mislead, or harm them.¹⁷ The French judiciary upholds this principle, ruling that if it is proven that the aim of comparative trials is to harm a particular manufacturer, distributor, or producer, then it constitutes unfair competition, which carries legal liability for those responsible.¹⁸ Regard has to be made that EU Law under recital 3 and 11 of the Directive 2011/83/EU on Consumer Rights consumers should receive clear, correct, and sufficient information to make informed decisions. Moreover, Article 5-7 of Directive 2005/29/EC on unfair commercial practices safeguards consumers from misleading or aggressive commercial practices. Thus, these directives recognize that information about products, including comparisons, shall safeguard consumers' interests.

Fifth: Publishing Comparative Results in Specialized Journals

Comparative experiments are conducted through research and laboratory studies, where goods from different brands are subjected to laboratory tests in specialized facilities. These products, sold in the market and serving the same function, are tested by organizations such as consumer protection groups with the aim of identifying the best products that meet consumer needs and desires. The results of these tests are then published in newspapers and publications specialized in consumer affairs and consumer protection research.¹⁹

¹⁵ SEY YOUSEF ZAHIA HOURIA, "The Role of Consumer Protection Associations in Consumer Protection", *Al-Haqiya Magazine*, Issue 34, p. 289.

¹⁶ ABDULRAHMAN YAHYA MAHMOOD, op. cit. p. 84.

¹⁷ HALA MIQDAD AHMED YAHYA AL-JALIL, *The Declaration - A Comparative Legal Study*, PhD thesis, University of Mosul, 2002, p. 169.

¹⁸ POLICY ROUNDTABLES, *Judicial Enforcement of Competition Law, Organisation For Economic Co-Operation And Development*, Oecd, 1996, p. 16. Available at: <https://www.oecd.org/daf/competition/prosecutionandlawenforcement/1919985.pdf> accessed 4 July 2024.

¹⁹ In most countries, there are now national associations, bodies, and laboratories that examine and monitor goods and services in the market to assess their quality and compliance with required standards and specifications. The findings are then published to the public in newspapers and magazines dedicated to consumer

Sixth: Conducting Comparative Experiments by Bodies and Organizations

For comparative experiments to be legitimate, they must be conducted by bodies, institutions, and associations that are independent of the production field. As stated in the United Nations Guidelines for Consumer Protection (expanded in 1999), Chapter I: Objectives, paragraph (e) provides: "Facilitate the establishment of independent consumer groups." These organizations typically carry out scientific studies in specialized technical laboratories to assess the advantages and disadvantages of goods and services available in the market. The comparison is based on similar elements and components between products, evaluating them in various aspects with an objective and independent scientific approach.²⁰

It is clear from the conditions mentioned that comparative experiments are legitimate if they involve goods and services with an element of comparison, are conducted by independent and neutral bodies outside the field of production, and aim to protect the consumer. The results of these experiments should then be published in specialized journals.

2.2. The Extent to Which the Results of Comparative Experiments Can Be Used in Comparative Advertising

In general, both comparative experiments and comparative advertising are methods of informing and providing information to consumers. However, they differ in several key aspects. To explore the extent to which the results of comparative experiments can be used in comparative advertising, we will divide this discussion into two sections. The first section will address the distinction between comparative experiments and comparative advertising, while the second section will focus on the possibility of using the results of comparative experiments in comparative advertising.

2.2.1. Distinguishing Comparative Experiments from Comparative Advertising

Comparative advertising refers to the comparison or contrast made by the advertiser, through any means, that highlights the advantages of the advertised product in relation to the disadvantages of competing products. It is a marketing strategy used to emphasize the benefits of a product or service offered by the advertiser, especially when compared to

awareness. One such magazine is Fifty Million Consumers, published by the National Institute of Consumption in France. See: AHMED ELSAIB LABIB, "Comparative Commercial Advertising between the Right to Advertising and Unfair Competition," *Journal of Legal and Economic Research*, No. 58, 2013, p. 258.

²⁰ AHMED AL-SAEED AL-ZAGARD, "Legal Protection from Advertising Deception in Kuwaiti and Comparative Law", *Law Journal*, Year 19, Issue 4, 1995, p. 258.

competitors.²¹ This technique focuses on highlighting the key differences between products, often using comparison and differentiation strategies to make the advertiser's product stand out. In contrast, comparative experiments are scientific evaluations conducted to objectively assess products or services based on specific criteria, often by independent bodies or organizations. While comparative advertising is aimed at promoting a product and persuading consumers, comparative experiments are designed to provide factual, unbiased information to help consumers make informed decisions.

There is no doubt that distinguishing between comparative experiments and comparative advertising is crucial, as both serve as important sources of information for consumers. They are often so similar in nature that recipients may confuse them. Despite sharing some common goals, each has unique characteristics and serves a specific purpose. Comparative experiments aim to provide objective, unbiased data to help consumers make informed decisions, while comparative advertising is primarily a marketing tool used to promote a product by emphasizing its advantages over competitors. Understanding these differences is essential for ensuring that consumers receive accurate and useful information.

Therefore, we can highlight the most important similarities between comparative experiments and comparative advertising in the following points:

1. Public Disclosure: Both rely on publishing and announcing the results of comparisons to the general public, with the aim of informing consumers about goods and services through direct comparison.²²
2. Principle of Differentiation: Both are based on the principle of differentiation, where they determine which products are better than others by comparing them and offering analysis and criticism.²³
3. Focus on Identical Products and Services: Both focus on comparing identical products or services that perform the same function, but come from different brands.²⁴

As for the differences between them, we can review them as follows:

First: In Terms of Source

Comparative advertising is created by the advertiser, meaning the advertiser becomes the source of the advertisement. This could involve producers who wish to highlight the advantages of their products or services in comparison to competitors, or advertising agencies working on behalf of companies and producers. On the other hand, comparative experiments are conducted and published by specialized agencies that are independent of the production fields.

²¹ ADNAN BAKI RAHIM, BAKHTIAR SIDDIQ MAHMOUD, AND AWISTA BURHAN, "Critical Observations on the Law Regulating Commercial Advertising in the Kurdistan Region - Iraq No. 4 of 2019," research published in the *Journal of Legal and Political Studies*, Sulaymaniyah University, ninth year, issue (2), 2021, p. 207.

²² AHMED SAMI MARHOON, op. cit. p. 4.

²³ BASSAM FANNOUSH, *Civil Liability for Online Advertising*, Egypt, Center for Arab Studies, 2018, p. 260.

²⁴ GULALA ABDUL RAZZAQ ABBAS, *Competitor Protection in Comparative Commercial Advertising*, Master's Thesis, Curie University, 2018, p. 11.

These organizations are often independent associations or consumer protection groups, as mentioned earlier, ensuring that the results are objective and impartial.²⁵

Second: In Terms of Results

Comparative advertising is not based on scientific comparison or laboratory and technical experiments, as the advertiser is the source of the advertisement and has a vested interest in highlighting the advantages of their products in comparison to competing products. In contrast, the results of comparative experiments are grounded in precise laboratory and technical experiments. These experiments are conducted objectively and are designed to provide reliable, scientific data. As a result, comparative experiments are considered one of the most important scientific mechanisms for fully and accurately informing consumers about the advantages and disadvantages of products and services when compared to other competing products.²⁶

Third: In Terms of Purpose

It is evident that comparative advertising is carried out by the producing companies themselves, and it is therefore natural for these companies to defend their products, aiming to present them in the best possible light.²⁷ The primary goal of comparative advertising is to achieve profits by increasing sales or promoting certain goods and services at the expense of others. In contrast, comparative experiments do not have a commercial objective of generating profits. Instead, they focus on the accuracy and integrity of the results they provide, typically through an objective and independent scientific approach. The purpose of comparative experiments is to educate the consumer, helping them choose the appropriate good or service by providing sufficient information to prevent their decisions from being influenced by misleading or biased claims.²⁸

In this regard, the Paris Tribunal issued a ruling concerning FNAC, one of the largest distributors of audiovisual equipment and books in France. FNAC had commissioned a laboratory to conduct comparative trials on a range of competing devices to determine their quality. The court ruled that proper product criticism should be conducted by an independent and neutral party, entirely impartial to production and distribution sectors. FNAC's actions were considered unlawful comparative advertising, with the purpose of making profits rather than informing consumers and providing them with the best options. This ruling highlights the importance of ethical marketing practices.²⁹

²⁵ ABDULRAHMAN YAHYA MAHMOOD, op. cit. p. 83.

²⁶ AHMED IBRAHIM, *The Legal System of Advertisements in Civil Law*, Cairo, Dar Al-Nahda Al-Arabiya, 2006, p. 401.

²⁷ AHMED ELSAYED LABIB, op. cit., p. 259.

²⁸ ALI AL-SAYED HUSSEIN ABU AL-DIAB and WALEED MOHAMMED BISHR, "Legal aspects of civil protection for consumers from false or misleading commercial advertisements", *Journal of the Faculty of Sharia and Law in Tanta*, Vol. 32, No. 2, 2017, p. 457.

²⁹ Paris, com,23 mai.1979 -G-P 1980 11- 215, not, Bensoussan and Cohen. Citing: AHMED SAMI MARHOON AL-MAAMOURI, op. cit. pp. 4-5.

Based on the above, it is clear that comparative trials of products and services are fundamentally different from comparative advertising. The credibility and validity of the information provided by comparative trials stand in stark contrast to that of comparative advertising. Comparative advertising, which is typically carried out by manufacturers themselves or their agents, is utilitarian in nature and does not prioritize consumer protection issues. In contrast, comparative trials, conducted by independent bodies such as non-profit organizations or associations, are primarily focused on consumer protection. Their purpose is to provide consumers with necessary, accurate, and objective information about the goods and services available in the market, enabling them to make informed and sound purchasing decisions. This process aims to ensure that consumers make choices based on full conviction, free from the influence of deception, misinformation, or ambiguity.

Regarding the position of Iraqi legislation, it is evident that the Iraqi Consumer Protection Law No. 1 of 2010 does not address comparative experiments, nor does it regulate comparative advertising or specify its elements, despite the widespread use of this advertising method. Additionally, comparative commercial advertising has not been legally regulated under the Law Regulating Commercial Advertising in the Kurdistan Region of Iraq No. (4) of 2019. However, the Instructions for Media Work in the Kurdistan Region No. (1) of 2023, recently issued by the Ministry of Culture and Youth, explicitly prohibit advertisements that "diminish the value of other people's products through unlawful comparison." This prohibition by the Ministry of Culture and Youth reflects a clear stance against unlawful comparative advertising.³⁰

Regarding the position of the Iraqi legislator on comparative experiments, it is clear that there is no law in place to regulate comparative experiments or establish any controls for them. Despite the issuance of the Iraqi Consumer Protection Law, which calls for the establishment of an Iraqi Consumer Protection Council and emphasizes the need for increasing consumer awareness through consumer protection associations, we have observed that these associations have not effectively played a role in protecting and educating consumers in practice.

In terms of the position of the EU law, the issue of comparative experiment has been regulated under different directives which are General Product Safety Directive (GPSD) 2001/95/EC, Regulation (EC) No 765/2008 (Accreditation and Market Surveillance), Decision No 768/2008/EC (Common Framework for Marketing of Products) and there are also some Sector-Specific "New Approach" Directives such as Toy Safety Directive 2009/48/EC, Medical Devices Regulation 2017/745, Low Voltage Directive 2014/35/EU. Moreover, comparative advertising has also been regulated in the EU under Directive 2006/114/EC on Misleading and Comparative Advertising and Directive 2005/29/EC on Unfair Commercial Practices (UCPD).

In light of this, we suggest that the Iraqi legislator address the issue of organizing comparative experiments by either issuing a special law dedicated to this matter or, at the very least, by adding a new paragraph to Article (5) of the Consumer Protection Law. This new provision

³⁰ These instructions were published in the Kurdish language in the *Kurdistan Chronicle*, issue No. 305, dated 5/22/2023.

could define the role of these associations or bodies in conducting comparative studies and publishing their results for the benefit of consumers, ensuring that they are provided with essential information, and highlighting any non-conforming subcomponents that fail to meet the necessary standard requirements.

2.3. The Possibility of Using Experimental Results in Comparative Advertising

It has been said that independent organizations conduct comparative experiments to inform consumers and protect them from commercial fraud. In contrast, comparative advertising is often carried out by advertisers to promote their goods or services at the expense of competing products. This raises the question: to what extent can the results of comparative experiments conducted by independent organizations be used in comparative advertising?

There are differing jurisprudential opinions on this matter.³¹ Some argue that the results of comparative experiments conducted by independent bodies and institutions should not be used for comparative advertising. This is because the source of the advertisement is, ultimately, the advertiser, who has a vested interest in emphasizing the advantages of their own products over those of competitors. Even if the advertiser relies on independent comparative experiments, they may not disclose this in their advertisement, as they did not conduct the experiments themselves. The primary goal of such advertising is not to protect or inform consumers but to highlight the superiority of the advertiser's products compared to those of competitors.

On the other hand, the opposing opinion holds that referring to the results of comparative experiments conducted by independent institutions and organizations for commercial advertising purposes is permissible, provided that the advertiser obtains the consent of the entity that conducted the comparison. Additionally, the advertiser must comply with the regulations governing comparative advertising when referencing these results.³²

The Paris Court of Appeal ruled in favour of allowing the use of experimental results in comparative advertising. However, in another ruling, the same court took the opposite stance, extending the prohibition to include producers, importers, and distributors, as they are all considered competitors. The court recognized that when an advertiser is prohibited from using the results of comparative experiments conducted by the National Institute of Consumption (L.I.N.G.), the advertiser, as a trader, does not have the right to republish the results of comparative trials to promote their products.

³¹ AHMED ELSAYED LABIB, *op. cit.* p. 259.

³² Judgment of the Court of Paris - Commercial Chamber - on May 23, 1979 citing: AHMED AL-SAEED AL-ZAGARD, *op. cit.* p. 261.

If we take EU law into consideration, in terms of using the outcome of comparative experiment for comparative advertising, it could be noticed that the outcomes of comparative experiments could be used in comparative advertising under EU law, provided that the advertiser adheres to Directive 2006/114/EC, Article 4 conditions. The outcome of comparative experiment by independent organisations could actually be the best evidence to defend against claims of misleading advertising, as it makes the comparison objective, verifiable, and credible.³³

We support the second approach, which allows the use of comparative experiment results in comparative advertising, provided that the information presented in the advertisement is accurate and based on those results. Advertisers should reference the comparative experiments used while ensuring that the results are not misrepresented or misleading. Additionally, they must adhere to the conditions outlined by proponents of this approach.

Furthermore, we acknowledge that the results of comparative trials represent factual information that should be disclosed-whether by independent bodies, institutions, or advertisers themselves. Since facts serve the interests of all parties, including consumers, their disclosure ultimately benefits the public.

3. Legal Protection of the Aggrieved Parties from Unlawful Comparative Experiments

When the parties conducting comparative experiments are not neutral and impartial in their assessments of goods and services, such experiments become unlawful. Consequently, they may cause harm to consumers, competitors, or the competitors' products. Therefore, it is necessary to provide the injured parties with mechanisms and means that enable them to initiate legal proceedings to challenge these comparative results and obtain compensation for the damages they have suffered.

Accordingly, we divide the research into two sections. In the first section, we outline the compensation claim against the entities conducting the comparative trials. In the second section, we address the aggrieved parties' right to compensation resulting from the unlawful comparative trials.

3.1. The Compensation Claim Against Entities Conducting Comparative Experiments

In the first section, we discussed the significance of comparative experiments in the promotion and marketing of goods and services, their influence on consumer decisions, and their role in

³³ Directive 2006/114/EC, Article 4.

protecting consumers from commercial fraud. It became evident that entities conducting comparative experiments between goods and services available in the market are typically obligated to maintain neutrality and objectivity in their comparisons.

Therefore, in this section, we will address the legal basis for a compensation claim against entities conducting comparative experiments. Subsequently, we will elucidate the essential elements of such a claim.

3.1.1. The Legal Basis for a Compensation Claim Against Comparators

There are several legal bases on which a compensation claim against a comparator can be founded if the comparator conducts a non-objective and non-neutral comparison. These include tort liability, abuse of rights, and unfair competition. We will briefly review these bases to determine the most appropriate foundation for a compensation claim against an unfair comparator, as follows:

First: Tort Liability as a Legal Basis for the Compensation Claim Against the Comparator

Tort liability arises when a person breaches a legal obligation not to harm others.³⁴ It is the liability that results from a person's breach of a pre-existing legal duty, even in the absence of any contractual relationship between the wrongdoer and the injured party.³⁵ This means that tort liability is established when a third party's act constitutes a wrongful act in violation of the law. This liability comprises three elements: fault, damage, and the causal relationship between the fault and the damage, the fault in tort liability refers to a person's breach of legal obligations and failure to exercise due diligence to prevent harm to others. Fault consists of two basic elements: The physical element, which involves a deviation from the person's usual behaviour, causing harm, the moral element, which indicates that the behaviour was committed by a person who has the awareness and ability to distinguish between right and wrong.

In general, the establishment of tort liability entails the reparation of the damage inflicted on others, either through the determination of material compensation³⁶ or the implementation of in-kind compensation,³⁷ depending on the circumstances. with reference to comparative experiments, we find that there is a legal and professional obligation on the entity that conducts such experiments to maintain neutrality and objectivity. Failure to adhere to these

³⁴ JIHAD JAMIL AL-SHAWABKEH, *Physician Civil Liability for Medical Errors in the Field of His Profession*, Master's Thesis, Middle East University, 2011, p. 36.

³⁵ ASMAA MUSA ASAAD ABU SURUR, *The Element of Error in Negligent Liability*, Master's Thesis, Nablus, Palestine, An-Najah National University, 2006, p. 13.

³⁶ JAMIL AL-SHARQAWI, *The General Theory of Obligations*, Cairo, Dar Al-Nahda Al-Arabiya, 1991, p. 443.

³⁷ RIYAD HANNA, *Civil Liability of Physicians and Surgeons*, Alexandria, Dar Al-Fikr Al-Jami'i, 2011, p. 26.

standards may result in tort liability if harm is caused to competitors or consumers. According to the French Civil Code of 1804, as amended by Law No. 131 of 2016, Article 1240 provides: "Any act committed by a person that causes harm to others shall oblige the perpetrator, who is at fault, to compensate the victim." This is based on Article 186 of the Iraqi Civil Code, which states that: (If someone damages the property of another or reduces its value directly or indirectly, he shall be liable, if he caused this damage through transgression or aggression). Through the text, it becomes clear to us that negligent liability based on error arises, because publishing the results of comparative experiments leads to different effects that may benefit some people at the expense of others, and the one who bears the burden of these damages is the producer of goods and services. These damages result from the body or institution that conducts the experiments exceeding the limits of honesty and integrity and violating objectivity and neutrality, thus exceeding its legal and professional obligations and ultimately being wrong and causing harm to others through its error, therefore it is obligated to pay compensation to the injured party. As we explained previously, Iraqi legislation did not regulate comparative experiments, not even before the issuance of Consumer Protection Law No. 1 of 2010. Nor after its issuance, which means that the damage inflicted on other companies or natural persons as a result of unfair comparative experiments according to this basis is subject to the general rules of civil law regarding liability.

Taking EU law into consideration in terms of tort law, it could be noticed that Article 340 of the Treaty on the Functioning of the European Union (TFEU) emphasise the importance of tort law principles in compensating damages caused by wrongful acts as it states that "In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties."³⁸

Secondly: Abuse of Right as a Legal Basis for a Claim for Compensation

The theory of abuse of right is an ancient concept originating in Roman law. It has been widely applied and recognized by jurists in Islamic law, where it has been formulated more comprehensively and precisely than by other legal scholars.³⁹ Islamic jurists built this theory on values emphasizing justice, equality, and cooperation,⁴⁰ relying on specific jurisprudential rules to achieve its objectives. Examples include: "no harm, no harassment" and "preventing harm takes precedence over bringing benefits." Notably, this theory initially faced challenges in gaining support from Islamic jurists due to its perceived conflict with the legal rule "legal

³⁸ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47, Article 340/2.

³⁹ ABDUL MAJEED AL-HAKIM, *A Brief Explanation of Civil Law (Sources of Obligations)*, Baghdad, Legal Library, 2007, p. 515.

⁴⁰ ABDUL MAJEED AL-HAKIM, *A Brief Introduction to the Theory of Obligation in Iraqi Civil Law*, Part One, University of Baghdad, 1986, p. 230.

permissibility negates liability." However, by the early sixteenth century AH, the theory was adopted by jurists and became a general rule in Islamic jurisprudence.⁴¹

The core principle of the theory is the misuse of a legal right in a manner that unlawfully causes damage to another person, thereby creating liability for the right holder, even if the act falls within the scope of the right itself.⁴²

This theory has been adopted by most civil laws, including the Iraqi Civil Code. Article 7 of the Iraqi Civil Code stipulates:

Whoever uses his right in an impermissible manner shall be liable for compensation.

The use of a right becomes impermissible in the following circumstances:

- A. If the use of the right is intended solely to harm others.
- B. If the interests sought by this use are of such minimal importance that they are grossly disproportionate to the harm caused to others.
- C. If the use of the right contravenes the principles of good faith or exceeds the bounds of customary usage.

With reference to comparative experiments, entities conducting such experiments have the right to critique and compare products offered in the market. However, this right is not absolute; it is constrained by the principles of objectivity, impartiality, and the absence of bias towards any particular party. Additionally, the purpose of the comparison must be legitimate. If the interests pursued by the comparative experiments are not legitimate, the conduct becomes arbitrary, and the entity conducting the experiments becomes liable for compensating those affected.⁴³ Some scholars argue that⁴⁴ a The competitive suit is nothing but a penalty for the abuse of the right granted by law to everyone, and every person has the right to work within the legitimate framework that does not lead to harm to others, so that if he exceeds this legitimate framework, he is being arbitrary in the exercise of his right. The proponents of this opinion believe that comparative experiments, in principle, are legitimate activities; however, if the parties involved deviate from lawful conduct in these experiments, it is considered an arbitrary use of the right.⁴⁵

Regarding EU law, the principle of abuse of right has been established by the Court of Justice of the European Union (CJEU), and it has evolved into a general principle of EU law applicable across various areas, including taxation, company law, and internal market freedoms. It operates as a restrictive doctrine, restricting the exercise of EU rights when they are invoked

⁴¹ SAEED AL-NUMAN, *The Theory of Abuse of Rights*, Iraqi Forum for Elites and Competencies, electronic link: <<https://iraqi-forum2014.com/committees-ar/legal>>, accessed January 27, 2025.

⁴² GHANI HASSOUN TAHA, *A Brief Introduction to the General Theory of Obligation - Sources of Obligation*, Baghdad, Al-Maaref Press, 1971, p. 452.

⁴³ BELMOKHTAR SAAD, "The Legal Basis of Unfair Competition Suits and Their Conditions," *Numerus Academic Journal*, Volume 1, Issue 1, 2020, pp. 131-141, p. 133.

⁴⁴ ZEINA HAZEM KHALAF, "Unfair Competition Lawsuit in Private International Law," research published in *Al-Rafidin Magazine*, Volume 12, 2012, p. 99.

⁴⁵ Close to this meaning: BELMOKHTAR SOUAD, op. cit. p. 133.

in a manner that defeats the purpose of the law.⁴⁶ The case of *Emsland-Stärke GmbH v. Hauptzollamt Hamburg-Jonas* (C-110/99, 2000) is the landmark that formally recognised this principle.⁴⁷

In our opinion, when entities conducting comparative experiments exceed legitimate limits by failing to perform their tasks with honesty, integrity, impartiality, and objectivity, this should not be considered an abuse of rights. Rather, it constitutes an error in the performance of their work and a violation of legally defined rules and standards. In such cases, the entity is liable for compensation based on error, not on arbitrary use of rights. This is because comparative experiments hinge on the determination of legality versus illegality, not on whether the actions are arbitrary or not. Comparative experiments operate within a specific framework and defined criteria; if the entity conducts its work within this framework, its actions are lawful. Conversely, if it operates outside this framework, its actions are illegal and contrary to the law. Therefore, in our view, arbitrariness in the use of rights cannot serve as a basis for claims for compensation.

Third: Unlawful Competition as a Basis for Compensation Claims

Competition is a fundamental law of human nature, and it is both permissible and desirable when conducted on sound and legitimate grounds. Its purpose is to foster excellence and leadership in any field it encompasses. In the realms of trade and economy, competition contributes significantly to human welfare, driving the progress of commercial enterprises. It serves as a vital and effective stimulus for creativity in commerce and industry. However, competition must always be legitimate, honest, and founded on integrity. As stated in Article 19 of the United Nations Guidelines for Consumer Protection (expanded in 1999), governments should encourage fair and effective competition so that consumers have the widest choice of products and services at the lowest cost. If competition deviates from its proper course—such as when a competitor uses methods or means that are unlawful or contrary to established customs—it becomes illegitimate.⁴⁸ Unfair competition can be defined as the exploitation of a business by a competitor with the intent to attract the customers of another merchant, for example, by usurping a trade name or imitating a trademark.⁴⁹ It also includes any acts or behaviors aimed at attracting customers through illegal methods, such as misleading consumers, discrediting competitors, or damaging their products.⁵⁰ Others define unfair⁵¹ competition as any conduct that contradicts the established facts of commercial dealings,

⁴⁶ GRAHAM BUTLER & KARSTEN ENGSIG SØRENSEN, "The Prohibition of Abuse of EU Law: A Special General Principle", in Katja Ziegler, Päivi Neuvonen & Violeta Moreno-Lax (eds), *Research Handbook on General Principles in EU Law: Constructing Legal Orders in Europe*, Edward Elgar, 2022, p. 402, pp. 402–422.

⁴⁷ *Emsland-Stärke GmbH v. Hauptzollamt Hamburg-Jonas* (C-110/99, 2000).

⁴⁸ FARAST RASUL AHMAD, *Legal regulation of compulsory licensing of trade secrets*, Master thesis, Soran University, 2022, p. 85.

⁴⁹ SULEIMAN BOU ZIYAB, *Principles of Commercial Law*, first edition, Beirut, University Foundation, 2003, p. 168.

⁵⁰ AHMED ABDUL-HUSSEIN KAZEM AL-YASIRI, "Legal Protection from Unfair Competition," A Study in Iraqi Law, *Al-Muhaqqiq Al-Hilmi Journal of Legal and Political Sciences*, Issue 3, Twelfth Year, 2020, pp. 316–338, p. 319.

⁵¹ BASSEM MOHAMMED SALEH, "Commercial Law," Part One, Al-Atik for Book Industry, Cairo, 1987, p. 168.

whether these facts are determined by legal rules or by the accepted customs within the commercial environment.

Regarding the position of the Iraqi legislator, we find that the Trade Law No. 30 of 1984 does not include any definition or regulation of unfair competition. This stands in contrast to the repealed Trade Law No. 149 of 1970, which dedicated a chapter to regulating unfair competition—though it did not define the term, it did outline its various forms. Meanwhile, the Competition and Monopoly Prevention Law No. 14 of 2010 addresses the concept of competition in Article 1/F1, defining it as "efforts made in the pursuit of economic superiority." The legislator was wise to leave the definition of unfair competition to jurists and the judiciary, as interpreting such matters rightly falls within their domain, not that of the legislator.

It is worth mentioning that under EU law, there are various directives that regulates the issue of unfair competition which directly serves as the legal basis for any claims that may arise out of unfair practices such as Directive 2005/29/EC on unfair commercial practices, Articles 101-102 of TFEU, Directive 2005/29/EC and Directive 2014/104/EU. Thus, we can say that unlawful competition forms a recognized legal base for compensation claims, combining elements of civil liability, consumer protection, and competition law.

Moreover, with regard to the 1983 Paris Convention, Article 10(2) on unfair competition stipulates the following:

1. Member States shall monitor other States to ensure effective safeguards against unfair competition.
2. Any competition that is contrary to the customs of fair competition in industrial or commercial matters shall be considered an act of unfair competition.

After clarifying the concept of unfair competition, the question arises: Can unfair competition serve as a basis for a claim for damages resulting from unfair comparative advertising or trials?

To answer this question, we must distinguish between two situations:

First: Agreement and Collusion Between Comparators and Production Companies

As previously mentioned, comparators must adhere to neutrality and objectivity, aiming to fulfill their intended purpose of protecting consumers and informing them about the advantages and disadvantages of the products being compared. However, if comparators deviate from these principles—abandoning objectivity, impartiality, truthfulness, and integrity—and enter into explicit or implicit agreements to collude with production companies in order to manipulate the results of the comparisons, the situation changes significantly.

This collusion may involve intentionally concealing the defects of a certain company's products while exaggerating their advantages to attract consumers, or presenting a competitor's products in a misleading way to make them appear of lower quality. When such conduct leads consumers to make misguided purchasing decisions, in exchange for the comparators receiving material or immaterial benefits, the comparative tests become unlawful.

In such cases, the aggrieved parties whether competitor or consumer harmed by the manipulated comparison results has the right to file a claim for compensation against the production company involved in the collusion with the comparative testing bodies, based on the grounds of unfair competition—provided that the collusion can be substantiated.

Second: Lack of Agreement or Collusion Between CTAs and Production Companies

In this case, the Comparative Testing Authorities (CTAs) exceed the bounds of honesty and integrity and violate the principles of impartiality and objectivity, showing bias toward a particular party with the intent to harm another—yet without any explicit or implicit agreement or collusion with the beneficiary production company. This means the deviation occurs independently, without the knowledge, will, or involvement of the benefiting company. The CTAs may conduct the comparison unlawfully in pursuit of material or other interests—such as personal animosity, or social, economic, or professional conflicts between members of the CTA and the affected production company. In such a scenario, the injured production company cannot bring a claim for damages against the CTA on the basis of unfair competition, as there is no collusion. However, it may pursue a claim based on tort liability.⁵²

This raises the question: Why can an injured competitor not bring a claim for damages against CTAs on the basis of unfair competition?

Firstly, for a claim of unfair competition to be admissible, there must be commercial competition within a commercial environment.⁵³ However, CTAs (Comparative Testing Authorities) are non-profit organizations. Therefore, their activities are not considered commercial in nature, and their members are not regarded as traders. Moreover, there is no competitive relationship between CTAs and production companies.

Secondly, according to Article 3 of the Iraqi Competition and Antitrust Law, the law applies to production, trade, and service activities conducted by natural and legal persons. Comparative testing bodies cannot be classified as commercial entities because their purpose is to protect consumers, not to generate profit.

Based on the above, it can be concluded that when specialized consumer protection bodies conduct unlawful comparative tests, the consequences are serious—not only for the directly affected companies but for society as a whole. When experts and specialists endorse products that lack quality or efficiency, it undermines the rules and principles governing commercial practices. This underscores the need for the legislator to address this issue through specific legal provisions.

⁵² MILOUD MUBARAK, "Conditions for Exercising Unfair Competition Lawsuits in the Field of Industrial Property Rights Protection," *Journal of Law and Political Sciences*, Issue 1, 2015, pp. 133-157, p. 145.

⁵³ For more details on the legal basis of unfair competition lawsuits in general, see: OMAR FOUAD OMAR, *The Mediator in Commercial Law*, Cairo, Dar Al-Nahda Al-Arabiya, 2008, Section 204, p. 328 ff. For this meaning, see: AHMED SAMI MARHOUN AL-MAHMOURI, the previous reference, op. cit. p. 18.

3.1.2. Elements of the indemnity claim

The elements on which liability in an unfair competition lawsuit is based are the same as those that apply to tort liability, with consideration given to the specific nature of this type of claim. An injured party affected by unfair comparative testing may resort to filing a lawsuit based on unfair competition.

Since such a lawsuit is, in essence, an application of tort liability, the fundamental elements must be present: the wrongful act constituting unfair competition, the resulting damage, and the causal relationship between them. Accordingly, our analysis of these provisions will focus on the specific characteristics of these elements within the context of an unfair competition lawsuit, as outlined below:

a) Fault

The element of fault in a claim for damages resulting from unlawful comparative experiments lies in the act of unfair competition—specifically, in cases where there is agreement and collusion between the comparative testing bodies and the production companies. However, even in the absence of such agreement or collusion, fault may still be established through a violation of the principles of neutrality and objectivity.

Fault in the context of comparative testing may arise when these authorities conduct comparisons without relying on objective, laboratory-based data gathered from products or services of different brands that serve the same function in the market. If these comparisons are conducted with the intent to misrepresent or distort information—aimed at damaging the reputation of a competitor and diverting their customers—this constitutes fault.⁵⁴

It is important to note that proving bad faith on the part of the comparators is not a requirement for establishing a case of unfair competition. It is sufficient if the damage caused to the competitor results from negligence or carelessness, or even from deliberate intent to harm the competitor.⁵⁵

Thus, unfair comparative experiments inherently imply fault on the part of the comparator when they attempt to favour one party at the expense of another. This occurs when associations or organizations exceed the boundaries of honesty and objectivity with the aim of defaming a particular merchant's reputation or devaluing the goods or services they offer,

⁵⁴ This meaning, see: AHMED SAMI MARHOUN AL-MAHMOURI, the previous reference, p. 18.

⁵⁵ AHMED AL-SAYED LABEED, op. cit. p. 441.

thereby benefiting a rival merchant. In such cases, a claim for compensation may be made, provided that the elements of fault, damage, and causation are established.⁵⁶

b) Damage

Damage is an essential element for establishing liability in general. Therefore, the mere occurrence of an error by the comparative testing entities is not sufficient for the injured party or competitor to file a lawsuit for unfair competition or to claim compensation based on tort liability. The claimant must have suffered actual damage as a result of that error.⁵⁷

It is enough for this condition to be fulfilled that the damage is either current or expected in the future. The damage may be material, affecting the injured competitor's property or financial interests, or moral, impacting their reputation or professional standing.⁵⁸

Harm resulting from unfair competition is realized when comparative testing bodies publish biased or misleading results that misrepresent a competitor's products, thereby encouraging the public to reject them. The distortion of a merchant's reputation diminishes the perceived value of their goods or services and typically leads to a loss of customers. In such cases, both material and moral damages often occur. Moral damage arises from harm to the merchant's reputation, while material damage typically results from a decrease in product sales, reduced marketing effectiveness, and a declining customer base due to misleading comparative testing.

59

Although the general rules of tort liability require that damage must be actual and realized—meaning no compensation can be awarded for merely potential harm—the specific nature of unfair competition cases calls for a different approach. The prevailing legal opinion distinguishes between the level of damage required to award compensation and that required to order preventive measures, such as stopping the broadcast of comparative trials. In the first case, awarding compensation requires that actual harm has occurred. However, in the second case, it is sufficient that the harm is potential. That is, preventive measures—such as halting the publication or broadcast of the comparative trials—may be ordered even if the damage has not yet materialized. This approach serves to protect commercial interests proactively. Therefore, a competitor may file an unfair competition claim to compel the cessation of publishing or broadcasting the results of unfair comparative trials without the need

⁵⁶ Close to this meaning, see: YOUSEF AHMED NAWAFLEH and YOUSEF BIN FADEL AL-BALUSHI, *Civil Protection of the Consumer from Misleading Commercial Advertisements*, a published study.

⁵⁷ SAMIHA AL-QALYOUNI, *Commercial Law, Theory of Commercial Business and the Trader – Industrial and Commercial Property*, Cairo, Dar Al-Nahda Al-Arabiya, 1981, No. 359, p. 412. Another trend in Islamic jurisprudence holds that it is not a condition for filing a lawsuit for unfair competition that the harm be certain to occur, but rather that it be likely to occur; Any fear of its occurrence in the future. See: BAHJAT QAID, *Commercial Law, Theory of Commercial Business and the Merchant – Store – Commercial and Industrial Property Rights*, Cairo, Dar Al Nahda Al Arabiya, 2001, Item 377, p. 3.

⁵⁸ ADNAN BAQI LATIF, *Legal Regulation of Competition and Prevention of Monopolistic Practices*, Dar Al Kotob Al Qanuniya - Dar Al Shatat for Publishing and Software, 2012, p. 77.

⁵⁹ AHMED SAMI MARHOON AL MAAMOURI, op. cit., p. 20.

to prove actual harm, as long as potential harm is reasonably likely. This reflects the dual function of the unfair competition claim: not only to redress existing harm but also to serve a preventive role in protecting a competitor's business from future damage resulting from acts of unfair competition.⁶⁰

c) The Causal Link

According to the general rules of tort liability, the mere occurrence of damage to the injured party is not sufficient to bring a claim for unfair competition. There must also be a causal link between the wrongful act and the damage—that is, a direct connection between the act of unfair competition and the harm suffered. The damage must be a direct consequence of the wrongful conduct for preventive measures to be taken or for compensation to be awarded.⁶¹

In the context of unfair comparative experiments, establishing this causal link can be particularly challenging. The harmful effects of such experiments on a competitor's business often do not appear immediately or in the short term. Instead, the impact tends to manifest over the medium to long term. The dissemination of biased or misleading comparative results does not always produce an immediate reaction in the market. Additionally, market competition involves repeated, overlapping, and ongoing practices, which further complicates the task of proving causation.⁶²

It is undisputed that the practice of comparing products available in the market for the purpose of informing the public is a recognized right under both legal norms and commercial customs. As long as the publication remains within the framework of legitimate practice—guided by objectivity, honesty, and neutrality—it does not give rise to liability. Therefore, no compensation is required where there is no damage and no wrongful act. However, if the comparative practices themselves constitute an unlawful act—for example, by deviating from objectivity and neutrality—then the party responsible may be held liable for the resulting harm and required to provide compensation.

Finally, we believe that any trader or injured party has the right to initiate an unfair competition lawsuit against comparators and production companies colluding with them, provided they can prove the causal relationship between the error committed by the comparators or production companies and the harm caused to the third party (the competitor trader). In cases involving multiple victims, each injured party may file separate lawsuits. The court holds discretionary authority to determine the causal link between the wrongful act and the damage in each case and to assess compensation if warranted.

⁶⁰ GULALA ABDUL RAZZAQ, *Op. cit.*, p. 91.

⁶¹ ADNAN BAQI LATIF, *Op. cit.*, p. 78.

⁶² AHMED SAMI MARHOON AL MAAMOURI, *Op. cit.*, p. 21.

3.2. Compensation for the Aggrieved Party for Damages Resulting from Unlawful Comparative Experiments

Generally, a judgment for compensation is issued when the elements of tort liability—fault, damage, and causation—are established. The primary remedy in such cases is a claim for compensation, which may be monetary or non-monetary. We will address these types of compensation in the following two sections as follows:

3.2.1. Monetary Compensation

The claim for compensation is one of the most significant outcomes of an unfair competition lawsuit, with monetary compensation being the primary means to redress the damage. Generally, monetary compensation covers the loss and loss of profit suffered by the injured merchant.⁶³ The court has discretionary authority to determine the amount of monetary compensation based on the extent of the victim's actual losses and loss of earnings, as stipulated in Article 207 of the Iraqi Civil Code.

Regarding EU Law, Article 3 and 7 of Directive 2014/104/EU (Antitrust Damages Directive) entitles aggrieved parties to claim full compensation for any loss caused due to breaches of EU competition law.⁶⁴ Moreover, Article 16 of Directive 2005/29/EC (Unfair Commercial Practices Directive) requires Member States to ensure effective remedy for financial loss suffered due to unfair commercial practices.⁶⁵

It is important to note that monetary compensation is the predominant remedy awarded in unfair competition cases, especially when the aggrieved party whether competitor or consumer suffers either material or moral damage as a result of unfair comparative experiments.⁶⁶ This form of compensation is considered the most appropriate to adequately address the harm caused. The Iraqi legislator expressly provided for this by stating that "compensation shall be assessed in cash."⁶⁷ In assessing compensation, the court must strictly adhere to the rules of tort liability to ensure that the lawsuit's purpose is to restore the injured party, rather than unjustly enriching them at the expense of the party responsible for the damage.⁶⁸

⁶³ AHMED SAMI MARHOON AL MAAMOURI, op. cit., p. 22.

⁶⁴ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union [2014] OJ L349/1.

⁶⁵ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L149/22.

⁶⁶ YOUSSEF GHANEM AWDA, *Legal Regulation of Online Commercial Advertising*, Beirut, Lebanon, Al-Halabi Legal Publications, 2015, p. 406.

⁶⁷ Article 209/2 of the Iraqi Civil Code. Article 171/1 of the Egyptian Civil Code No. 131 of 1948 also provides this same meaning.

⁶⁸ ABDEL-RAHMAN AL-SAYED QARMAN, *Parasitic Competition: A Study of the Extent of the Legitimacy of Economic Parasitism on the Values of Competition*, Cairo, Egypt, Dar Al-Nahda Al-Arabiya, 2002, p. 271.

Monetary compensation also encompasses moral damages caused to the injured merchant due to illegal comparative experiments, particularly when such publication results in damage to the merchant's reputation amounting to commercial defamation. Therefore, whether the injured party is a consumer or a competing merchant, if damage—material or moral—results from illegal comparative experiments, they have the right to claim compensation according to the general legal principles, and specifically under Article 186 of the Iraqi Civil Code No. 40 of 1951, which provides: "If anyone damages another person's property or reduces its value directly or indirectly, they shall be liable as a guarantor if such damage results from a trespass or infringement."

3.2.2. Non-Monetary Compensation

In unfair competition cases, judges rarely award monetary compensation alone. Alongside financial damages, they often impose additional measures and procedures that, while not considered compensation *per se*, serve a preventive and corrective role. One common measure is the publication of the court's judgment regarding the illegal comparative experiments in various media outlets, often at the expense of the comparator. This publication may take the form of notices in one or several daily newspapers for a specified period. Such publication acts as a special sanction aimed at dispelling any confusion or misunderstanding that customers and the public may have developed as a result of the unfair comparative acts conducted by the parties responsible for product comparisons. This measure also serves as moral rehabilitation for the injured trader by publicly notifying third parties—including traders, customers, and consumers—that the trader was the victim of unlawful comparative experiments. It alerts consumers that they were misled by an unlawful act that targeted and affected them.⁶⁹

Furthermore, the court may order the publication of corrected comparative experiments at the tortfeasor's expense to rectify the errors made in the original report.⁷⁰ In practice, these procedures are often disseminated through the media to inform consumers about the lack of credibility and objectivity of the bodies responsible for comparing similar products from different brands, thereby protecting consumer interests and market fairness.

Although Iraqi law lacks specific provisions addressing this procedure in comparative trials, under general legal principles, the judge may order the publication of the judgment at the defendant's expense as a form of compensation. This is supported by Article 209(2) of the Iraqi Civil Code, which states: "The court shall determine the method of compensation according to the circumstances...". It is worth noting that under EU law, Directive 2006/114/EC (Misleading and Comparative Advertising Directive) under Articles 8–9 enable Member States to make sure that injunctions shall be granted to preclude or stop misleading advertising or

⁶⁹ YOUSSEF GHANEM AWDA, *op. cit.*, p. 411.

⁷⁰ For this meaning, see: GULALA ABDUL-RAZZAQ, pp. 101-102.

unfair comparative claims. Remedies may include ordering the publication of corrective statements or halting distribution of test outcomes that mislead the market.⁷¹ As for the French legislator, Article 7-1231 of the amended French Civil Code stipulates: "The judge has absolute authority in compensation cases to determine the most appropriate means of compensation and may, on this basis, rule to award monetary compensation rather than compensation in kind." This provision indicates that French law grants the judge discretionary authority to determine and decide on the appropriate form of compensation for the injured party.

In some cases, the production company colluding with the comparative testing entities may intentionally engage in wrongful behaviour (collusion) after evaluating that the profits gained will significantly exceed any compensation awarded under traditional rules. This situation is referred to as a profitable error. In such cases, it is necessary to restore the injured party and hold the responsible parties accountable by returning them to the position they occupied prior to the harmful act. Therefore, we propose adding the element of full profit recovery alongside the traditional elements of compensation. This approach aims to fully compensate the competitor affected by the comparative trials, aligning with the principle of full recovery versus full compensation.⁷²

4. Conclusion

This study has led to a set of conclusions, recommendations, and suggestions, summarized below:

First: Results

1. Comparative testing is a vital tool for introducing products and services traded in the market. It plays a crucial role in protecting consumers from commercial fraud and serves as an important means to promote legitimate commercial competition, as each merchant seeks to offer products or services of higher quality or lower prices than competitors to achieve better evaluations in comparative tests.
2. Comparative experiments are not conducted for commercial gain but aim to provide consumers with essential information about goods and services available in the market, enabling them to make informed purchasing decisions. These experiments and their results are typically published in journals specializing in consumer protection.
3. Comparative experiments are considered legitimate when conducted on goods and services that allow meaningful comparison, carried out by independent and impartial bodies unaffiliated

⁷¹ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising [2006] OJ L376/21.

⁷² EZZ EL-DIN ZOUBA, "Compensation for Profitable Mistake under English and French Law," *Voice of Law Magazine*, Volume 8, Issue 1, 2021, pp. 1159-1160.

with production entities, with the primary goal of protecting consumers. The results should be published in specialized journals.

4. The results of comparative trials may be used in comparative advertising, provided that the information presented is accurate and based on the trial outcomes. Advertisements should clearly reference the comparative trials conducted and include warnings to avoid misleading or altering the trial results. Furthermore, the results of comparative trials constitute factual information that must be disclosed, whether produced by independent bodies or by the advertiser themselves, as facts benefit all parties, especially consumers.

5. Comparative trials differ from comparative advertising in terms of their source and neutrality: comparative trials are conducted by independent and objective entities, whereas comparative advertising primarily aims to promote products and generate profit.

6. Despite the significant role of comparative trials in educating consumers, Iraq currently lacks a national body responsible for conducting such trials, exposing consumers to the risk of purchasing inferior or fraudulent goods and services.

7. Regarding the legal grounds for a compensation claim against those conducting comparative trials, it is important to distinguish between two scenarios: the existence of agreement and collusion between comparators and production companies, and the absence of such collusion. In cases of collusion, the injured party whether competitor or consumer may bring a claim for damages against the production company colluding with the comparators based on unfair competition. In the absence of collusion, the injured production company cannot claim damages based on unfair competition but may seek compensation under general tort liability.

8. Comparative experiment in the EU is not regulated under a standalone law, however its conduct and use are indirectly regulated through various frameworks such as consumer protection (Directive 2005/29/EC), misleading and comparative advertising (Directive 2006/114/EC), and competition law (Directive 2014/104/EU). The EU highlights independence, impartiality, and competence of testing bodies (Regulation 765/2008/EC and Decision 768/2008/EC) to guarantee reliability and credibility. While legally protected when objective and lawful, manipulated or misleading testing can trigger liability for unfair commercial practices, tort, or unfair competition, enabling affected competitors to ask for both monetary and non-monetary remedies.

Second: Recommendations and Suggestions

1. We recommend that the Iraqi legislator regulate the provisions regarding comparative experiments either through a dedicated law or by adding specific paragraphs to Article (5) of the Consumer Protection Law. This should establish national testing and quality laboratories operating under the supervision and control of the Consumer Protection Council. The primary responsibility of this council would be to inform consumers, conduct comparative studies, and

publish the results to the general public, thereby providing essential information and alerting them to substandard or non-compliant products that fail to meet required standards.

2. We recommend that the Iraqi legislator introduce a definition of comparative experiments within the Consumer Protection Law No. (1) of 2010, in the section dedicated to definitions. We propose the following wording: *"Comparative experiments are objective, scientific, and neutral comparisons of products available in the market from different brands that perform the same function. These comparisons are conducted by bodies or associations independent of production and distribution, with the results published for the purpose of educating consumers, enabling them to make informed choices, and protecting them from commercial fraud."*

3. We call for the establishment of consumer protection associations and national organizations in Iraq and the Kurdistan Region that conduct comparative tests between products. Their goal should be to educate consumers and protect them from poor quality, substandard, counterfeit, or fraudulent goods and services prevalent in local markets. The findings should be published in newspapers and magazines specializing in consumer awareness. This aligns with the objectives of the Iraqi Consumer Protection Law No. (1) of 2010, which called for the establishment of the Iraqi Consumer Protection Council and emphasized the role of consumer protection associations in raising awareness.

4. It is recommended that the EU work on harmonizing procedural safeguards for conducting and publishing tests across Member States, to ensure that impartiality and scientific reliability are properly taken into account.

5. It is also recommended that EU provide obvious guidance on the permitted use of test outcomes in comparative advertising in order to reduce disputes and promoting fair competition.

List of References

ABADI, BATOUL SARAWAH, *Misleading Commercial Advertising and its Impact on the Consumer*, Beirut, Halabi Law Publications, 2011

ABBAS, GULALA ABDUL RAZZAQ, *Competitor Protection in Comparative Commercial Advertising*, Master's Thesis, Koya University, 2018

ABU AL-DIAB, ALI AL-SAYED HUSSEIN / BISHR, WALEED MOHAMMED, "Legal aspects of civil protection for consumers from false or misleading commercial advertisements", *Journal of the Faculty of Sharia And Law In Tanta*, Vol. 32, No. 2, 2017

ABU SURUR, ASMAA MUSA ASAAD, *The Element of Error in Negligent Liability*, Master's Thesis, Palestine, Nablus, An-Najah National University, 2006

AHMAD, FARAST RASUL, *Legal regulation of compulsory licensing of trade secrets*, Master, Soran University, 2022

AHMED, MOHAMED YASSIN, *Consumer Protection*, first edition, Khartoum, Dar Al-Kultura, no year

AL-HAKIM, ABDUL MAJEED, *A Brief Explanation of Civil Law (Sources of Obligations)*, Baghdad, Legal Library, 2007

AL-HAKIM, ABDUL MAJEED, *A Brief Introduction to the Theory of Obligation in Iraqi Civil Law*, Part One, University of Baghdad, 1986

AL-JALIL, HALA MIQDAD AHMED YAHYA, *The Declaration - A Comparative Legal Study*, PhD thesis, University of Mosul, 2002

AL-JUBOURI, HELAN ADNAN AHMED MOHAMMED, "Misinformation and Deception or Lying in Commercial Media," *Journal of the College of Law for Legal and Political Sciences*, 2014

AL-NUMAN, SAEED, "The Theory of Abuse of Rights," *Iraqi Forum for Elites and Competencies*, electronic link: <<https://iraqi-forum2014.com/committees-ar/legal>>, accessed January 27, 2025

AL-QALYOUNI, SAMIHA, *Commercial Law, Theory of Commercial Business and the Trader - Industrial and Commercial Property*, Cairo, Dar Al-Nahda Al-Arabiya, 1981

AL-RUBAIE, LAITH, "The Role of the Research Center and Civil Society Organizations in Consumer Protection," a study presented at the *Consumer Legal Protection Symposium* held at the House of Wisdom, Baghdad, 2002

AL-SHARQAWI, JAMIL, *The General Theory of Obligations*, Cairo, Dar Al-Nahda Al-Arabiya, 1991

AL-SHAWABKEH, JIHAD JAMIL, *Physician Civil Liability for Medical Errors in the Field of His Profession*, Master's Thesis, Middle East University, 2011

AL-YASIRI, AHMED ABDUL-HUSSEIN KAZEM, "Legal Protection from Unfair Competition," A Study in Iraqi Law, *Al-Muhaqqiq Al-Hilmi Journal of Legal and Political Sciences*, Issue 3, Twelfth Year, 2020

AL-ZAGARD, AHMED AL-SAEED, "Legal Protection from Advertising Deception in Kuwaiti and Comparative Law", *Law Journal*, Year 19, Issue 4, 1995

AWDA, YOUSSEF GHANEM, *Legal Regulation of Online Commercial Advertising*, Beirut, Lebanon, Al-Halabi Legal Publications, 2015

BAEZ, BAKHTIAR SABER, "Comparative Commercial Advertising and its Legality," *Journal of Sharia and Law*, No. 76, 2018

BUTLER, GRAHAM & SØRENSEN, KARSTEN ENGSIG, "The Prohibition of Abuse of EU LAW: A Special General Principle", in Katja Ziegler, Päivi Neuvonen & Violeta Moreno-Lax (eds), *Research Handbook on General Principles in EU Law: Constructing Legal Orders in Europe*, Edward Elgar, 2022, pp. 402-422

- FANNOUSH, BASSAM, *Civil Liability for Online Advertising*, Egypt, Center for Arab Studies, 2018
- FERRIER, DIDIER, *La protection des consommateurs*, DALLOZ, 1996
- HANNA, RIYAD, *Civil Liability of Physicians and Surgeons*, Alexandria, Dar Al-Fikr Al-Jami'i, 2011
- HOURIA, YOUSEF ZAHIA, "The Role of Consumer Protection Associations in Consumer Protection", *Al-Haqiya Magazine*, Issue 34
- IBRAHIM, AHMED, *The Legal System of Advertisements in Civil Law*, Cairo, Dar Al-Nahda Al-Arabiya, 2006
- IRAQ MINISTRY OF HIGHER EDUCATION AND SCIENTIFIC RESEARCH, Order No. 212/5542, based on the Scientific Research Centers System of the Ministry of Higher Education and Scientific Research No. 1 of 1995
- KHALAF, ZEINA HAZEM, "Unfair Competition Lawsuit in Private International Law," research published in *Al-Rafidin Magazine*, Volume 12, 2012
- LABIB, AHMED ELSAIB, "Comparative Commercial Advertising between the Right to Advertising and Unfair Competition," *Journal of Legal and Economic Research*, No. 58, 2013
- LATIF, ADNAN BAQI, *Legal Regulation of Competition and Prevention of Monopolistic Practices*, Dar Al Kotob Al Qanuniya - Dar Al Shatat for Publishing and Software, 2012
- MAHMOOD, ABDULRAHMAN YAHYA, *The Legal Framework of Comparative Advertising*, Doctora, Soran University, 2023
- MARHOON, AHMED SAMI, "Civil protection resulting from comparative commercial advertising", research published in the *Faculty of Law Journal*, Al-Nahrain University, Vol. 14, No. 2, 2012.
- MINISTRY OF CULTURE AND YOUTH, "Instructions on (Media Operations in the Kurdistan Region) No. (1) of 2023" (published in the Kurdish language), *Kurdistan Gazette*, Issue No. (305), dated May 22, 2023
- MUBARAK, MILOUD, "Conditions for Exercising Unfair Competition Lawsuits in the Field of Industrial Property Rights Protection," *Journal of Law and Political Sciences*, Issue 1, 2015
- NATIONAL LABORATOIRE ESSAIS'D ET METROLOGIE IN FRANCE, <<http://www.lne.eu/index-en>>, Accessed 8/10/2024
- OMAR, OMAR FOUAD, *The Mediator in Commercial Law*, Cairo, Dar Al-Nahda Al-Arabiya, 2008, Section 204
- POLICY ROUNDTABLES, *Judicial Enforcement of Competition Law, Organisation For Economic Co-Operation And Development*, Oecd, 1996, Available at: <<https://www.oecd.org/daf/competition/prosecutionandlawenforcement/1919985.pdf>> accessed 4 july 2024
- QAID, BAHJAT, *Commercial Law, Theory of Commercial Business and the Merchant – Store – Commercial and Industrial Property Rights*, Dar Al Nahda Al Arabiya, 2001

QARMAN, ABDEL-RAHMAN AL-SAYED, *Parasitic Competition: A Study of the Extent of the Legitimacy of Economic Parasitism on the Values of Competition*, Cairo, Egypt, Dar Al-Nahda Al-Arabiya, 2002

RAHIM, ADNAN BAKI / MAHMOUD, BAKHTIAR SIDDIQ / BURHAN, AWISTA, "Critical Observations on the Law Regulating Commercial Advertising in the Kurdistan Region - Iraq No. 4 of 2019," research published in the *Journal of Legal and Political Studies*, Sulaymaniyah University, ninth year, issue (2), 2021

SAAD, BELMOKHTAR, "The Legal Basis of Unfair Competition Suits and Their Conditions," *Numerus Academic Journal*, Volume 1, Issue 1, 2020

SALEH, BASSEM MOHAMMED, *Commercial Law*, Part One, Cairo, Al-Atik for Book Industry, 1987

SULAIMAN, AHMED ALI, *Consumer Protection*, first edition, Alexandria, Dar Al-Kitab for Publishing and Distribution, 2004

TAHA, GHANI HASSOUN, *A Brief Introduction to the General Theory of Obligation - Sources of Obligation*, Baghdad, Al-Maaref Press, 1971

ZIYAB, SULEIMAN BOU, *Principles of Commercial Law*, first edition, Beirut, University Foundation, 2003

ZOUBA, EZZ EL-DIN, "Compensation for Profitable Mistake under English and French Law", *Voice of Law Magazine*, Volume 8, Issue 1, 2021

(texto submetido a 29.06.2025 e aceite para publicação a 1.10.2025)