

What is a trademark?

A trademark is mark used or proposed to be used in relation to goods and service for the purpose of indicating a connection in trade between goods and the person having the right either as a proprietor or registered user to use the mark

Section 67 of the Trademarks Act



What are the enabling laws?

The Trademarks Act
The Trademark Regulations
The Federal High court Act,
The Federal High Court (Civil Procedure) Rules.

Who is a proprietor?

A Proprietor is the registered owner of a trademark conferred with the right to the exclusive use of the mark in Nigeria.

Rights conferred upon registration of a trademark

Priority right and Exclusive right to the use and enjoyment of the mark to the exclusion of all others. The right includes the right to defeat a subsequent application for an identical, similar or confusing mark.

-Section 5 of the Trademarks Act

What is a registered mark?

A registered mark is a mark found on the Register of trademark kept at the Trademarks' office.

-Section 67 of the Trademarks Act

What is a service mark?

A service mark is a mark used in relation to services.

How many classes of goods are there?

There are 45 classes of goods.
Classes 1-34 relates to goods
Classes 35-45 relates to services

Nice International Classification of Good and Services

What are registrable marks?

Name, brands, headings, label, ticket, signature, words, letters, numerals, devices or a combination of them. Registrable marks can be words or devices or a combination of both.

- Section 67 of the Trademarks Act

What are distinctive marks?

Distinctive marks are marks that are adapted in relation to the goods registered or sought to be registered by a proprietor, to distinguish them from the goods of another. Examples are-

1. Name of a company, individual or firm represented in a special way
2. Signature of the applicant or some processor in his business
3. Invented words
4. Works not having direct reference to the character or quality of the goods

- Section 9 of the Trademarks Act

What are unregistrable marks?

1. Deceptive or scandalous marks
2. Names of chemicals
3. Identical and similar marks
4. Geographical names
5. Surnames

Section 11-13 of the Trademarks Act

Recordal of trademark

Before or after registration, the following recordals may be effected on the register in respect of a trademark:

1. Assignment
2. Change of name/address
3. Merger

Grounds for Refusal of the registration of a trademark

1. Non-distinctiveness of the trademark
2. Deceptive or scandalous marks
3. Names of chemicals
4. Identical and similar marks

Sections 10, 11, 12 13 Trademark Acts

Appeal

Refusal by the registrar of trademark may be conditional or absolute. Conditional refusal may give room for amendment while absolute refusal can only be appealed. The registrar has the discretion to refuse marks containing the following words:

1. Patent, patented, registered, registered design, copyright, Red cross or Geneva Cross OR representations of the general or other crosses in red; Swiss Federal cross in white on a red ground; silver on a red ground or such representations in similar colours.
2. Representation of the Nigerian Flag/Coat of Arm of the Federal Republic of Nigeria or of any State within Nigeria
3. Words like President, Governors or words indicating that the applicant is acting in an official in capacity for the President or Governor
4. Names of living person or a deceased person.

In order to overcome a refusal on the above grounds, consent to register may be obtained from the relevant body, individual or authority having the power to issue such consent. Further appeal of the decision of the Registrar of Trademarks can be made to the Federal High Court.

**Regulation 17,18,19,20 of the Trademark
Regulation**

Publication of trademark

Upon the acceptance of a trademark, the trademark will be published in the official gazette referred to as the Trademarks Journal. For clarity and proper identification of journals, journals in each year are issued in Volumes and Numbers e.g., Vol. 1 No. 2, 2nd May 2022

Opposition

Statutory period for the opposition of published mark is two (2) months. An opponent shall file its opposition at the registry stating the grounds for the opposition, the number of the offending application and the number of the publication journal, the registry shall cause a copy of the notice of opposition to be served on the applicant of the offending application

The applicant shall within one (1) month of receiving the notice of opposition, file its response by way of a counter statement stating the facts he admits or controverts, the registrar shall cause to be served on the opponent a copy of the notice of opposition.

Within one (1) month of receiving the applicant's counter statement, the opponent shall file its evidence by way of statutory declaration.

Statutory declaration is a witness deposition on oath adducing evidence in support of the opposition, the same shall be served on the applicant. The applicant upon receipt of the opponent's statutory declaration, shall file and serves its own statutory declaration

The Registrar upon receipt of these processes may direct the parties to file their written submission before the trial date.

An opposition may be abandoned where either of the parties fail to comply with the above steps or fails to comply within the statutory timeframe in which event the Registrar shall issue to the erring party a notice of abandonment. In the case of the applicant, the application will not proceed to registration, in the case of the opponent, the opposition will be deemed abandoned and the application will proceed to registration.


Section 20 of the trademarks Act; Regulation 48-59 of the Trademarks Regulation

Duration of trademark


A registered trademark is valid for seven (7) years and shall thereafter be renewable for further periods of fourteen (14) years

Section 23 of the Trademarks Act

The Federal High Court (FHC)



The FHC is the court of first instance vested with original jurisdiction to adjudicate on trademark related cases. It also sits in appellate jurisdiction to the decisions of the Tribunal at the trademarks' Registry. The FHC derives its power to act from the 1999 Constitution (as amended), the Federal High Court Act and the Federal High Court (Civil Procedure) Rules.

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