



## **TRADEMARKS** by Intellectual Property Association Nigeria IPLAN

### **What Is A Trademark?**

A Trademark is a sign that is used to identify goods and services as those produced or provided by a specific person or organization. Trademarks help us to distinguish the goods and services of one manufacturer from similar goods and services provided by other manufacturers. The word "Trademark" is often substituted with similar words such as 'Brand', 'Logo', 'Sign' or 'Trade Name'.

### **Reputation**

One of the reasons Trademarks are protected is to safeguard the goodwill and reputation of the trademark owner. Brands are often identified with reputations for quality, luxury, good service, customer satisfaction, class, and other characteristics. Brand Owners protect their reputation by registering Trademarks for these brands. Trademark registration gives the brand owner the exclusive right to use that trademark, and to also stop others from imitating or copying the brand.

### **Types of Trademarks**

A Trademark may consist of a word (e.g. Omatek) or a combination of words (Coca-Cola), letters and abbreviations (e.g. HP, GTB, BMW, ABC), numerals (e.g. 11:45) and names (e.g. XAVI MOORE, or GUCCI). A trademark may also consist of drawings (like the logo of the Shell oil

company), or three-dimensional signs such as the shape and packaging of goods (e.g. the shape of the Coca-Cola bottle or the packaging for the Toblerone chocolate). In some countries, non visible signs, such as music and fragrances, may constitute trademarks.

### **Unique and Distinctive**

A trademark must be distinctive: it must be capable of distinguishing the goods or services with which it is used. A name which is purely descriptive of the nature of the goods and services that are offered may not constitute a valid trademark. For example, Apple may serve as a trademark for computers but not for actual apples. However, a given trademark may not be distinctive from the outset, but may have acquired distinctive character or “secondary meaning” through long and extensive use.

In addition to trademarks identifying the commercial source of goods or services, several other categories of marks exist.

### **Benefits of Trademark Registration**

1. Trademarks provide business people with a remedy against unfair practices of competitors, which aim at causing confusion in consumers’ minds by leading them to believe that they are acquiring the goods or services of the legitimate owner of the trademark, whereas in fact they are acquiring an imitated product, which may be of lesser quality. The legitimate owner may hence suffer from loss of potential customers, as well as harm to his own reputation.
2. A Trademark is an intangible asset that represents the investments made in brand development.

A Trademark owner is given the exclusive rights:

- To use the trademark to identify his goods or services;
- To prevent others from using and marketing the same or a similar trademark for the same or similar goods or services;
- To authorize others to use the trademark, (e.g. by franchising or licensing agreements) and in return for payment

The most common and efficient way of protecting a trademark is to have it registered. Trademarks are registered at the Trademarks Registry, a Department under the Federal Ministry of Trade & Investment, Abuja.

Unregistered trademarks are also protected in Nigeria by the common law tort of “Passing Of”.

### **Procedure for Registration**

Trademarks in Nigeria are registered through Trademark Agents.

First, an application for registration of a trademark must be filed with the Trademarks Registry, Federal Ministry of Commerce Abuja.

The application must contain

- A specification of the goods or services to which the sign would apply
- 12 clear reproductions of the proposed Trademark.
- A Power of Attorney appointing the Trademark Agent to act for the Brand Owner

A registered trademark is valid for 7 (Seven) years and can be renewed indefinitely on payment and filing of renewal fees.

### **About Us (IPLAN)**

IPLAN is the frontline association of lawyers focusing on intellectual property issues of both national and international impact. IPLAN is constituted by lawyers, judges, policymakers, academics, practitioners and Law Students involved directly or indirectly in the practice of patent, industrial design, trademark, copyright, trade secret, and unfair competition law; as well as other fields of law affecting intellectual property.

### **MEMBERSHIP**

Membership of IPLAN is open to Lawyers interested in Intellectual Property law in Nigeria. Intending members must be of good character and in good standing within the legal profession.

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