

Enhancing Business Competitiveness

Trademarks and Industrial Designs

What is a Trademark?

- This is a guise, slogan, sign, shape, symbol, logo, device, heading, label, name or brand which identifies products or services and distinguishes them from others. It is used to inform the public of the owner of goods or services. It is therefore used a lot in branding.
- To qualify for protection your mark must pass the distinction test. The mark must be able to distinguish a certain set of goods or services from others. The word/symbol/logo must be unique e.g. Google, Kodak etc.
- Common names like “cat” and dog cannot be trademarked as they are not unique.

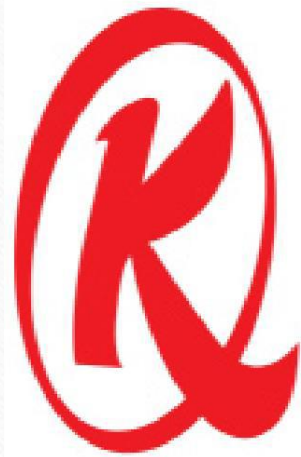
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- The mark should also not be identical or similar to another already existing mark. E.g. “goldband versus blueband, horseman versus sportsman, nivelin versus nivea”
 - Practical steps in getting a trademark:- (1) Invent the word/logo, (2) You must know the industry in which you are going to apply the mark for example is it stationary or hospitality? The importance of this is because all marks fall under either one class of the Nice classification which is a WIPO classification of marks/brands. You can register in several classes at a go.

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- Trademark registration is done at KIPI and there are a number of forms to be filled to ascertain if there is a similar mark and also if the mark is registerable.
 - Once you passed these two tests and you make your application, then it is published at the KIPI Journal for 2 months to allow the public to comment.
 - Usually at this stage is when opposition proceedings are filed, that is a proceeding by a third party objecting to you being granted a trademark. If no proceedings filed within 60 days you get your certificate.

Benefits of a Trademark

- In any proceeding for infringement registration of a trademark is prima facie evidence of ownership.
- Helps you build goodwill for your brands since the IPR gives you a monopoly over that logo. When people see the logo they automatically identify with your brand.
- Helps you fight counterfeits and contra-brands therefore safeguarding your brand quality.
- It prevents others from riding on your goodwill. There are some business people who wait for a brand to be established then try to build a similar brand by creating confusion in the public eye. With a trademark you can sue such people.

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- A trademark is an intangible asset of your business and therefore increases book value.
 - A trademark can be used in IP financing and strategy. A trademark can be used in the franchise industry.
 - 'Nice & Lovely / L'oreal.
 - Serves a consumer protection purpose.



Kenya Airways

The Pride of Africa







Industrial Designs

- Industrial Property Act 2001
- Any composition of lines or colours or any three dimensional form whether or not associated with lines or colours, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as pattern for a product of industry or handicraft.
- An industrial design is any protection given to the outward appearance of objects as defined by shape, pattern or ornament. For 3D objects.
- The outward appearance must be distinctive i.e special appearance.

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- It is useful in industries where aesthetics appeal to the customers and means no third parties can copy the same design without authority. It does not protect the method of construction or the function of the article but merely the outward appearance.
 - Some industries:- Can protect the shape of shoes, clothes, perfume bottles, cars, phones, shapes of buildings, shop layouts and other 3D objects.
 - Registration is done at KIPI. For a design to qualify for registration, it must be novel.
 - Application involves filling of the requisite forms.
 - The same is published at the KIPI journal to give public a chance to object. If no objection is filed within 60 days, registration will proceed.



