

# **The Usefulness of Brand Information and its Importance to Improve the Image of Gambian Companies**

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## I / INTRODUCTION

In a globalized and highly competitive environment where it is increasingly difficult to compete, the brand is one of the leading economic and strategic assets for companies seeking to grow. However, in order to enjoy all the benefits of the brand, it is necessary to protect it. But this protection will only be effective if the person requesting it acquires a certain amount of information about the sign chosen as a brand.

Branding information is the tool that will serve as a guide not only in the choice of the sign but also to acquire all other information about marks in general and about the bibliographic content of the official bulletins and certificates relating to the marks in particular.





This information is mainly found in official bulletins and brand databases. However, our presentation will focus solely on finding the information contained in the Global Brand Database of the World Intellectual Property Organization (WIPO). But before the use of this database, it is necessary first of all to define the concept of trademark, an essential step for a better comprehension of the information it contains.

## **II - WHAT IS A TRADEMARK?**

According to the definition given by WIPO, a trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.

We will retain the following points from this definition:

## **1. THE TRADEMARK IS FIRST OF ALL A SIGN**

- The trademark can be a letter, an acronym, a sequence of words, a phrase, a slogan, a number, a word, a patronymic name ...
- The trademark can also be a sound signal (the music of Bouygues Telecom is registered as a trademark).
- The trademark can still be a drawing (the Olympic rings), a logo (the Windows logo), a particular color, a hologram, or a relief ...
- The trademark can even be three-dimensional (the particular shape of the Coca-Cola bottle is registered as a trademark).
- Finally, the trademark can be a combination of one of these signs, for example the association of a word and a drawing on a background composed of bands of colors.



## 2 / SOME EXAMPLES OF TRADEMARKS

**DUPHASTON**

**558**

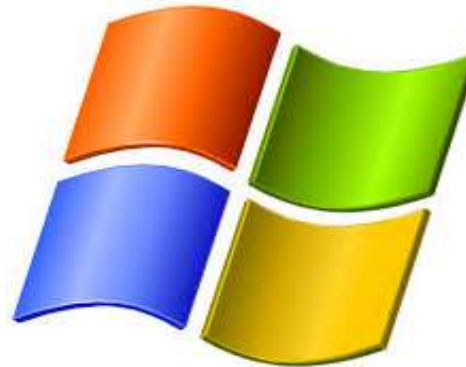
**TOYOTA**

**405**

**BMW**

**Nestlé**

**« Stratton Sports Courts »**





### **3 / THE TRADEMARK SHOULD DISTINGUISH THE GOODS AND SERVICES OF A NATURAL OR LEGAL PERSON**


The Trademark distinguishes the goods and services of its owners from competing goods or services. It allows customers to connect the goods or services, object of the brand, to the person who is behind it. The trademark confer its owner an exclusive right to exploit the sign chosen for a limited monopoly to the specialty sector of the trademark owner.

### **III / CATEGORIES OF EXISTING MARKS**

There are two main categories:


- Trade Marks that are affixed to goods (food products, appliances, perfumes, etc.).



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- Service Marks used to distinguish services as those of a specific company (commercial activities, hotels, restaurants, financial activities, etc.).

These trade or service marks can be **individual or collective**.

- They are **individual** when they belong to a single natural person or a single legal person thus conferring on him the exclusivity of the exploitation of the mark.
- They are **collective** when they belong to a group or an association whose members can use the mark according to a set of rules defined by the group or the association. This type of mark is generally intended to guarantee a particular and common origin, quality or characteristic of the goods or services offered by the members.



There are also **certification trademarks** that are generally granted to goods that meet defined standards but are not restricted to members of an entity.

These certification trademarks can therefore be used by anyone who can certify that the products in question meet the criteria defined by the trademark owner.

The registration of a certification trademark is subject to an important requirement: the entity requesting it must be considered competent to certify the concerned products. The application must be made in the name of a legal entity with a certain independence meaning that this person cannot either be a manufacturer or importer or seller of the products concerned.

**EX: "NF Environment" which certifies that the products of this brand have a reduced environmental impact.**




## IV / CONDITIONS OF VALIDITY OF A MARK

To be valid, the mark should meet the following 4 conditions:

- **The mark must be distinctive:** This means that it must not be the necessary, generic or usual designation of the goods or services and must not be descriptive either.

*For example, we cannot use "auto" as a car trademark. Similarly, the "LOTO" trademark, concerning lottery products and services, was cancelled by the French Supreme Court on the grounds that this term was descriptive of the goods and services marketed by its owner. (Cass. com April 28, 2004, No. 02-14373).*

- **The mark must be lawful:** This means that it must not be contrary to public policy and morality and must not be prohibited either by law or by international conventions.




Consequently, a sign reproducing or imitating wholly or partially the official signs of a state or an international organization may not be registered as a trademark unless authorized by the competent authority of that state or organization.

***For example: The International Convention of Geneva of July 6, 1906 provides that the words "red cross" and the emblem of the red cross on a white background (figurative trademark) may only be used to protect or designate the health formations and institutions, staff and material protected by the Convention.***

Nor can we use obscene signs as trademarks neither can we use insulting or racist words.

However, note that the concept of public policy and morality can vary from one country to another.



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- **The mark must be available:** This means that it must not infringe an earlier right held by a third party. Thus, a trademark must not be the same or similar to another trademark used for the same goods or services or for similar goods or services.
  - **The mark must not be deceptive:** This means that it must not be such as to deceive the public, to give false information in particular on the composition, origin, quality of goods or services it designates. **(Example: the trademark "GREEN TEA OF CHINA" for tea from another source).**

## V / THE FUNCTIONS OF THE TRADEMARK


The presence of a trademark on a product adds value to this product in the eyes of consumers. A person who buys an Apple phone because convinced in advance of the quality, will still be satisfied even if he came across a wrong number.

The trademark has several functions that are very important to understand in order to build a good communication strategy on a good or a service.

The following functions can be mentioned:


- **The distinction:** it establishes the difference with the goods or services of the competitors.
- **The guarantee:** it reassures the consumer about the quality of the good or service. It reinforces its certainty and motivates him in his decision to purchase and consume the product.





**Identification**: the trademark simplifies the consumer's task, enabling him to easily identify a product that has given him satisfaction. Imagine a world without trademark, without distinctive sign to activate your memory, to guide you. Imagine the time it would take you to choose a product. The trademark guides the consumer in his choice and has become essential today.

**The valuation of the consumer**: as a general rule, the consumer is looking for the possession of a particular trademark, to display their values, their style. For example the fashion trademarks, automotive trademarks, perfume trademarks...



**Relationship**: it allows to build a relationship with the consumer beyond the purely functional dimension of the good or service, developing an emotional connection with him. The consumer will therefore be able to identify with the trademark for various reasons: his social, personal valuation...

**Advertisement**: it allows the company to promote its goods or services.

In addition, the trademark has a commercial value. It is a negotiable asset either by sale or by lease.





## VI / TRADEMARKS PROTECTION SYSTEMS

**There are three levels of protection:**

**At the national level:** the request is addressed to the Office of the country from which one wishes to protect its trademark.


**At the regional level:** the request is submitted to the regional organization of protection of the trademarks (ex OAPI, ARIPO, EUIPO ....)

**Internationally:** via the Madrid system.


**Note:**

This system is governed by two treaties:

- The Madrid Agreement concerning the International Registration of Marks (1891);

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- The Protocol relating to the Madrid Agreement, adopted in 1989 and became effective on December 1, 1995. It is applied since April 1996.
  - The Madrid system is governed by these two treaties because some states wished to benefit from the international deposit system but criticized several provisions of the Madrid Agreement. Thus, another treaty on the international registration of marks was concluded, the Madrid Protocol being much more flexible.
  - Like the United States and Japan, a certain amount of countries have never adhered to the Madrid Agreement, which they consider to be too rigid.




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- This system is administered by the International Bureau of WIPO, which maintains the International register and publishes the WIPO Gazette of International trademarks.
  - The application for international registration may only be filed by a person or legal institution who is linked to a member of the Madrid Union by a real and effective industrial or commercial establishment, his residency or his nationality.
  - Any State Party to the Paris Convention for the Protection of Industrial Property may become party to either the Agreement, the Protocol or both.
  - An international registration is equivalent to a set of national registrations because the trademark is protected in each of the designated contracting parties.

## Comparative table between the Madrid Agreement and the Madrid Protocol

DESIGNATION	MADRID AGREEMENT	MADRID PROTOCOL
<b>Basis of the international application</b>	Registration of the trademark in the country of origin	Application or registration in the country of origin
<b>Parties to the Treaty</b>	States	States -intergovernmental organizations
<b>Deadline for notification of objections by the National Offices</b>	1 year	18 months and more in case of opposition
<b>taxes</b>	Basic fees + fees per country + fees per class beyond the 3rd class of goods or services	Basic fees + higher state taxes (possibility for states to require additional taxes, individual taxes)
<b>Consequences of the loss of rights in the basic national mark within 5 years from the date of the international registration</b>	Cancellation of the international trademark	Removal of the international trademark but possibility of transformation, within three months, into national or regional applications with retention of the international filing date and, if applicable, of the priority date





Whatever system of protection is chosen, in principle the registration of a trademark confers an exclusive right to the use of the registered trademark. This means that the trademark can be used exclusively by its owner or licensed to a third party for a fee. Registration confers a legality to the mark and reinforces the position of the owner of the rights, particularly in the event of litigation. The validity period of a trademark registration may vary, but is generally 10 years. Registration may be renewed indefinitely upon payment of renewal fees.

## **VII / THE ESSENTIAL INFORMATION CONTAINED IN THE PUBLICATION OF THE REGISTRATION OF A TRADEMARK**

The items listed below (non-exhaustive) are intended to make more accessible the trademark information published in the Global Brand Database of the World Intellectual Property Organization (WIPO). You will also find codes corresponding to each heading which identify the various bibliographic data relating to the trademarks which appear not only in the official bulletins but also in the certificates related to the trademarks.

### **Those are:**

- (210)** Serial number of the application.
- (220)** Date of filing of the application.
- (181)** Expected date of expiration of the registration.
- (111)** Registration Number.





(151) Date of registration.

(540) The reproduction of the mark.

(511) The International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) and the list of goods and services classified according thereto

(731) Name and address of the applicant.

(740) Name and address of representative.

(591) Information concerning colors claimed.

**If it is an international application, in addition to the information listed above, you will have:**

(270) Language of the application.

(821) Basic application.



**(822)** Basic registration.

**(831)** Designations under the Madrid Agreement.

**(832)** Designations under the Madrid Protocol.

**(834)** Designations under the Madrid Protocol by virtue of Article 9sexies. ***(Article 9sexies deals with relations between States Parties to both the Madrid Protocol and the Madrid (Stockholm) Agreement).***

***For more information please refer to ST 60 of the Handbook on Industrial Property Information and Documentation: Recommendation on Bibliographic Data Relating to Trademarks.***

***Link: [http://www.wipo.int/madrid/en/madridgazette/remarks/gaz\\_st60.htm](http://www.wipo.int/madrid/en/madridgazette/remarks/gaz_st60.htm)***



## **VIII / SOME ADVANTAGES OF THIS INFORMATION FOR COMPANIES**

- Find business partners;
- Monitor the activities of competitors;
- Avoid infringing the rights of third parties by not protecting a trademark identical or similar to a mark already registered for identical or similar goods or services;
- Oppose the registration of a trademark that conflicts with your trademark;
- Avoid unnecessary expenses by registering an unavailable trademark;
- Know who to contact in case you want to apply for a license to operate a trademark.

**In any case, each company will have to exploit this information to the best of its interests.**

## **IX / HOW CAN BRAND INFORMATION IMPROVE THE IMAGE OF GAMBIAN COMPANIES?**

### **1- AT THE LEVEL OF THE CHOICE OF THE SIGN**

Brand information is a preferred source of information because it will give you the necessary information on the choice of the sign. Note that there is no strict rule that the sign you choose will be a successful mark. However some criteria must be able to guide you.

#### **Those are:**


- The sign you intend to choose must meet the legal requirements for the registration of a trademark (it must be distinctive, lawful, available ...);
- The sign must be easy to read, to spell, to pronounce;
- It must also be adapted to the markets in which you intend to use it.





## **2- AT THE RESEARCH LEVEL IN THE BRANDS DATABASES**

Companies are advised to search the brands databases to ensure that they have all the information that the chosen mark is not already being used by another company in their target markets. In many countries, the Trademark Office registers marks without making a comparison with previously received registrations leaving it to your competitors to formulate an opposition after publication of the application or registration of the trademark. This is the case at African Intellectual Property Organization (OAPI). Therefore, registering a trademark in these countries does not guarantee that the trademark will not infringe the rights of third parties. It is therefore important to search in the brands databases before using a trademark.




One should also keep in mind that while it is easy to distinguish trademarks that are identical to your own trademark, it is more difficult to recognize confusing trademarks that are in conflict with yours. For this reason, it is recommended to use the services of a trademark attorney to make search and interpret the results. At the end of this research, you can easily decide whether or not to continue the protection of your mark.

### **3-AT THE LEVEL OF THE PROTECTION OF THE TRADEMARK**

In the current context characterized by international competition, the protection of the trademark must be for companies a strategic means of competition because it allows legal way to constrain competitors, limiting their freedom of maneuver to approach your trademark. Based on information from brands databases and official trademarks newsletters, you






can easily define how and when to protect your trademark, taking into account the ambitions of your business. A company that attacks and knows how to defend its rights on its trademarks is respected, gains notoriety and strengthens its image.

**In addition, trademark protection offers businesses the following opportunities:**


- **Defensive weapon**, the protection of the trademark guarantees the rights of innovative companies on their goods and services.
- **Offensive weapon**, it gives companies the means to win markets.
- **Deterrent weapon**, it deters potential counterfeiters and avoids court proceedings.

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- **An economic weapon**, it allows businesses to reap significant profits. The trademark can be evaluated financially and serve as a guarantee for a bank loan, for example. However, the financial value of the trademark is intimately linked to its legal validity, hence the need for its protection.

**Moreover, thanks to this protection, companies can ensure their growth in several ways namely:**

- Prevent competitors from copying or counterfeiting their marks;
- Create a brand image through a brand-driven marketing strategy;
- Negotiate license, franchise or other brand agreements;
- Increase the market value of the business;



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- Have access to new markets;
  - Avoid unnecessary litigation and save time and resources.

***Note: In any case, it is important for Gambian companies to use databases of patents and trademarks to learn about the latest technical advances, identify their future partners and discover the innovations of competing companies. These databases contain valuable technical and business information that will enable them to develop the business strategies needed to enhance their image in the markets in which they operate.***



## **X / CONCLUSION**

Brand information must be a preferred tool for all businesses, regardless of size. The trademark is no longer used only as a weapon to defend itself and survive the competition. It serves not only to strengthen the brand image of the company but also to generate revenue through the licensing of third parties. It should be noted that today the trademark can also be used as collateral in a financial transaction.

For this reason, all companies must ensure good trademark management by using brands databases that contain a lot of useful information for their growth.





Thank you for your kind attention !!!