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How do I Register a Trademark in Nigeria? Substantive and Procedural Requirements for Registration of a Trademark¹

Trademarks are source identifiers in terms of origin and quality. They also serve to distinguish goods and services of one trader from the next. A triadic structure is often used to explain the functional nature of Trademarks. This triadic structure refers to: 'A signifier' (which is the perceptible form of the mark); 'A signified' (which refers to the semantic content, that is, the goodwill acquired) and 'A referent' (which is the product or service to which the mark refers).² Different jurisdictions have various criteria that must be satisfied before a mark/brand can qualify to be registered. Only distinctive trademarks or marks capable of distinguishing the applicant's goods/services from those with which no such association can validly be made in the course of trade are registrable in Nigeria. Please note the following requirements are specific to Nigeria.

The Registration of trademarks in Nigeria is governed and protected by the Trade Marks Act, Cap. T13, Laws of the Federation of Nigeria 2004 (based on the original 1965 Act). In Nigeria, there are three steps to be taken before a trademark can be registered:

- a. Firstly, to ascertain that a mark is registrable, a search should be conducted at the Trade Marks Registry to confirm the availability or otherwise of the mark prior to an application for registration. However, an application may still be made without

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² See Barton Beebe's article in "The Semiotic Account of Trademark Doctrine and Trademark Culture", in Trademark Law and Theory: A Handbook of Contemporary Research (Dinwoodie & Janis eds. 2008).

conducting a search, but this stands the risk of being refused if in the process of registration it is discovered to be in conflict with an existing mark. The search, barring any bureaucratic hitches, usually takes two or three business days. The applicant is at liberty to seek an advisory opinion on the registrability of a trademark from the Registrar before committing additional resources on this undertaking.

- b. After a successful search and confirmation of the availability of the mark, the requisite statutory documents would need to be filed at the Trademarks Registry in Abuja.

These necessary statutory documents are listed as follows:

- i. A power of attorney duly executed by the proprietor of the mark, authorising your lawyers/filing agent to register the trademark;
- ii. The name of the mark or specimen of the mark (in the case of a logo or device);
- iii. Name and address of the Applicant; and
- iv. Indication of the product class(es).

An applicant is required to forward a replica of the mark/device/logo in the desired mode (for example, with a distinctive font size, alphabetical style, colour, etc.). This is a very crucial step and the applicant must be certain of what is to be protected as that is what will be recorded at the Registry. The name and address of the person or company that would own the trademark will also be required and must be stated clearly.

Every trademark registered in Nigeria must be registered under a class or under multiple classes, depending on your business objectives. This is in line with the Nice Classification (NCL) established under the Nice Agreement (1957) as updated from time to time. The Nice Agreement is an international classification of goods and services applied to the registration of marks. An applicant must clarify the types of goods and services they would like to protect in order to obtain proper advice and guidance from the attorney or trademark agent on the recommended class having regard to the applicant's business type and objectives.

The Power of Attorney/Authorisation of Agent empowers the filing agent to act on the applicant's behalf regarding the registration of the desired trademark. The authorisation of agent requires no legalisation or other formalities apart from a proper signature of the authorising party.

Once an application is filed, an acknowledgement is issued immediately. An acceptance form is usually issued within three to four months after filing the application, and following an initial examination for possible conflicts. The subsequent publication of the mark is at the discretion of the Trade Mark Registry.

- c. Thirdly, once there is no opposition filed challenging the application for registration within the statutory period allowed for challenges (i.e. Two (2) months), an application for issuance of a certificate of registration in respect of the trademark would be made.

In Nigeria, the entire duration for the application and registration of trademark(s) takes between 18 - 24 months, once the opposition period has expired and barring any official delays. The procurement for the trademark certificate shall only become due once the trademark has been published and no opposition is filed within the statutory two months opposition period. Trademarks registered in Nigeria have an initial validity period of seven (7) years with subsequent renewals valid for fourteen (14) years thereafter.

**This article is intended to convey general information and not intended to give legal advice. Questions about any legal matter should be referred to a lawyer for professional guidance and advice.*

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