OPERATIONALISATION OF TRADEMARKS IN UGANDA

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1.1. Introduction

Trademarks forms a vital branch of the intellectual property law and business strategy. In the contemporary commercial world with heightened business stakes, trademarks are central to brand marketing and commercial consumer protection.

A trademark is a guarantee of the reputation and quality value of the product or service offered by the business. It acts as an indicator of origin since various marks are associated with a particular company and also tells the business story. In Uganda trademarks are governed under the Trademarks Act, 2010 and the Trademarks Regulations, 2023. There is an established statutory body Uganda Registration Services Bureau (URSB) that handles the registration and trademark related matters.

1.1.1 What is a trademark

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company from those of other enterprises. A sign or mark includes any word, symbol, slogan, logo, sound, smell, color, brand label, name, signature, letter, numeral or any combination of them and should be capable of being represented graphically. It is worth to note that there are various types of marks including, service marks, certification marks, defensive marks, collective marks and associated marks.

The life of a trademark is indefinite it will last as long as there is continuous use of the mark.



1.1.2. Why you should register your trademark

Trademark protection and enjoyment of rights is only granted upon registration. Any entity or individual that desires to use a certain mark can apply to the registrar at URSB to register the intended mark. When trademark registration is undertaken you enjoy an exclusive right to use the registered trademark which can be capitalized on to distinguish the business from the other competitors in the market. Registration also comes with the right to sue for infringement when the registered mark is used without the owner's consent and any use of a confusingly similar mark.

Trademark registration is synonymous with brand protection which enhances business value and implies quality which is a business message to the customers. It builds trust and emotional connection which in the long run simplifies purchasing decisions for clients.

As your business grows, your trademark becomes an intangible asset that holds significant value.

Customers, investors and potential partners view trademarks as a sign of credibility, reliability, and authenticity, leading to increased loyalty for the business. Additionally, a trademarked brand can attract licensing and franchising opportunities, expanding your revenue streams and increasing your brand's visibility.

A registered trademark provides the exclusivity needed to operate confidently in the territory.

It ensures that no other entity can use a similar mark within the same category, thereby eliminating confusion and protecting customer trust. This becomes particularly important when entering competitive markets where brand differentiation is key. Moreover, trademark registration is a prerequisite for international protection systems, allowing businesses to secure their brand in multiple countries through streamlined processes.

1.1.2.1 Trademark registration process

The registration of a trademark is a process that is engraved in the laws of Uganda specifically the Trademarks Act (No. 17 of 2010). It is a step by step process briefly laid out below;

- Trademark search. After generating your intended trademark and preferred class of registration. You are required to carry out a search of the intended mark with the registrar to ensure that there is no similar existing mark in use.
- Filing the application. When confirmed, a trademark application is filed at URSB with relevant documents and details.
- Formal and substantive examination by the registrar. The registrar examines the application to determine that compliance of all requirements, distinctiveness of the mark and ensure that there is no conflicting mark.
- Publication in the gazette and possible opposition. Upon approval, the mark is published in the official gazette for 60 days and any opposition to the registration of the mark is entertained in the 60 days window.
- Registration and certificate: If no opposition is lodged or incase the opposition is not successful, the mark is entered in register and a certificate granted upon full payment of fees.



It is worth to note that Trademark registration is territorial in nature in that registration of the mark is only limited to that particular country in which the mark was registered. A mark established in a particular jurisdiction, the rights are generally enforceable in that jurisdiction.

This position has been upheld by Ugandan courts in ***Modino furniture company ltd v homeart Uganda ltd & another (Civil Suit No. 427 of 2020; Civil Suit No. 724 of 2019) [2024] UGCommC 428*** court stated that "the 2nd defendant cannot be said to have obtained exclusive rights under international registration, as non-registration of the protected mark in Uganda cannot confer automatic protection of the said mark in Uganda". It further held that "international registration is independent of national registration and the 2nd defendant ought to have registered the mark in Uganda in order to obtain protection in Uganda" . However this position is a subject of appeal and we await to hear the pronouncement of the Court of Appeals in regard to that matter.

Upon registration the duration for trademark protection is 7 years after the first registration. And this is renewable successively every after 10 years which renewal is done under an application to the registrar.

Non-compliance with the renewal may lead the registrar to remove the trademark from the register

1.1.2.2 Trademark infringement

Trademark infringement occurs when an unauthorized party uses a mark closely resembling or confusingly similar to a registered mark. This creates confusion to the customers and likely misleads the public as to the actual origin of the product. The right to sue for trademark infringement is only limited to registered marks. Thus owners of unregistered marks cannot sue under infringement. Protection of unregistered marks, owners of unregistered marks can only sue under the common law tort of Passing off. The common law tort of passing off prevents traders from misrepresenting their goods and services as those of another.



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Trademark infringement takes various forms and a proprietor has the right to sue upon any of these forms;

- Direct infringement, this occurs when a person without the consent or approval of the registered proprietor uses a mark identical or deceptively similar to a registered mark in relation to the same or similar goods or services. There must be a likelihood of confusion in the target market.
- Dilution, this occurs between products in unrelated markets where goods do not compete with each other.
- Blurring, involves an association arising from the similarity between a famous mark and a new mark. This impairs distinctiveness.
- Tarnishment, is an association arising from the similarity between a defendant mark and a famous mark that harms the reputation of the famous mark. The famous mark is linked to inferior quality products or an illegal product.

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Conclusion

Trademark registration and protection in Uganda has taken a positive stride in the business world and economy. Many companies and individuals have realized the strategic importance of trademark registration and its impact as a direct business asset with critical enhancement of brand value hence being pivotal business growth. It is thus important to understand the trademark eco system in Uganda and its relevance to your business.



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