The Responsibility of Brand and Trademarks Owners in an Increasingly Health Conscious World

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ARIPO at the WIPO 2018 Assemblies

Using Intellectual Property to Promote National Interests and Economic Development in Low Income Countries
INTRODUCTION
The African Regional Intellectual Property Organization (ARIPO) is an intergovernmental organization, which was established on 9 December, 1976 under the Lusaka Agreement signed in Lusaka, Zambia. Its mandate is to develop, harmonize and promote intellectual property in the Member States of the Organization and in Africa.

Membership of the Organization is open to all the States members of the United Nations Economic Commission for Africa (UNECA) or the African Union (AU). Currently there are nineteen Member States, namely; Botswana, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, Swaziland, United Republic of Tanzania, Uganda, Zambia and Zimbabwe.

Substantive activities of the Organization are implemented through three treaties each focusing on a specific field of intellectual property. These treaties are: (a) the Harare Protocol on Patents and Industrial Designs; (b) the Banjul Protocol on Marks, and (c) the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore. A fourth treaty, the Arusha Protocol for the Protection of New Varieties of Plants is yet to enter into force.

The Harare Protocol was concluded in 1982 and entered into force on 25 April, 1984. Among other functions, it empowers the ARIPO Office to grant patents and register industrial designs as well as utility models on behalf of the treaty’s contracting states. The Harare Protocol incorporates other international treaties of relevance, for instance, the Paris Convention, the Patent Cooperation Treaty (PCT) and therefore enables applicants from the African region and elsewhere to file international applications and obtain protection of their intellectual property rights. The Harare Protocol has also been linked to the Budapest Treaty, which enables applicant to provide information on new micro-organisms claimed in patent applications. All Member States of ARIPO, with the exception of Somalia, are party to this treaty.

Search services
ARIPO has custody of worldwide patent documents. With the available documentation and information retrieval systems, the organization offers several search services to the public including state of the art, novelty, validity, Bibliographic and Patent map searches.


The Protocol empowers the ARIPO Office to register marks for goods and services in respect of and on behalf of the contracting states. Similar to the Harare Protocol, the Banjul Protocol provides a centralised system of registration and provides a mechanism for the ARIPO system to co-exist with the national systems of the Banjul Protocol contracting states. Thus, an applicant can choose to register a mark with a national office for protection limited to that country or may elect to use the ARIPO route in which case the application should designate at least one contracting state up to the maximum of ten.

The Swakopmund Protocol was concluded on 9 August, 2010 at a diplomatic conference held in Swakopmund, Namibia. It entered into force on 11 May, 2015. It acknowledges that traditional and local communities have for long utilised their traditional knowledge and culture for their survival and livelihood, and that there is now a gradual disappearance, erosion, misuse, unlawful exploitation and misappropriation of this traditional knowledge and folklore. Thus, the treaty seeks to empower and enhance capacity of custodians of traditional knowledge and folklore to realise their aspirations and prosperity through an effective protection system that will create a conducive environment for the respect, recognition, development and promotion of traditional knowledge and expressions of folklore and their continued use and development.

The Arusha Protocol for The Protection of New Varieties of Plants
The Arusha Protocol for The Protection of New Varieties of Plants was concluded by a Diplomatic Conference that was held in Arusha, the United Republic of Tanzania on 6 July, 2015. The Protocol will enter into force only when four States have deposited their instruments of ratification or accession. The Protocol will provide Member States with a unified plant variety protection system that recognizes the need to provide growers and farmers with improved varieties of plants in-order to ensure sustainable agricultural production.

Protection of Copyright and Related Rights
ARIPOs mandate on Copyright and Related Rights aims to ensure the Organization coordinates and develop policies for the effective growth and protection of Copyright and Related Rights, recognizing the value of creative industries to the contribution of national economies and employment in Member States, the emancipation of copyright from all forms of piracy and strengthening infrastructure used for enforcement of copyright laws in the Member States and Africa at large.

Capacity Building Activities and Awareness Creation
ARIPO established a state of the art Acaderny, which was inaugurated on 15 February, 2006 to serve as a center of excellence in teaching, training, research and skills development in the field of intellectual property for different target audiences, including creators, inventors, artists, business managers and IP professionals, journalists, parliamentarians, policy makers, university lecturers, government officials of IP institutions, students and the civil society. The Academy provides intellectual property training in different areas including Masters in Intellectual Property, tailor-made courses, professional courses, research studies, attachments, internships and fellowships, and training programmes that focus on industrial property, copyright, enforcement, traditional knowledge, genetic resources and folklore.
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The success of ARIPO this past year was built on the efforts and dedication of all the ARIPO staff, partnership with our Member States and collaboration with our cooperating partners.

Some of the highlights from 2018 in regard to the protection of rights are that we saw an unprecedented growth in the applications of utility models filed from 1 January to 31 October 2018. This is an important signal that our innovators are slowly making use of this important tool to protect their incremental innovations with the view to improve their abilities and be able in future to file patents. The number of applications for patents has also increased by 13.1%. We project the total number to be 831 applications by end of December 2018.

In the Information and Communication Technologies, I am happy to inform you that ARIPO has made tremendous progress. The ARIPO online system is today fully functional. We have received encouraging testimonies from IP Practitioners and applicants using the ARIPO online platform. This has also led to an increase in the number of new applications filed online. Currently, 77% of all new applications filed in this year were filed online compared to 58% in 2017 and 33% in 2016. It is our hope that we will soon operate fully online with great advantages both to the ARIPO office, member states and users.

Also, related to the foregoing is a Regional IP Database that was developed in a bid to ease the access to published IP titles from ARIPO Office and its Member States. A pilot database was launched in September this year and it has currently more than 400,000 IP titles, mainly trademarks, from ARIPO Office and 12 Member States. We believe that soon the database will cover the remaining states.

Other achievements in the year include the launch of a two-year Masters of Philosophy programme on Intellectual Property (IP) in collaboration with the Kwame Nkrumah University of Science and Technology (KNUST) and the Ghana IP Office in August 2018. It is also expected that a new programme will be launched in May 2019 in Tanzania in collaboration with the University of Dar es Salaam. So far, the Masters of IP that is currently delivered in collaboration with Africa University in Zimbabwe and the WIPO Academy with the support of the Japan’s Funds in Trust has produced 296 IP experts from 26 African Countries in 10 years.

Last but not least, the Organization achieved a 50:50 gender distribution of staff members with 13 out of the 19 Member States nationalities represented.

As we get into the holiday season, I wish you all happy holidays and a happy 2019.

Email: communications@aripo.org
HIGHLIGHTS OF EVENTS

Forty-Second Session of the Administrative Council of ARIPO Concludes in Windhoek, Namibia

The Forty-second Session of the Administrative Council of ARIPO held in Windhoek, the Republic of Namibia at the Safari Conference Centre from 19 November to 23 November, 2018 concluded on a high note with a clarion call for promotion of IP in the continent for economic development.

“African leaders need to scrutinize intellectual property rights to drive innovation. We are here to discuss the latest developments in the realm of Intellectual Property (IP) and explore a new frontier for business,” noted the Deputy Minister of Industrialization, Trade and SME Development of the Republic of Namibia, Honourable Lucia Iipumbu who was the Guest of Honor at the opening of the Council meeting.

Honorable Iipumbu further noted that innovation is the driver for economic development globally and that the current trends in IP were likely to translate into huge business opportunities for fast movers in the knowledge market.

The Annual meeting discussed several documents on the administrative aspects of the Organization including the proposed budget and programme of activities for the year 2019 and proposals to amend some of the ARIPO Protocols (Harare Protocol on Patents and Industrial Designs and Banjul Protocol on Marks) to continually keep them user friendly and in line with international trends.

The ARIPO Director General, Mr. Fernando dos Santos informed the Council that the number of IP applications under the ARIPO Protocols increased considerably compared to 2017.

He particularly emphasized that this year saw an unprecedented growth in the applications of utility models filed from 1 January to 31 October 2018. “This is an important signal that our innovators are slowly making use of this important tool to protect their incremental innovations with the view to improve their abilities and be able in future to file patents, he added.

By the close of the Session, the Council approved among other things the suggested changes to the Harare and Banjul Protocols that would improve the implementation of the two legal instruments. The Council also approved the proposed budget and programme of activities for 2019.

Seventeen Member States of ARIPO were represented at the Session, namely; Botswana, Eswatini, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. Mauritius and Seychelles also attended the session in their capacity as Observer States. Also present were Inter-governmental Organizations, Co-operating Partners and IP Practitioners.

The Chairman Administrative Council, Mr. Namelo Chikumbutso, thanked the members of the Administrative Council and other stakeholders for making time to attend the Annual meeting which showed commitment in supporting ARIPO’s mandate.
ARIPO was at the Fifty-Eighth Series of Meetings of the Assemblies of the Member States of World Intellectual Property Organization. The 2018 Assemblies of the Member States of WIPO, held from September 24 to October 2 at the WIPO Headquarters in Geneva, discussed a range of action items and featured a high-level negotiations on the norms that underpin the IP rights that are increasingly critical components of global business and trade.

ARIPO was represented by the Director General, Mr. Fernando dos Santos, the IP Operations Executive Mr. John Kabare and the Head of Policy, Legal and International Cooperation Mr. Pierre Runiga.

Amendments to the Intellectual Property Act in Kenya

Article by Inês Monteiro Alves
Inventa International

The Authorities of Kenya published on April 10th 2018, The Statue Law (Miscellaneous Amendments) Bill, 2018, a legislation for the amendments of several laws, in which the Industrial Property Act, 2001 (No. 3 of 2001), the Copyright Act, 2001 (No. 12 of 2001), the Anti-Counterfeit Act, 2008 (No. 13 of 2008) and the Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (No. 33 of 2016) are included.

Apart from the controversial amendments to the Anti-Counterfeit Act, 2008 (No. 13 of 2008), involving, amongst others, the substitution of the Anti-Counterfeit “Agency” (ACA) to “Authority” and the fact that it is now mandatory to record Intellectual Property rights at the customs, the amendments to the laws regarding Intellectual Property have been well accepted.

On what regards the amendments to the Industrial Property Act, 2001 (No. 3 of 2001), it is possible to point out some relevant modifications which will be further analyzed. To begin with, there is an obvious concern to align the definitions of the Act with those from the Constitution.

Kenyan Constitution has the reputation of being one of the best globally in what refers the protection of Intellectual Property rights. In accordance to article 40 of the Constitution, any citizen should be granted Intellectual Property rights without any discrimination and the state is unable to pass any law that arbitrarily allows the government to compulsory acquire such rights (with the exception of the acquisition of rights for public purposes or in the public interest and in these cases, the state is required to compensate the owner) or to pass any law that limits the owner of enjoying these rights.

For this reason and considering that the Constitution is the supreme law regarding the protection of Intellectual Property rights, the aim to align the definitions of the Industrial Property Act, 2001 with those from the Constitution was a target met.

On a second note, the new law also determines the substitution of “ARIPO Protocol” to “Harare Protocol”, which means the protocol on patents and industrial designs adopted at Harare on 10th December 1982. In fact, the African Intellectual Property Organization (ARIPO) comprises two different protocols, specifically the Harare Protocol on Patents and Industrial Designs and the Banjul Protocol on Marks, both within the framework of the African Regional Industrial Property Organization. Kenya, however, is only a signatory member of the Harare Protocol, since 24th October 1984.

The amendment of the law was intended to clarify that the only enforceable Protocol in Kenya is the Harare Protocol. For this reason, there is now an express mention to this specific protocol that only affects patents, utility models and industrial designs filed under the same. As per article 59 (1), a “regional application” means an application for a patent, utility model or industrial design filed in accordance with the Harare Protocol and the regulations made thereunder.

Thirdly, patents have also been subject to modifications within the new legal framework of the Statue Law Bill, 2018.

In accordance to the new amendments, the applicant of a patent is required to disclose “the best mode” for carrying out the invention, as the wording of article 34 (5) of the Industrial Property Act should now be read as follows: “The description shall disclose the invention and the best mode for carrying out the invention, in full, clear, concise and exact terms as to enable a person skilled in the art to make, use or evaluate the invention (...).” Contrarily, the previous wording only mentioned that the description should “(...) disclose the
invention and at least one mode for carrying out the invention in such full, clear, concise and exact terms as to enable any person having ordinary skills in the art to make use and to evaluate the invention (...)."

In what refers the inventions concerning a microbiological process or the product thereof, which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the deposit of the same is now required to be done in a depository institution as prescribed by the regulations. The new wording omits the necessity of the deposit at the date of the filing of the application.

The legal framework of industrial designs was also subject to determinant amendments under the new law.

There is now a new definition for “industrial design”, which means the overall appearance of a product resulting from one or more visual features of the shape, configuration, pattern or ornamentation of a product; the term “product” means anything that is made by hand, tool or machine. Previous to the amendment, the design was defined as the “composition of lines or colors or any three dimensional form, whether or not associated with lines or colors, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft”.

There is now an extension to what is unable to be protected as a design and apart from the circumstance where the product serves solely to obtain a technical result, it shall also not be able to be protected as design the product that solely serves methods or principles of manufacture or construction.

In addition, the requirement of novelty has been amended and the new law determines that an “industrial design is new unless it is identical or substantially similar in overall impression to an industrial design that has been disclosed to the public anywhere in the world by publication or use prior to the filing date or, where applicable, the priority date of the application for registration”. Contrarily, the former requirement of novelty determined that a design should “be deemed to be new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or, in Kenya by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.”

Apart from the designs that are contrary to public order and morality, already previously foreseen, works of sculpture, painting, photography and any other creations that are purely of artistic nature shall also not be able to be registered as industrial designs.

Despite the fact that there have been other amendments to the Industrial Property Act, 2001, the aforementioned changes have been significant in what refers the main definitions of industrial property rights, particularly patents and industrial designs, which purpose appears to be intended to harmonize the concepts determined within the legal framework of the Harare Protocol and other international legislation enforceable in the country. It is not fair to say that Kenya was in need of background changes regarding intellectual and industrial property, as this is one of the most developed and effective countries in Africa in what refers this matters, however, amendments of this nature are only representative of how well structured the legal system of the country is.

Ghana Embarks on Copyright Education Project

This article was first published in Patent Lawyer Magazine Nigerian Law Intellectual Property Watch Inc. By Nathaniel Adebayo

Ghana Copyright Office has taken a giant step by initiating and spearheading a copyright education project aimed at educating the public on copyright issues.

The campaign was launched on the August 7, 2018 at the Coconut Grove Hotel in Accra, where it was announced that the education campaign will take place in conjunction with the Copyright Monitoring Team (CMT).

Speaking at the launch, the acting copyright administrator of the team, Yaa Attafu said that “Education, awareness creation and building respect for copyright are prerequisites for enforcement”.

Yaa added that the campaign is to shed light on the deleterious effect of copyright infringement on the creative industry. He emphasized on the need for proper insight for the public in a bid to disallow inefficient enforcement.

“It is for this reason that the Copyright Office together with the Copyright Monitoring Team is stepping up its education and awareness creation campaign by using both the traditional and new media to drum home to all and sundry the need to respect the rights of creators”. Yaa Said.

The CMT, which comprises police, copyright owners, book publishers, audiovisual right and musical rights holders and the Copyright Office, is chaired by Dorothy Habadah. The body will execute drives against piracy and keep an eye on copyright cases in the country.

Source: https://nlipw.com/ghana-embarks-on-copyright-education-project/  

Malawi Becomes Latest Member Of Madrid System

On 25 September 2018, the World Intellectual Property Organization reported that Malawi deposited its instrument of accession to the Madrid Protocol. This makes Malawi the 102nd member of the Madrid System.

The Madrid System enables trade mark proprietors in Malawi to file a single international application for trade mark protection in up to 117 territories.

The Madrid Protocol is set to come into force in Malawi on 25 December 2018.

Malawi’s current trade mark legislation does not provide for the registration of trade marks in terms of the Madrid Protocol. However, on 2 February 2018, Malawi’s President assented to Trade Marks Act no. 2 of 2018 (“the New Act”). The New Act makes provision for the registration of trade marks in Malawi in terms of the Madrid Protocol. However, the New Act has yet to come into law and will come into operation on a date appointed by the Minister by notice published in the Gazette.

Given the current challenges at Registry, particularly the lack of fully digitised records, we strongly recommend seeking national TM protection, until such time as the Malawian Trade Marks Office is fully automated and Madrid designations are being processed in conformity with the relevant regulations.

New Staff at ARIPO

*Copyright Officer*
*Mr. Amadu Bah*

Mr. Amadu Bah is a citizen of Sierra Leone and joined ARIPO on 1 November, 2018 as the Copyright and Related Rights Officer under the IP Development Division. Mr. Bah is a holder of a Master’s Degree in Intellectual Property from Africa University in Mutare, Zimbabwe. Prior to joining ARIPO, Mr. Bah worked at the Institute of Advance Management and Technology in Sierra Leone where he taught an Introductory to Intellectual Property course.

He also has a Certificate in Basic Electoral Administrative from the Sierra Leone National Electoral Commission acquired in 2017. Mr. Bah also worked at the Ministry of Finance and Economic Development as an Enumerator where his responsibilities were Public Expenditure Survey.
Intellectual Property has Become a Central Issue for Modern Businesses, in Addition to Playing a Role in Economic Development.

*Article by Charmine Ngatjiheue, The Namibian*

This is according to the Business and Intellectual Property Authority (BIPA)’s acting chief executive officer Selma Ambunda, who said intellectual property (IP) in the past decade received recognition and prominence. Ambunda was speaking at the African Regional Intellectual Property Organization (ARIPO)’s 42nd administrative council meeting, which kicked off on Monday in Windhoek. The meeting will end tomorrow. She said as IP is becoming an integral factor to business packages, it is worth noting that its emergence in African countries, including Namibia, has reached a record level. “However, the challenge of IP authorities is how to respond to the needs of the citizens, and how to help them unlock their IP potential. A strong national IP framework will reassure investors, whilst the framework gains an edge in the global knowledge component,” Ambunda said. She added that IP authorities are challenged to build national IP regimes which have strong legislative frameworks, supported by effective enforcement mechanisms.

“However, in this fast-changing world, these can no longer suffice. In the area of IP, where uniqueness and innovation are the key ingredients, it will be naïve to expect IP law to anticipate and deal with all the challenges brought about by rapid technological advancements. A more comprehensive strategy must also address the demands of cyber education. Apart from maintaining an effective, transparent IP registration system, the role of the national IP authorities should include changing people’s mindsets towards IP,” the acting Bipa chief said. She reiterated that IP has received recognition and prominence in the last decade, saying it is an important topic not only for corporate boardrooms, but it is also being discussed amongst government and international organizations.

“Much of these changes are as a result of globalization and the beginning of a global market place, which is talked about by growing international trade. This has led to the emergence of globally distributed production chains, whereby an idea can be conceptualized in Africa, designed in Europe, manufactured in Asia and marketed all over the world. In the emergence of the world economy, competitive advantage will depend less on traditional factors of production such as land and natural resources, but more to the quality of patents, ideas and innovations. As a result, companies are looking to IP protection to gain an advantage in this competitive global market place,” Ambunda observed.

Also speaking at the council meeting, ARIPO’s director general, Fernando dos Santos, said the fact that the administrative council is being held in Namibia is a sign of the Namibian government’s commitment to support ARIPO.

ARIPO has 19 participating member states, namely Botswana, Gambia, Ghana, Kenya, Eswatini (Swaziland), Lesotho, Malawi, Mozambique, Namibia, Sierra Leone, Liberia, Rwanda, Somalia, Sudan, Tanzania, Uganda, Zambia, Sào Tomé and Príncipe and Zimbabwe.

Using Intellectual Property to Promote National Interests and Economic Development in Low Income Countries

By Olasupo Owoeye, PhD, Senior Lecturer in Law, RMIT University, Melbourne, Australia

Intellectual property rights are generally protected by states to promote creative works and commercial brands while incentivising research and development with a view to fostering innovation. As the protection conferred comes at a cost to consumers in the form of the intellectual property driven market power that often results in higher pricing, intellectual property laws must be designed to strike a balance between incentivising innovation or creativity and the cost of market monopoly. A well designed intellectual property system can be a powerful vehicle for economic growth and human development. The accretion of knowledge with its exploitation is indisputably a major driver of socio-economic development in the 21st century and the role of intellectual property in the knowledge economy cannot be overemphasised. This explains why governments all over the world are constantly developing intellectual property systems that are responsive to the needs of industries generating knowledge and their national and developmental objectives.

The entry into force of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) engendered a significant degree of concern on the implications of intellectual property for development especially in low income and least developed countries. This is particularly so in relation to the patents and public health debate that started with the action against the South African Government by the Pharmaceutical Manufacturers Association of South Africa in 1999. A development that made TRIPS and Public Health a major topic in the WTO Doha Development negotiations. This also led to a major amendment to the TRIPS Agreement in the form of the Protocol Amending the TRIPS Agreement which entered into force on 23 January 2017.

It is however worthy of note that the TRIPS Agreement has the enhancement of economic development as one of its underlying objectives. The preamble to the TRIPS Agreement not only recognises the relevance of intellectual property to the pursuit of developmental and technological objectives, Article 7 of the TRIPS agreement specifically provides that intellectual property ‘should contribute to the promotion of technological innovation and to the transfer and dissemination of technology...in a manner conducive to social and economic welfare, and to a balance of rights and obligations’.

Article 8 of the TRIPS Agreement goes further to provide that WTO member states may in formulating their IP laws adopt measures necessary to protect public health, public nutrition and public interest. A question that arises from Articles 7 and 8 is whether the provisions are merely hortatory or mandatory. It appears the language of Article 7 was designed to be hortatory and the provision may be taken to reflect more of a policy objective. However, a recent decision of the WTO Panel, which was adopted in August 2018, in DS467: Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging (hereinafter referred to as Australian Tobacco Case), seems to suggest that the provisions of Articles 7 and 8 of the TRIPS Agreement may be more than merely hortatory. The WTO Panel in the Australian Tobacco case had to interpret Article 2.2 of the WTO Agreement on Technical Barriers to Trade (TBT) in relation to the plain packaging legislation adopted by Australia to protect public health. The Australian legislation prohibits, amongst other things, the use of trademarks on tobacco products and it was argued that this ran afoul of Article 20 of the TRIPS Agreement. Article 20 of the TRIPS Agreement provides that there shall be no unjustifiable encumbrances against the use of trademarks. Australia in its defence, relied on Article 2.2 of the TBT which provides thus:
Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective. Taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

The WTO Panel took the view that there was no conflict between Article 2.2 of the TBT and Article 20 of the TRIPS Agreement. In relation to the legality of the measure taken by Australia under WTO law, the Panel thus opined:

It is undisputed, in these proceedings, that tobacco use and exposure to tobacco smoke cause death and disease, and that the protection of human health from such risks is thus a legitimate public health objective within the meaning of Article 2.2 of the TBT Agreement.

It is pertinent to note that the language of Article 2.2 of the TBT is largely in tandem with Article 8 of the TRIPS Agreement which empowers WTO member states to adopt measures necessary to protect public health and public interest in sectors of vital importance to their economic and technological development. The WTO decision in the Australian Tobacco case thus lends credence to the view that the principles and objectives of the TRIPS Agreement are valid and legitimate considerations in the formulation of intellectual property rules.

While much of the intellectual property and development debate has focussed on the North-South divide in relation to patents and access to patented technologies in low income and least developed countries, the role of copyright in promoting economic growth in developing countries has not received the same level of attention. This is particularly true with respect to African countries. As succinctly put by Schultz and Gelder:

African creativity remains an underappreciated and underexploited resource: rarely do creative sectors contribute more than 1 percent of the relatively low gross domestic products of any African country. Africa’s share of trade in cultural goods constitutes less than 1 percent of the global total.

It is important to note that intellectual property is not just a system that offers benefits for developed countries with developing countries having to pay higher prices; it is a framework that can be used to enhance the expansion of creative industries and economic growth even in low income countries.

It is indisputable that Africa as a continent is very rich in culture, arts and music. While virtually all African countries have local legislations regulating copyright law, the protection of copyright remains a major challenge in Africa and this continues to have grave implications for creative industries in the continent. This is largely due to a range of factors. Schultz and Gelder highlighted the following as major obstacles impeding the growth of creative industries in African countries:

- Lack of reliable enforcement against piracy;
- Lack of royalty payments;
- Lack of licensing fees;
- Irrational, burdensome taxation.

While these factors all contribute to the underdevelopment of creative industries in Africa, lack of knowledge of intellectual property rights, especially copyright and image rights, also contribute to the continuing impoverishment of the African artiste. There is equally the cultural propensity to favour the common use of works without licensing or compensation based on the traditional belief that the general use, even when unaccompanied by royalty or licensing payments, is a mark of recognition and respect. Although Africa is blessed with many talented artistes, many of the artistes that could have made great contributions to the growth of creative industries and the economic development of the continent through their creativity have been hampered by the factors highlighted above. The benefits of copyright and the potentials of creative industries in the continent have been greatly undermined by the several challenges that weaken intellectual property frameworks in the continent. It is therefore important to exigitently explore options for making copyright work for creative industries in Africa and the economic development of the continent.

To maximise the benefits of intellectual property, especially copyright and image rights, in Africa, African artistes must be supported to appreciate and understand the breadth and scope of their rights under intellectual property law and the need to protect these not only for their career growth but also the economic development of their nations. It is also imperative for African governments to develop copyright and image rights laws that are specially formulated to promote innovation, creativity and their national economic objectives in line with Articles 7 and 8 of the TRIPS Agreement. More importantly, African governments must be committed to making intellectual property work in the continent by putting in place administrative and judicial structures that foster the enforcement of intellectual property rights in their territories.
The Responsibility of Brand and Trademarks Owners in an Increasingly Health Conscious World: A Balancing Exercise or a Threat to Intellectual Property?

By Wonder Nyamayaro, Legal Intern at ARIPO

‘Health is wealth’ mantra is increasingly becoming the quintessence of modern day policy making. An examination of policies such as sugar tax, plain packaging laws and graphic warning signs on alcohol drinks in countries like Turkey affirms to a greater extent the foregoing assertion that posits the prominence of the consumer health narrative in policy making. The nobility of the consumer health narrative is apodictic; nevertheless brand and trademark owners may justifiably feel that too much weight is given to the consumer health goal without sufficient corresponding respect to their intellectual property rights. This article examines this conundrum and its possible ramifications on the future of intellectual property rights.

Consumer health narrative and analysis

The consumer health narrative is the idea that consumers should be given a comprehensive background that will enable them to make sound decisions vis-à-vis the selection, purchase and use of certain products particularly those considered ‘harmful’ such as tobacco, alcohol and fatty foods. To achieve this, various governments and States around the world are making policies that are aimed at tackling misinformation or misconceptions by brand or trademarks owners aimed at influencing consumer choice in relation to the ‘harmful’ product. Examples of such misleading brand information include, ‘a long life is stress free, eat chicken’, ‘organic fruity tobacco’ and ‘no one knows the meaning of life sober, grab a beer. Bonadio (2014) argues that Brands affixed on packaging, including fancy words, logos and colours, are the privileged means to communicate this message to prospective purchasers. It therefore does not come as a surprise that more and more regulators and policy makers around the world have started adopting measures that prohibit or restrict the use of trademarks on packaging in connection with products that are considered harmful.

Therefore various States and governments are trying to make ‘harmful’ products less appealing so as to discourage consumption. For example, in the UK, Australia and France they introduced laws that establish standardized mandatory plain packaging for all cigarettes and roll on tobacco products in order to discourage teenagers from taking up smoking in order to ‘look cool.’ The rationale behind this policy is that an unflattering packaging will discourage teenagers from smoking cigarettes or promoting cigarettes to their peers in the process reducing teenage smoking. Of course, the perturbing certitude from the plain packaging policy is the fact that teenagers are smoking in the first place in spite of smoking being illegal to minors. Is that an indication of failure of government policy to effectively ban teenage smoking and enforce severe penalties on the facilitators of teenage smoking?

The foregoing rhetoric question is not meant to deflate the possible influence of brand and trademarks in encouraging teenagers to take up smoking or vaping. For instance, Vox (2018) argues that JUUL (a leading US vape company) is popular with impressionable teenagers because of its various flavors such a mint and, its social media usage (i.e.: teenagers take snaps on snapchat vaping or take Instagram pictures vaping portraying the ‘cool’ element of vaping). Therefore, there is veracity in the notion that brand or trademarks can influence consumer choice particularly impressionable consumers like teenagers.

The question then becomes, to what extent can the government and States protect impressionable consumers without vexing intellectual property rights owners? Surely, logos, graphic designs and colours have value to trademark and brand owners as they effectively showcase the origin of the goods, the quality of the goods and assist customers to easily identify one product from another?

The Law

In the case of British American Tobacco UK Limited v The Secretary of State for Health which challenged plain packaging law, it was decided, inter alia, that trademarks are negative rights rather than positive rights. This means that a trademark owner has a right to prevent others from using his or her trademark as opposed to the right to use it. In addition, the courts decided that plain packing laws were allowable under the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) which should be interpreted with the Doha Declaration on TRIPS which compel members of WHO to promote public health. In light of this, the
legality of restrictive laws on the use of trademarks whether on cigarettes packs, alcohol or fatty foods is that they are compatible with international laws to a greater extent.

On the other hand, the question of whether registration of trade mark on its own provides a positive right to use a trade mark remains debatable. The answer provided by the courts and academics that have published in this area is that it does not offer a positive right but a negative right to prevent others from free riding on the mark of the rights holder.

**Problems for Rights Holders - Adapt or Collapse?**

Since recent legal opinions seem to endorse the consumer health narrative vis-à-vis restrictions of trademarks, the onus is on the trademark or brand owners to either make costly legal challenges that they will likely lose basing on current legal precedent or adapt to the new realities. For example, we are seeing fizzy drinks manufacturers adapting to the sugar tax in some countries by making ‘zero sugar’ alternatives.

However, this is difficult to match with plain packaging laws which establish homogenous specifications of packaging of the harmful product apart from the name of the brand. Here, new brands of ‘harmful products’ will undoubtedly struggle to find a market because they will not be able to set themselves apart visibly and also, they do not have an established name that customers can use to identify them. Proponents of consumer health narrative will undoubtedly see this as a positive, nevertheless, for opponents, does this signal a threat to the intellectual property growth?

Moreover, there is a genuine concern of the domino effect of these consumer health laws. Where does this end? Today, fatty foods and sugar drinks are unhealthy based on established science present today, what about sweet potatoes in near future? How harmful does a product have to be in order for the governments and States to establish restrictive use of trademarks for rights holders of that product?

**Conclusion**

These above stated lamentations demonstrate a bleak future for IP rights if the ‘adapt or collapse’ philosophy is followed. It is agreed that trademark and brand owners should be responsible with how they portray their products especially to impressionable people like teenagers.

Nevertheless, a balancing exercise should be conducted by the government and States when promoting consumer health, otherwise aggressive restrictive use of trademarks will destroy intellectual property rights over time.
The ARIPO Secretariat has developed a mobile APP for meetings as more of its operations get digitized. The ARIPO App, available on the from the Google Play Store and Apple APP Store was first used at the 42nd Administrative Council held in Windhoek, Namibia from 19-23 November, 2018 and at the JPO-WIPO-ARIPO Regional Workshop on development of IP Policies in Universities & R&D Institutions held from 5-6 December, 2018 at ARIPO.

The mobile APP offers the following functionalities among others:

- Workshop information
- Programme
- Organizing committee details
- Speakers’ information
- Information about Zimbabwe
- Hotels information
- Notices

DID YOU KNOW?

The ARIPO App is available on the Google Play Store and Apple APP Store.
INTRODUCTION

The new ARIPO Headquarters Building was officially inaugurated on 9 December 2016. Its location is a premier area, a diplomatic zone and has a greenery view. The new building incorporates extensive office space, conference facilities, state-of-the-art auditorium, cafeteria and courtyard garden which is set to become a gallery/exhibition space displaying samples of registered Intellectual Property (IP). It also has an ample parking lot. It is within this context that the Organization is making available some of the new facilities to the public for hire.

This business model provides the basic information for hiring the state-of-the-art facilities and the premier IP services that ARIPO offers.

ARIPO FACILITIES FOR HIRE

The new ARIPO Headquarters Building offers state-of-the-art facilities geared towards providing excellent impressions for a professional outlook that any business would be proud to be associated with. First impressions are crucial and a great environment can give a business pitch and the best chance of success. The facilities offer a variety of meeting packages that range from intimate private spaces to ambient conference rooms that can accommodate up to 150 participants. All meeting facilities are equipped with designer furniture and aesthetic artwork, high performance audiovisual and conference equipment.

Conference Facilities

All the conference facilities can be hired for seminars, workshops or symposiums and ARIPO’s professional technical staff are always available on the ground to assist. The facilities are offered as a full package or room hire only as follows:

<table>
<thead>
<tr>
<th>FULL PACKAGE</th>
<th>ROOM HIRE ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stationery (writing pad, pen, markers, flip charts)</td>
<td>Stationery (writing pad, pen, markers, flip charts)</td>
</tr>
<tr>
<td>Overhead projector</td>
<td>Overhead projector</td>
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<tr>
<td>PA system</td>
<td>PA system</td>
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<tr>
<td>Teleconferencing equipment</td>
<td>Teleconferencing equipment</td>
</tr>
<tr>
<td>Refreshments (juices, sweets, water)</td>
<td>Refreshments (juices, sweets, water)</td>
</tr>
<tr>
<td>Lunch, morning and afternoon teas</td>
<td></td>
</tr>
</tbody>
</table>

Wi-Fi available for both packages

1. THE AUDITORIUM

The ARIPO state-of-the-art auditorium has a seating capacity of 150 people and is an acoustically engineered to function as a broadcast centre that enables live presentations and discussions through large flat screen monitors.

The auditorium, the first of its kind in Harare, has:

- 3rd Generation Confidea® conference system which features, focused intelligent audio visual equipment, state-of-the-art Quad-Band wireless technologies, fault-tolerant error correcting protocols and advanced encryption algorithms
- Equipment allows moderated discussion, simultaneous interpretation and electronic voting
- 3 x 60inch LED monitors
- 3 interpretation booths
- Fully air-conditioned
- Individual charging ports
- Wheel chair access
- Spacious and comfortable seats
2. JEREMIAH HERBERT NTABGOBA CONFERENCE HALL

The Jeremiah Herbert Ntabgoba Conference Hall with the seating capacity of 50 people has:
- State-of-the-art digital projector
- High speed wireless audio system
- Interpretation booth
- 50 inch LED Screen
- Projector
- Desk microphones

3. MULTI-PURPOSE HALL

ARIPo has a multi-purpose hall with the seating capacity of 60 people, which can also be converted into other usage such as entertainment, catering and seminars. However with a large number of participants using the main conference hall, the multi-purpose hall can be given as gratis for catering services.

CAFETERIA

For all meetings, conferences or symposiums, ARIPo offers a spacious cafeteria with a seating capacity of 60 people. The cafeteria may be used for events and meetings taking place at ARIPo or can be hired separately by those seeking to outsource meals for their guests. Additional arrangements can be made for hosting dinners and other meals outside working hours. If the number exceeds 60, the multi-purpose hall can be used as a cafeteria.

BOARDROOMS

There are two impressive Boardrooms which accommodate up to 10 people each and are ideal for executive meetings including conference calls, presentations, screenings or breakout sessions. The Boardrooms are supported by integrated audiovisual equipment including video conferencing facility.
• The Boardrooms are equipped with:
  • Integrated AV equipment
  • HDLCD TV
  • Polycom conference phone
  • Featured artwork
  • White board
  • Free Wi-Fi

TRAINING LAB

Technical, online and virtual training are a key part of modern learning. ARIPO offers a spacious modern training lab equipped with 25 workstations, Wi-Fi, projector and audio equipment. The training lab can be used for practical trainings that require use of computers.

Anderson Ray Zikonda Library

The library facilities offer:
  • Free access and subscription
  • Specialized collection of books, dissertations on IP
  • Free access to specialized IP collections and books
  • Free virtual library access
  • Free information research services

Our highly qualified and experienced Team also offers:
  • Indexing services
  • Editorial services
  • Bibliography services
  • Reproduction and binding services for a fee

Place an advertisement in the ARIPO magazine. For more details and rates send email to communications@aripo.org or call +263 24 2 794 065/6/8/54.
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