



Trademarks

in 43 jurisdictions worldwide

Contributing editors: Joseph Nicholson and Stuart Sinder

2009

Published by
GETTING THE DEAL THROUGH
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Trademarks 2009

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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ISSN 1745-4638

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Printed and distributed by
Encompass Print Solutions.
Tel: 0870 897 3239

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Mozambique

Élio Teixeira

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1 Ownership of marks

Who may apply?

Any individual or company, namely (including but not limited to) industrialists, manufacturers, traders and craftsmen.

2 Scope of trademark

What may and may not be protected and registered as a trademark?

Any distinctive, visible or audible sign which is capable of being represented graphically consisting of words, including personal names, designs, letters, numerals, the shape of products or its packaging may be protected and registered as trademarks .

The following signs may not be protected and registered as a trademark if:

- they are contrary to the law or offend against public order, morality or bonos mores;
- they reproduce official badges, stamps and seals relating to any entity, private emblems or the Red Cross or similar organisations; or
- they reproduce, imitate or contain features pertaining to coats of arms, flags, coins, emblems, shields or other official symbols belonging to States, municipalities and other national and foreign public and private organisations, unless authorised by such entities.

3 Obtaining a trademark

How long does it typically take, and how much does it typically cost to obtain a trademark registration?

If no opposition is filed against the trademark application and if the application is filed with all the required documents, it usually takes five months to obtain a trademark registration plus another five months to obtain the registration certificate. The official fees amount to 2,875 meticaís.

4 Classification system

What classification system is followed, and what goods or services may be claimed?

The 9th Edition of the Nice Classification is followed and the goods and services listed in the 45 classes of said classification system may be claimed.

5 Conflicts with other trademarks

Are applications examined for conflicts with other trademarks? What is the procedure followed in the Trademark Office?

Yes, applications are examined for conflicts with other trademarks.

6 Use of a trademark and registration

Does use of a trademark or service mark have to be claimed before a registration is granted? Does proof of use have to be submitted? If registration is granted without use, is there a time by which use must begin to maintain the registration?

No use of a trademark or service mark has to be claimed and proof of use is not required. Use of the mark is not required to maintain the registration.

7 Appealing a denied application

Is there an appeal process if the application is denied?

Yes, there is an appeal process if the application is denied, both before the Registry (Trademarks Office) and the Administrative Court.

8 Third parties

May a third party oppose registration or seek cancellation of a trademark or service mark? What are the procedures?

Third parties may oppose trademark applications within 60 days after the date of publication of the advertisement in the Trademarks Journal (this period may only be extended once for a maximum period of 60 days) by lodging a Notice of Opposition. The Industrial Property Code currently in force does not provide for cancellation procedures. However, annulment and nullity of trademark rights may be sought before the Administrative Court.

9 Duration and maintenance of registration

How long does a registration last and what is required to maintain a registration?

A registration is valid for 10 years, starting from the date on which it is filed. In order to maintain a registration it is necessary to file a DIU (Declaration of the Intention to Use the mark) every five years and renew the registration every 10 years.

10 The benefits of registration

What are the benefits of registration?

Registration confers upon its owner the exclusive use of the mark and prohibits third parties from using it in the course of their business. As a consequence, the owner of the mark may seek protection before the relevant entities in case of infringement.

11 Assignment

What can be assigned? Trademark with goodwill? Without goodwill? All or some of the goods and services? Must other business assets be assigned to make it a valid transaction?

Trademarks can be assigned with or without goodwill. Assignments can cover all or some of the goods and services. It is not required to assign other business assets.

12 Assignment documentation

What documents are required?

The following documents are required:

- Deed of Assignment signed by the assignor and the assignee;
- Power of Attorney in the name of the trademarks agent; and
- a duly completed official form.

13 Validity of assignment

Must the assignment be recorded for validity?

Yes, the assignment must be recorded for validity.

14 Security interests

Are security interests recognised?

Yes, security interests are recognised.

15 Markings

What words or symbols can be used to indicate trademark use or registration? Do these words or symbols have to be used? What are the benefits of using them and the risks of not using them?

The words *Marca Registrada* (registered trademark) or the symbol ® can be used to indicate trademark registrations; however, they do not have to be used. There is no risk in not using them. The benefits are mainly in terms of marketing purposes and so that third parties are aware that the mark is registered.

16 Trademark enforcement proceedings

What types of legal or administrative proceedings are available to enforce trademark rights against an infringer, apart from previously discussed opposition and cancellation actions? Are there specialised courts or other tribunals? Is there any provision in the criminal law regarding trademark enforcement?

The trademark owner may, inter alia:

- file a complaint against the infringer before the General Inspectorate of the Ministry of Trade and Industry based on the grounds of unfair competition;
- file a complaint before Customs to avoid the import of unauthorised or counterfeit goods; or
- institute an Urgent Interdict before the Civil Courts.

The Civil Court has a Commercial Section that deals with intellectual property matters. There is provision in the criminal law regarding trademark enforcement is article 230 of the Penal Code

17 Procedural format and timing

What is the format of the infringement proceeding? Is discovery allowed? Live testimony? Experts? Who decides the case? How long does the proceeding typically last? If there is a criminal enforcement mechanism, what is that procedure?

The infringement procedure is different depending on the choice of the decision maker and depends on whether it is lodged before the

General Inspectorate of the Ministry of Trade and Industry or before Customs. In the former case the General Inspectorate decides the case and in the latter the Customs Court issues a decision.

18 Burden of proof

What is the burden of proof to establish infringement or dilution?

The burden of proof lies with the plaintiff, who has the burden of proving that its mark has been infringed.

19 Standing

Who may seek a remedy and under what conditions? Who has standing to bring a criminal complaint?

Both the trademark owner and the licensee may seek remedies. The trademark owner must have the mark registered before the Mozambique Trademarks Office and the licensee can only intervene if the Registered User Agreement (licence to use) is recorded before said Office.

20 Foreign activities

Can activities that take place outside the country support a charge of infringement or dilution?

Only activities that take place in the Mozambican territory may be taken into account. However, this is not applicable to goods made outside the country from the moment that they are imported into Mozambique.

21 Discovery

What discovery devices are permitted for obtaining evidence from an adverse party, from third parties, or from parties outside the country?

Adverse or third parties (including State entities) may be required to submit documents or exhibit goods. If they resist a court order may be sought.

22 Timing

What is the typical time frame for an infringement or dilution action, at the trial level and on appeal?

Unfortunately there is no 'typical time frame' for infringement or dilution actions. They are lengthy and can last for years.

23 Litigation costs

What is the typical range of costs associated with an infringement or dilution action, including trial preparation, trial and appeal?

Unfortunately there is no 'typical range of costs'. These depend mainly on the professional fees that are charged.

24 Appeals

What avenues of appeal are available?

Decisions regarding an infringement or dilution action can be appealed to the Administrative Court or the Civil Court, depending on the matter.

25 Defences

What defences are available to a charge of infringement or dilution?

The defendant or alleged infringer has the legal right to participate in the proceeding by responding to the complaint and submitting evidence.

26 Remedies

What remedies are available to a successful party in an action for infringement or dilution? How is monetary relief apportioned? Is injunctive relief available, preliminarily or permanently, and in what circumstances and under what conditions? What criminal remedies exist?

The Trademarks Act contains provisions regarding the penalties imposed on an infringer but is silent regarding the apportionment of monetary relief. Injunctive relief is available permanently if there is an immediate danger to the complainant. The remedies are rather administrative than criminal.

27 ADR

Are ADR techniques available and commonly used? What are the benefits and risks?

ADR techniques are not available in Mozambique.



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