

Set Yourself Apart from the Competition; Register a Trademark, Patent or Copyright in Kenya

Intellectual property is an invention or a piece of work that is a creation of the mind such as artistic works, literary works, designs, names, symbols and images. These creations are broadly categorized into **trademarks**, **patents**, **copyright** and **industrial designs**. The importance of intellectual property is that innovativeness improves the standard of living through advancement of ideas and technologies. It is therefore important to protect intellectual property by having the owners compensated adequately as an incentive for even more innovation. However, some owners of intellectual property do not know under which category to protect it. Below is a distinction of the different forms of intellectual property:

a) Trademarks

A trademark is a mark or sign that distinguishes the products or services of an entity from those of another entity. It can be a word or a combination of words, letters, numbers, symbols or even logos. A trader can have his mark registered which gives him exclusive use of the mark by which he can assure customers of the quality of his goods or services. If a mark is not registered, the owner of the mark may have to contend with competitors unfairly utilizing his mark leading to revenue leakages or even misrepresentation of the goods and services of the owner of the trademark. It is therefore important to have a mark registered to get exclusive use of it including the ability to legally take on persons that breach any rights arising from the trademark.

Trademarks are registered with the Kenya Industrial Property Institute (KIPI), which is mandated under law to keep and maintain a register of trademarks. In

the event of any dispute on ownership or use of a mark such disputes can be resolved at the Intellectual Property Tribunal hosted at KIPI.

b) Copyright

Copyright is the exclusive right to distribute, reproduce or perform in public an original artistic or literary works. Copyright can accrue from original works like audio, visual and audiovisual and written works. These are covered by music, films, plays, books, computer programs, maps etc. In Kenya, copyrights can be registered with the Kenya Copyright Board to enable the owner of the copyright be able to claim royalties when his/her works are performed in Public or authorize the distribution or reproduction of those works. Registration of a copyright, upon which a certificate is issued, is evidence of ownership of artistic or literary works.

c) Patent

A patent is the exclusive right to use or sell an invention. For something to be an invention, it has to be a new product or process that offers a new way of doing something or a solution to a problem. In Kenya, patents are registered at the KIPI after which the proprietor is given a certificate. The proprietor of the patent does not have to be the inventor.

d) Industrial design

An industrial design is the right to the exclusive use of the outward appearance of a product. A producer may want to have special contours on the packaging of his/her products to distinguish them from products of competitors. In Kenya, these are also registered with KIPI. Examples are the shapes of beverage containers like the coca cola bottle etc.

From the foregoing, a person can have one of the above protections or a combination over one product, as long as it meets the criteria laid out in law.