



# Requirements for registration of trademarks in Kenya

By Geoffrey S. Ochieng'



A trademark is a type of intellectual property right consisting of a sign, design, expression which identifies and distinguishes goods of an industrial, commercial enterprise or group from that of another. Trademarks in Kenya are regulated by the Trademarks Act, Cap 506 – Laws of Kenya.

Registering a trademark confers exclusive ownership of the goods and safeguards the owner from infringement. The Kenya Industrial Property Institute (KIPI) is the body mandated with the registration of trademarks in Kenya.

## ***For a trademark to be registered, certain requirements have to be met by the owner:***

The mark proposed to be registered by the owner must be register-able and distinct. The mark has to be adaptive to distinguish, that is, it must be connected to the goods in which it is proposed to be registered but different from other goods.

## ***The proposed mark must contain or consist of at least one of the following essential particulars:***

- I. the name of a company, individual or firm, represented in a special or particular manner;
- II. the signature of the applicant or some predecessor in his business;
- III. an invented word or invented words;
- IV. a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
- V. any other distinctive mark, but a name, signature or word or words, other than such as fall within the descriptions in paragraphs (I), (II), (III) and (IV) above, cannot be considered registrable except upon evidence of its distinctiveness.

## ***When will the Registrar not register a trademark?***

- I. Where it is likely to deceive or cause confusion or otherwise, or if it would be contrary to law or morality, or any scandalous design.
- II. Where any goods or description of goods is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or in respect of services, is identical with or nearly resembles a mark belonging to a description of services.

However, in the event that there is honest concurrent use, or any other special circumstances which in the opinion of the Registrar, make it proper so to register, the Registrar may permit the registration of trademarks that are identical or nearly resemble each other in respect of the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the Registrar may think it right to impose.

*AIP Advocates has a vibrant Intellectual Property Law Unit within the firm that is eager to answer any of your queries on IP law*