

Africa Intellectual Property Newsletter Vol. 116

Measures Against Fraudulent or Bad Faith Trademark Filings: Egypt & Nigeria

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INTRODUCTION

Fraudulent or bad-faith trademark filings pose a growing challenge for brand owners, undermining legitimate rights and creating uncertainty in the marketplace. As trademark systems continue to expand across jurisdictions, so too does the need for effective legal mechanisms to prevent, challenge, and remove improperly obtained registrations. This Special Newsletter provides an overview of the principal measures available to address fraudulent or bad-faith trademark filings in Egypt and Nigeria, with particular focus on opposition and invalidation procedures, and offers practical guidance to assist rights holders in protecting and enforcing their brands.

EGYPT

1. Overview of the Trademark System

1.1. First-to-file or first-to-use

Egypt adopts the first to file principle for the examination and registration of trademarks. Legal ownership and exclusive rights to a trademark are granted to the first person or entity to file an application with the [Egyptian Trade Marks Office](#), rather than the first to use it. Registration is essential for enforcement, as unregistered marks generally lack protection. While prior use might be considered in limited circumstances, registration is the primary determinant of ownership.

An exception to the first-to-file principle is the provision for protection for well-known marks.¹ Applications that are filed in bad faith can be challenged by a prior user (provided the latter can prove prior use) during the opposition process.² A prior user of a mark can also challenge the validity of a registered mark within five years of its registration.³

1.2. Single or multi-class application system

Egypt allows both single and multi-class applications.⁴

1.3. Available filing routes

¹ Art 68 of Egypt's Intellectual Property Law No. 82 of 2002, Book Two pertaining to Marks, Trade Names, Geographical Indications and Industrial Designs, accessible at <https://www.wipo.int/wipolex/en/legislation/details/22066>.

² Art 80 of the Intellectual Property Law No. 82 of 2002

³ Art 65 of the Intellectual Property Law No. 82 of 2002

⁴ Arts 73 and 74 of the Intellectual Property Law No. 82 of 2002

Egypt is not part of OAPI or ARIPO. There is no regional trademark system applicable. Direct national applications must therefore be filed with the Egyptian Trade Mark Office.⁵

Egypt acceded to the Madrid Protocol⁶ in 2009. Applicants can therefore designate Egypt in an international application filed through the World Intellectual Property Organization (WIPO), and Egyptian nationals/entities can file international applications via the Madrid system.

Egypt is furthermore party to the Paris Convention⁷ and it is possible to claim priority under the Paris Convention.⁸

1.4. Duration

A trademark registration in Egypt is valid for 10 years from the filing date. It is renewable indefinitely for further periods of 10 years each, subject to payment of renewal fees.⁹

1.5. Substantive examination

Egypt conducts substantive examination of trademark applications. Examination covers absolute grounds (distinctiveness, descriptiveness, genericness, morality, public order, misleading marks, etc.¹⁰) and relative grounds (conflicts with prior registered marks¹¹). The Trade Mark Office checks for prior identical or confusingly similar marks in the register.

1.6. Fraudulent or bad faith filings

Fraudulent or bad faith filings are subject to refusal, opposition, and cancellation under statutory provisions and international obligations.¹²

Egypt follows a strict first-to-file system, but fraudulent filings can be challenged. At the Examination stage, examiners check for conflicts with existing marks, misleading elements, and evidence of bad

⁵ In line with Ministerial decree No. 493/2025 published on 9 February 2026 and effective from 10 February 2026, the newly established Egyptian Intellectual Property Authority (EGIPA), seeks to streamline all IP-related services under a single organization with the consolidation of several offices, including those in charge of trademarks. However, registration of marks still occurs before the Trade Marks Office for Internal Trade Development (located in Nasr City).

⁶ <https://www.wipo.int/wipolex/en/text/283484>

⁷ <https://www.wipo.int/wipolex/en/text/288514>

⁸ Art 75 of the Intellectual Property Law No. 82 of 2002

⁹ Art 90 of the Intellectual Property Law No. 82 of 2002

¹⁰ Art 67 of the Intellectual Property Law No. 82 of 2002

¹¹ Art 68 of the Intellectual Property Law No 82 of 2002

¹² Arts 65, 67 (8), 68, 77, 80, 91, 92 and 94 of the Intellectual Property Law No 82 of 2002

faith. Marks filed in bad faith (e.g., copying a well-known foreign mark without authorization) are refused. Bad faith can also be relied upon during opposition or cancellation proceedings.

1.7. Legislative framework / examination guidelines

The following national legislative framework applies:

- Book Two of the Intellectual Property Law No. 82 of 2002 (Egyptian Intellectual Property Law)¹³ governs trademarks, trade names, geographical indications, and industrial designs.
- Article 67: Prohibits registration of marks that are contrary to public order or morality, or that are misleading.
- Article 68: Bars registration of marks identical or confusingly similar to well-known marks, even if not registered in Egypt, where the application is made in bad faith.
- Article 77 provides that an applicant may be required to undertake modifications in order to avoid its confusion with a mark already registered, or a mark for which an application for registration has already been filed.
- Article 80: Allows cancellation of a registered mark if it was obtained fraudulently or in bad faith.
- The implementation of regulations is governed by the Council of Ministers Resolution No. 1366 of 2003¹⁴, which provides procedural rules for examination, opposition, and cancellation.
- Examiners are instructed to assess whether applications are filed in bad faith, particularly where evidence suggests intent to block legitimate owners or exploit reputation.
- The Consumer Protection Law No. 67 of 2006¹⁵ reinforces prohibitions against misleading or deceptive practices, which can overlap with fraudulent trademark filings.

The following International Obligations are applicable:

- The Paris Convention (Article 6bis): Protects well-known marks against bad-faith registration.
- The Madrid Protocol, of which Egypt is a member, provides for fraudulent international applications to be opposed or refused.
- The TRIPS Agreement¹⁶ requires Egypt to provide for and apply effective remedies against bad-faith trademark registrations.

2. Trademark Search methods

In Egypt, there is no online system available nationally. An official search must be conducted via a local agent as the trademark database is not publicly accessible.

¹³ <https://www.wipo.int/wipolex/en/legislation/details/22066>

¹⁴ <https://www.wipo.int/wipolex/en/legislation/details/7299>

¹⁵ <https://www.wipo.int/wipolex/en/legislation/details/7422>

¹⁶ <https://www.wipo.int/wipolex/en/treaties/textdetails/12746>

For International trademarks, parties may utilise “Madrid Monitor”, available at <https://www3.wipo.int/madrid/monitor/en/>. The Searches can be also conducted via TMView at <https://www.tmdn.org/tmview/#/tmview>.

Information accessible includes application numbers, trademark, class of goods/services, specification of goods/services, applicant name and address.

Search capability varies depending on which website is used. Madrid Monitor offers extensive search capabilities as does TMView.

3. Measures Upon Discovering That a Third Party Has Filed or Registered a Mark Identical or Similar to One’s Own

3.1. Submission of Information to the Trademark Office Regarding a Fraudulent / Bad-Faith Filing

There is no codified process for “submitting information” regarding a fraudulent or bad-faith filing to the Trade Marks office in terms of the Law no 82 of 2002, Book Two pertaining to Marks, Trade Names, Geographical Indications, and Industrial Designs (“the Law”) and Council of Ministers Resolution no 1366 of 2003, Regulations for implementing Law no 82 of 2002, Book Two (“the Regulations”). Where such issues arise, an interested party would have to file formal cancellation or opposition proceedings.

3.2. Opposition Proceedings

Any interested person is eligible to file opposition against an application advertised in the Gazette of Trademarks and Industrial Designs (“Gazette”).¹⁷ The Official Trade Marks Gazette is published by the Internal Trade Development Authority (ITDA) and is accessible via the ITDA website (www.itda.gov.eg), more specifically at <https://www.itda.gov.eg/jurnal-TM.aspx>¹⁸. In practice however, certified or complete copies are typically obtained from a registered agent in Egypt.

Opposition is filed with the Department of Trade Registry, the Department.¹⁹

Opposition against a national application is to be filed within 60 days of the date of publication of the application in the Gazette.²⁰ No extension of the opposition term is possible.

¹⁷ Article 80 of the Law

¹⁸ Access to the online Gazette may require navigation through the ITDA homepage and may not function reliably via direct URL access depending on user jurisdiction and/or browser configurations

¹⁹ Article 80 of the Law and Article 89 of the Regulations

²⁰ Article 89 of the Regulations

Opposition against an international registration designating Egypt is to be filed within 60 days of the date of publication of the application in the WIPO Gazette.

Grounds of opposition:

There are no specified grounds of opposition in terms of the Law, however, it is presumed and in practice it is allowed for opposition to be for the same reasons why trademarks should be refused registration. Relevant to the issue of an application for an identical or similar mark by a third party, these are:

- a mark which is contrary to public order or morality²¹;
- a mark which is identical to a well-known trademark (even if not registered in Egypt) and which is intended to be used in relation to goods which are identical to those of the well-known mark²²; and
- a mark which is identical to a well-known mark (where the well-known mark is registered in a member country of the World Trade Organization and in Egypt) and which is intended to be used in relation to non-identical goods, but where the use is intended to lead the public to believe that a connection exists between the owner of the well-known mark and those goods and such use may be prejudicial to the interests of the owner of the well-known mark²³.

Notably, although not an express ground of opposition nor basis for refusal of an application *ex officio*, the Department may require the trademark applicant to modify the trademark in question to define and clarify the mark, to avoid confusion with a mark already registered, or a mark for which an earlier application has been filed.²⁴

Procedure:

A concerned person may file an opposition, on the required form and together with all necessary documentation (in Arabic) establishing the reasons and rights to oppose, with the Head of the Department or person designated by the Head of the Department, within 60 days of advertisement of the application in the Gazette.²⁵

The opposition will be forwarded to the Trademark Applicant by the Department within 30 days.²⁶
The Trademark Applicant has 30 days to file with the Department its written and reasoned response

²¹ Article 67(2) of the Law

²² Article 68 of the Law

²³ Article 68 of the Law

²⁴ Article 77 of the Law

²⁵ Article 89 of the Regulations

²⁶ Article 89 of the Regulations

to the opposition, including any relevant documentation relied upon.²⁷ Failure by the Trademark Applicant to file a response shall result in the application being deemed abandoned.²⁸

A copy of the response is to be sent to the Opponent within 10 days of receipt of the response.²⁹

Upon request by the Trademark Applicant or Opponent, a single hearing may be convened for the parties to present their respective arguments.³⁰ A decision is thereafter to be made by the Department and the parties to be informed within 10 days from the date that the decision is issued.³¹

In circumstances where the Department's decision is rejection of the opposition, the Trademark Applicant has 90 days from the date of notification of the decision to complete the registration procedure, failing which the application shall be deemed abandoned.³²

Appeals

The decision of the Department can be appealed to the Substantive Court. In tandem with the appeal to the Substantive Court, there is a proceeding before the State Commissioners Board whereby it holds hearings and issues a non-binding report on the opposition for consideration by the Substantive Court.

After the State Commissioners Board has issued its non-binding report, memoranda can be filed with the Substantive Court in the matter.

The hearings before the Substantive Court can be postponed pending the issuance of the report by the State Commissioners Board.

3.3. Invalidation (Nullity) Proceedings

Although no express grounds or reasons are stated in the Law, it appears that the validity of a registration may be challenged on the same grounds on which the mark could have been refused registration.³³

²⁷ Article 90 of the Regulations

²⁸ Article 90 of the Regulations

²⁹ Article 90 of the Regulations

³⁰ Article 91 of the Regulations

³¹ Article 92 of the Regulations

³² Article 92 of the Regulations

³³ See <https://nexuscharter.com/cancellation-and-nullification-of-trademark-registration/> and specifically the reference to case judgment No. 695 of the 5th judicial year – on 11-12-2014, a decision of the Cairo Economic Court.

There is also provision in the Law for invalidation of a registration to be sought by a prior user of a mark, however, due to the provisions of Article 65 of the Law that a person who has registered a trademark and made use of it for a period of 5 years as of the date of registration shall be deemed to be the owner of the trademark, unless prior use by a third party is proven, a prior user may only challenge validity of a registration within 5 years from the date of registration.³⁴

Invalidation of a registration may also be sought where registration is made in bad faith.³⁵

There is no time limitation to seek invalidation of a registration made in bad faith.³⁶

There is no prescribed criteria or *locus standi* requirement for an invalidation request to be made but it is presumed that any such person would have to have an interest in the matter, i.e. be the prior user of the mark, or be the true proprietor of the mark or have some other right that would entitle a claim of bad faith.

Applications before the Economic Court are decided by the judges alone. There is no trial like procedure with oral evidence presented by witnesses. Instead, proceedings are conducted through exchange of written memoranda by the relevant parties, with multiple hearings allowing for oral argument to supplement the written memoranda.³⁷

There is no discovery process in cancellation proceedings. All that is required is that if a document is referenced then a party may request that it be adduced, unless such document is not in the party's possession or there are practical reasons why it cannot be adduced. In addition, all documentary evidence should be in Arabic.³⁸

Application for invalidation is made in the first instance to the preliminary chambers of the economic court.

An appeal of the first instance decision of the economic court will be to the Court of Appeal, within 40 days.

Any further appeal will be to the Court of Cassation, within 60 days.

³⁴ Article 65 of the Law

³⁵ Article 65 of the Law

³⁶ Article 65 of the Law

³⁷ See article at <https://www.cwblegal.com/trademark-litigation-2017-global-guide-egypt/#:~:text=The%20court%20will%20entertain%20remedies,Evidencing%20the%20case>

³⁸ See article at <https://www.cwblegal.com/trademark-litigation-2017-global-guide-egypt/#:~:text=The%20court%20will%20entertain%20remedies,Evidencing%20the%20case>

Other relevant notes

Article 92 of the Law provides that where cancellation is in response to an enforceable court order invalidating the registration of a mark, such mark may be registered in favor of a third party soon after the cancellation.

3.4. Non-Use Cancellation Proceedings

Article 91 provides for an interested party to request cancellation of a trademark registration if the mark has not seriously used for a period of 5 consecutive years.

The requirement of 'serious use' is not defined in the Law and is presumed to require genuine use in good faith.

A request for cancellation will be made to the Economic Court.

Cancellation applications before the Economic Court are decided by the judges alone. There is no trial like procedure with oral evidence presented by witnesses. Instead, proceedings are conducted through exchange of written memoranda by the relevant parties, with multiple hearings allowing for oral argument to supplement the written memoranda.³⁹

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Other relevant notes

³⁹ See article at <https://www.cwblegal.com/trademark-litigation-2017-global-guide-egypt/#:~:text=The%20court%20will%20entertain%20remedies,Evidencing%20the%20case>

⁴⁰ See article at <https://www.cwblegal.com/trademark-litigation-2017-global-guide-egypt/#:~:text=The%20court%20will%20entertain%20remedies,Evidencing%20the%20case>

Article 92 of the Law provides that where cancellation is in response to an enforceable court order invalidating the registration of a mark, such mark may be registered in favor of a third party soon after the cancellation.

3.5. Other Procedures

A registration will also be invalidated, with the effect being cancellation from the Register, if the trademark registrant fails to renew the registration within 10 years and the additional 6-month grace period.⁴¹

Notably, Article 92 of the Law provides that a cancelled mark may be re-registered - in favour of its owner exclusively - within three years from the date of the cancellation, according to the prescribed conditions and same procedure of registration and against payment of a fee prescribed by the Regulations not exceeding 1,000 pounds (~JPY 3,245 / USD 21).

Article 92 also provides that after the lapse of the said period, a mark may be re-registered for the benefit of its owner or a third party, in connection with the same products, under the same conditions, procedures and fees of the initial application for registration.

NIGERIA

1. Overview of the Trademark System

1.1. First-to-file or first-to-use

Nigeria operates a first-to-file system. In terms of Sections 5(1) and 6(1) respectively of the Trade Marks Act, CAP T13 LFN 2004⁴², registration of a person in Part A or Part B of the Register as proprietor of a trademark in respect of any goods shall, if valid, confer on that person the exclusive right to use the mark in relation to those goods. Sufficient prior use such as to accrue substantial reputation and goodwill confers enforceable rights under Section 11 of the Act in addition to a common-law passing-off action preserved under Section 3 of the Act.

1.2. Single or multi-class application system

Nigeria does not permit multi-class applications. Section 4 of the Trade Marks Act requires separate applications to be filed for each class.

⁴¹ Article 90 of the Law

⁴² <https://www.wipo.int/wipolex/en/legislation/details/5413>

1.3. Available filing routes

National Applications can be filed directly with the Trademarks, Patents and Designs Registry⁴³ under the Federal Ministry of Industry, Trade and Investment.

Nigeria is not a member of ARIPO or OAPI. There is no regional filing route available.

Nigeria has not yet acceded to the Madrid Protocol.

Nigeria has been signatory of the TRIPS Agreement since 1994. However, the provisions of the Agreement have not yet been domesticated into Nigeria's local IP laws.

Nigeria is a signatory to the Paris Convention, however it is also not possible to claim priority for trademark applications.

1.4. Duration

In terms of Section 23 of the Trade Marks Act, the initial registration term for a trademark registration is seven 7 years. Thereafter it is renewable indefinitely for a period of 14 years. Renewal must be filed before expiry. Late renewal is possible with surcharge.

1.5. Substantive examination

Nigeria conducts substantive examination which covers absolute grounds (distinctiveness, descriptiveness, contrary to public policy, etc.) and relative grounds (conflicts with prior marks). Examiners assess both absolute and relative grounds. The following provisions of the Trade Marks Act are applicable:

Section 9 provides for refusal if mark is not distinctive or is descriptive.

Sections 11 and 13(1) provide for refusal if mark conflicts with earlier registered marks, and specifically under Section 11, if the mark applied for is contrary to public policy, law or morality or otherwise scandalous.

1.6. Fraudulent or bad faith filings

Fraudulent or bad faith filings are subject to refusal, opposition, and cancellation under statutory provisions.

The following provisions of the Trade Marks Act apply:

- Section 9(2) provides for refusal if mark is not distinctive
- Section 11 provides for refusal if is likely to deceive or cause confusion or filed in bad faith or in fraud of the rights of another.

⁴³ <https://www.iponigeria.com/>

- Section 13 provides for refusal of identical or similar to an existing registered mark.
- Section 14 provides for grounds for challenging a registered mark where bad faith or fraud or contrary to Section 11 of the Act, provided the registration is challenged before the expiration of 7 years from the date of the registration.
- Section 31 provides that registration without bona fide intention to use or use can be challenged

In addition, Section 3 of the Merchandise Marks Act⁴⁴ criminalizes false trade descriptions and fraudulent use of marks.

1.7. Legislative framework / examination guidelines

Regarding examination guidelines and practice, examiners may refuse applications that clearly copy well-known marks or show evidence of bad faith. Bad faith is also often raised during opposition or cancellation proceedings, rather than at initial examination. Nigerian courts have also recognized that fraudulent intent undermines validity, even if formal requirements are met.

2. Trademark Search methods

Nigeria has neither an online Register nor an online gazette. Only accredited agents are allowed online access to their applications alone. There is, however, a publicly available trademark gazette in hard copy which can be purchased and searched when published and put on sale.

Types of information accessible (via accredited agent / manual search of hard copy gazette) include application number, mark, class, applicant's name, contact address/details. Trademark application status such as pending/registered/refused/cancelled, or registration number are not provided in the gazette.

Language supported: English

3. Measures Upon Discovering That a Third Party Has Filed or Registered a Mark Identical or Similar to One's Own

3.1. Submission of Information to the Trademark Office Regarding a Fraudulent / Bad-Faith Filing

"Submission of information" to the Registry is neither a recognized nor codified mechanism under the Trade Marks Act Cap T13 Laws of the Federation of Nigeria 2004 ("the Trade Marks Act") or the Trade Marks Regulations 1967 ("Trade Marks Regulations").

⁴⁴ <https://lawsfnigeria.placng.org/view2.php?sn=250>

Nevertheless, whilst a letter could be submitted to the Registry with the information, any challenge to a fraudulent or bad-faith filing must be made through the formal procedures prescribed by law specifically, opposition (before registration) or cancellation/rectification (after registration).

3.2. Opposition Proceedings

Any person is eligible to file opposition against an advertised mark.⁴⁵ There is no limitation to 'interested persons' only, however, opposition still must be accompanied with a statement of grounds of opposition.

Opposition is filed with the Registrar of Trade Marks.⁴⁶

Opposition is to be filed within 2 months of publication of the impugned application in the Journal.⁴⁷

Through practice directives issued by the Registry, no extension of the opposition term is allowed.

Grounds of opposition

The grounds for filing an opposition against an identical or similar mark are founded in Section 20 read with Sections 11 and 13 of the Trade Marks Act, as well as Section 18 read with Section 67(1) of the Trade Marks Act and are specifically that:

- the mark applied for is identical to a mark already on the Register for the same or similar goods or services, or so nearly resembles the earlier mark as to deceive or cause confusion.⁴⁸ In view of the requirements of Regulation 49, which include that where reliance is on a mark already on the Register the notice of opposition must include the numbers of such trademarks and the numbers of the Journals in which the trademarks were advertised, this provision is often interpreted as allowing reliance on both a prior registration and a prior application which has already been advertised;
- use of the mark applied for would be likely to deceive or cause confusion⁴⁹;
- use of the mark applied for would be disentitled to protection in a court of justice⁵⁰;
- use of the mark applied for would be contrary to law or morality⁵¹; and

⁴⁵ Section 20(1) of the Trade Marks Act and Regulation 48

⁴⁶ Section 20(1) of the Trade Marks Act and Regulation 48

⁴⁷ Regulation 48

⁴⁸ Section 13(1)

⁴⁹ Section 11(1)(a)

⁵⁰ Section 11(1)(a)

⁵¹ Section 11(1)(a)

- the applicant is not the true proprietor of the mark nor entitled to register the mark, and does not meet the definition of a 'trademark'⁵².

Notably, there is no express provision for nor recognition of well-known trademarks. Nigeria is, however, a signatory to the Paris Convention on the Protection of Intellectual Property, and there is express provision for application and registration of convention applications.⁵³ In earlier unreported decisions of the Trademark Registrar, such as in the 'Speakeeze case', well-known marks have been recognized. However, in more recent decisions of the Tribunal (the Registrar) the position has been expressed that the Paris Convention and TRIPS Agreement have not been domesticated into law and therefore a mark being well-known internationally is not an enforceable ground.⁵⁴ Owing to this position enforcing rights in a well-known mark, particularly in opposition proceedings, in practice is actually through the common law wrong of passing-off, under the general provisions of Section 11(1)(a) that use of the mark applied for would be likely to deceive or cause confusion, it would be disentitled to protection in a court of justice, and use is contrary to law or morality.

A mark applied for fraudulently or in bad faith would be objectionable under the broad, general grounds of Section 11(1)(a).

Procedure

The Opponent files a Notice of Opposition, on Form 6, within 2 months of advertisement of the application.⁵⁵ Through practice directives issued by the Registry no extension of the opposition term is permitted. Although evidence need not be filed at this stage, the Notice of Opposition must include a statement of the grounds of opposition and cite the details of any marks already on the Register.⁵⁶

The Trademark Applicant has 1 month from receipt of the Notice of Opposition to file a Counter Statement, on Form 7, in response.⁵⁷ Failure to file a counter-statement will result in the application being deemed abandoned.⁵⁸

⁵² Section 18 read with Section 67(1), definition of a 'trade mark'

⁵³ Section 44

⁵⁴ *Duravit Aktiengesellschaft v. Royal Castle Group of Companies Limited*, Compendium of Rulings of Trademarks Tribunal, Vol. 3, pages 107-120 and see https://www.gelias.com/images/Newsletter/Safeguarding_Well-Known_Brands_-_A_Case_for_Enhanced_Protection_in_Nigeria.pdf

⁵⁵ Section 20(1) of the Trade Marks Act; Regulation 48

⁵⁶ Section 20(2) of the Trade Marks Act; Regulation 49

⁵⁷ Section 20(3) of the Trade Marks Act; Regulation 50(1)

⁵⁸ Section 20(3) of the Trade Marks Act

The Registrar may request security for costs either from the Opponent or the Trademark Applicant and failure by the requested party to provide security for costs may result in the opposition or application being abandoned.⁵⁹

Upon receipt of the Counter Statement, the Opponent has 1 month within which to file evidence by way of a Statutory Declaration/s in support of the Opposition.⁶⁰ If the Opponent does not file any evidence the opposition will be deemed abandoned.⁶¹

Upon receipt of the Opponent's Statutory Declaration, the Trademark Applicant has 1 month within which to file a Statutory Declaration/s in support of the application (registration of the mark).⁶²

Upon receipt of the Applicant's Statutory Declaration, the Opponent has 1 month within which to file a Statutory Declaration in reply.⁶³

When all the evidence has been filed, the Registrar issues at least 14 days' notice of the hearing, and each party must confirm attendance within 7 days, failing which they may be treated as not wishing to be heard.⁶⁴ In practice, parties may also be requested to or opt to file written submissions with legal arguments. After the hearing, the Registrar decides whether the application should proceed to registration and may impose conditions or limitations as appropriate.

Appeal

Section 21 of the Trade Marks Act allows for the decision of the Registrar in an opposition to be appealed to the court, which will be Federal High Court in Abuja.

An appeal of the decision of the Federal High Court lies with the Court of Appeal and finally with the Supreme Court.

Other relevant notes

Although Regulation 57 provides for a party to request an extension of time in opposition proceedings, to try address backlogs and delays with registration of trademarks, in practice no

⁵⁹ Section 20(5) of the Trade Marks Act

⁶⁰ Regulation 51

⁶¹ Regulation 52

⁶² Regulation 52

⁶³ Regulation 53

⁶⁴ Regulation 56

extensions are permitted for the filing of a notice of opposition or counter-statement. Extensions are, however, regularly granted, for one month, for the filing of evidence.

3.3. Invalidation Proceedings

As relevant to the context of discovering that a third party has registered an identical or similar trademark, Section 38 of the Trade Marks Act provides that any person may apply for the rectification and correction of the Register, on the basis that any entry has been made without sufficient cause, or any entry wrongly remains on the Register.⁶⁵ Depending on the facts and prayer, the outcome of such proceedings can be the expungement or removal of the entire offending trademark registration, or partial removal.

Application for rectification and/or correction of the Register is to be made to the Court, but may at the option of the applicant (person) may be made to the Registrar.⁶⁶ However, Section 56(a) of the Trade Marks Act requires that application be made to the court in cases where an action concerning the trademark in question is pending.

Section 49 of the Trade Marks Act provides that the fact that a person is registered as the proprietor of a trade or service mark is *prima facie* proof of validity of the registration. In addition, where a registration has been registered in Part A of the Register for 7 years from the date of registration, the registration will be taken to be valid in all aspects⁶⁷, unless:

- registration was obtained by fraud⁶⁸; or
- the trademark offends against the provisions of Section 11 of the Trade Marks Act⁶⁹.

Notably, Section 14(2) of the Trade Marks Act expressly provides that the 7-year rule does not apply to trademarks registered in Part B of the Register.

Procedure

For an application for expungement or rectification made to the Registrar, the procedure is as follows.

⁶⁵ Section 38(1)(b) and 38(1)(c) of the Trade Marks Act

⁶⁶ Section 38(1) of the Trade Marks Act

⁶⁷ Section 14(1) of the Trade Marks Act

⁶⁸ Section 14(1)(a) of the Trade Marks Act

⁶⁹ Section 14(1)(b) of the Trade Marks Act

The Applicant files an application on Form 27 for the expungement of the trademark, accompanied by a statement of case detailing the applicant's interest, the facts upon which the case is based and the relief sought.⁷⁰

The Trademark Registrant/ Respondent has 1 month from receipt of the expungement request to file a Counter Statement in response.⁷¹

Upon receipt of the Counter Statement, the Applicant has 1 month within which to file a Statutory Declaration/s (the evidence) in support of the expungement.⁷²

Upon receipt of the Applicant's Statutory Declaration, the Trademark Registrant/ Respondent has 1 month within which to file a Statutory Declaration/s in defense of the entry and registration of the trademark.⁷³

Upon receipt of the Trademark Registrant / Respondent's Statutory Declaration, the Applicant has 1 month within which to file a Statutory Declaration in reply.⁷⁴

Unlike with opposition proceedings, Regulation 84 provides that the Registrar shall not rectify the register nor remove the mark from the register merely because the registered proprietor has not filed a counter-statement.

When all the evidence has been filed, the Registrar issues at least 14 days' notice of the hearing, and each party must confirm attendance within 7 days, failing which they may be treated as not wishing to be heard.⁷⁵ In practice, parties may also be requested to or opt to file written submissions with legal arguments. After the hearing, the Registrar decides whether the application should proceed to registration and may impose conditions or limitations as appropriate.

If an invalidation action, so request for rectification is filed with the Federal High Court of Nigeria, proceedings commence with the filing of a suit. The pleadings phase sees the claimant filing originating processes and pleadings setting out the grounds of invalidation under the Trade Marks Act. The registered proprietor will have an opportunity to file a defense, as well as evidence in support of such defense. The parties exchange witness statements on oath and documentary evidence in support of their respective cases. For the hearing, the Court will hear oral evidence (if required), cross-

⁷⁰ Regulation 83(1)

⁷¹ Regulation 84 read with Regulation 50(1) and 50(2)

⁷² Regulation 84 read with Regulation 51

⁷³ Regulation 84 read with Regulation 52

⁷⁴ Regulation 84 read with Regulation 53

⁷⁵ Regulation 84 read with Regulation 56(1) and 56(2)

examination, and legal arguments. The parties will thereafter file final written submissions summarizing their respective arguments. The Federal High Court will then ultimately deliver judgment either invalidating the registration (in whole or in part) or dismissing the claim.

Appeal

This is the same as that for opposition matters, namely Sections 54 and 55 of the Trade Marks Act affords any party interested in any decision of the Registrar an option to appeal to the High Court, this will be the Federal High Court in Nigeria.

An appeal from a decision of the Federal High Court lies with the Court of Appeal and finally with the Supreme Court.

3.4. Non-Use Cancellation Proceedings

In terms of Section 31(1) and 31(2) of the Trade Marks Act application for cancellation of a trademark registration can be made where either:

- application for the mark was filed without any *bona fide* intention to use the mark in relation to the relevant goods or services and there has in fact been no *bona fide* use of the trademark in relation to such goods or services⁷⁶; or
- up to a date 1 month prior to the application, a continuous period of 5 years or longer elapsed without any *bona fide* use of the mark in relation to the relevant goods or services.⁷⁷

Any concerned person may apply for cancellation of a registration on the basis of non-use.⁷⁸

Application for cancellation on the basis of non-use is to be made to the Court, but at the option of the concerned party may be made to the Registrar⁷⁹, unless there is an existing action pending against the registration and in which latter case application must be made to the Court.⁸⁰

It is not possible to rely on non-use if such non-use is due to special circumstances in trade and not due to any intention to abandon the trademark.⁸¹

Procedure:

⁷⁶ Section 31(2)(a) of the Trade Marks Act

⁷⁷ Section 31(2)(b) of the Trade Marks Act

⁷⁸ Section 31(1) of the Trade Marks Act

⁷⁹ Section 31(1) of the Trade Marks Act

⁸⁰ Section 56(a) of the Trade Marks Act

⁸¹ Section 31(4) of the Trade Marks Act

The procedure will be the same as for invalidation proceedings.⁸²

Appeal

This is the same as that for opposition matters and invalidation matters, namely Sections 54 and 55 of the Trade Marks Act affords any party interested in any decision of the Registrar an option to appeal to the High Court, this will be the Federal High Court in Nigeria.

An appeal from a decision of the Federal High Court lies with the Court of Appeal and finally with the Supreme Court.

3.5. Other Procedures for Revoking or Extinguishing Rights

Not applicable.

⁸² Regulation 84

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