AN ANALYSIS OF LEGAL, INSTITUTIONAL AND PRACTICAL CHALLENGES DURING REGISTRATION OF TRADEMARKS IN MAINLAND TANZANIA

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CERTIFICATION

The undersigned certify that they have read and hereby recommend for acceptance by the Open University of Tanzania a thesis entitled "An Analysis of Legal, Institutional and Practical Challenges During Registration of Trademarks in Mainland Tanzania" in fulfilment of the requirements for the degree of Doctor of Philosophy of the Open University of Tanzania.

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DECLARATION

I, Dimesh Surendra Mawji, declare that the work presented in this thesis is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in fulfilment of the requirement for the Doctor of Philosophy Degree of the Open University of Tanzania.

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Date

DEDICATION

To the whole Dimesh Mawji's family for their kindness, love, cooperation, and encouragement.

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ABSTRACT

This study examines the legal, institutional, and practical challenges during trademark registration in mainland Tanzania, with a particular focus on administrative inefficiency and the absence of effective control mechanisms in the existing trademark legislation. It employs a mixed methodology combining doctrinal, empirical, and benchmark analysis and draws on primary data from legislation and secondary data from interviews with key stakeholders, including legal practitioners, trademark owners, and officials from the Business Registration and Licensing Agency (BRELA). The findings reveal significant gaps within the legislative framework and administrative processes, underscoring the need for urgent reform. The analysis shows that the Trade and Service Marks Act of 1986, inherited from colonial-era laws, grants the Registrar broad powers without establishing specific timeframes for essential administrative actions such as examination, advertisement, and registration. This lack of regulatory oversight has resulted in prolonged delays, which disadvantage service seekers, hinder business innovation, and create opportunities for corrupt practices. The study further explores the incompatibility of Tanzania's trademark regime with international frameworks such as the Madrid Agreement and its Protocol, as well as the regional system under the African Regional Intellectual Property Organisation (ARIPO). It concludes by proposing targeted amendments to introduce time-bound administrative provisions and establish legal or judicial remedies for undue delays. Additionally, it recommends harmonising national law with international and regional standards to facilitate trademark registration beyond domestic borders. Adoption of these reforms would enhance efficiency, transparency, and competitiveness within Tanzania's trademark system, benefitting both the business community and the national economy.

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LIST OF STATUTES

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Constitution of the United Republic of Tanzania, 1977 revised in 2008

Foreign Jurisdiction Act, 1890 (UK)

Judicature and Application of Laws Ordinance Cap 543 of the Laws of Tanzania

Merchandise Marks Act, No. 63 of 1963

Merchandise Marks Act, 1887

Merchandise Marks Act, 1953 (UK)

Patent (Registration) Ordinance, 1962 Cap 217

Patent, Design and Trademarks Registration Act, 1883 (UK)

Penal Code Cap 16 of the Laws of Tanzania

Tanganyika Order in Council, 1920

Trademark Registration Act of 1875

Trade Registration Act of 1888

Patent Designs and Trademark Act of 1883

Trademark Registration Act of 1883

Trademark Act, 1905

Trademark (Amendment) Act of 1937

Trademark Act of 1938

Trademark Act, 1919 of India

Trademark Ordinance, (Cap 394) of the Laws of Tanganyika

Trademark and Service Mark Regulation, G.N. No. 40 of 2000 of the Laws of Tanzania

Trade and Service Mark Act No. 12 of 1986 of the Laws of Tanzania

Trademark (Amendment) Act, 1937

Written Law (Miscellaneous Amendments), Act No. 19 of 2004

Written Laws (Miscellaneous Amendments), Act No. 3 of 2021

INTERNATIONAL AND REGIONAL CONVENTIONS

Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995

Convention Establishing World Intellectual Property Organization (WIPO), 1970

Lusuka Agreement, 1976

Madrid Agreement Concerning the International Registration of Marks (1891)

Protocol relating to the Madrid Agreement concerning the international registration of marks, 1989

Common Regulation under the Madrid Agreement concerning the international Registration of Marks and the Protocol Relating to that Agreement, 2009

Nice Agreement concerning the International Classification of Goods and Services, 1979

Paris Convention for the Protection of Industrial Property, 1883

Regulation for implementing the Banjul Protocol, 1995, amended in the year 2018

The Banjul Protocol on Marks within the framework of the African Regional Industrial Property Organisation (ARIPO), 1979, as amended in the year 2018

East African Community (EAC), 1999

African Continental Free Trade Area (AFCFTA), 2021

LIST OF CASES

Amrithdhara AIR (1963) SC 449

AG.v. Great Eastern Rail. Co (1880), S APP Cas 473

Bio-Chem Pharmaceutical Industries.v. Astron Pharmaceuticals (2003) PTR 18

Birmingham Small Arms Co Ltd App (1907) 24 RPC 563

Banwaridas Pugali.v. Colgate Palmolive Co (1979) AIR Cal 133

Breen.v. Amalgamated Unions (1971) 1 ALL ER 1148

Banik Rubber Industries v. Sree D.B. Rubber Industries (1990) AIR C91, 225, 230

C.S. Rowjee v. State of A.P. Air 1964 SC 72

Deo Shirima and Two Others v. Scandinavian Express Services Limited, Civil Application No. 34 of 2008

Fabrick Application (1990) 27 RPC 493

Fatima Tile Works.v. Sudarsan Trading Co Ltd AIR (1992) Mad 12

F. Reddaway & Co Ltd's Application, 1972

Fiat Application (1981) RPC 8

Imperial Tobacco v. Registrar AIR 1968 Calcutta 582

India Electric's Application (1945) 49 CWH 425

J.N. Nichols Ltd.v. Rose and Thistle (1993) (II) CHN 395 (Cal) (DB)

John Mwombeki Byombalirwa.v. The Regional Commissioner and Regional Commander, Bukoba, (1986) TLR 73 (HC)

John William Maeda.v. Yono Auction Mart & Co Ltd, Civil Appeal No. 76 of 2022 TZHC 13485 (11th March, 2022)

Kouk Oil and Grains PTE Ltd.v. Murzah Oil Mills Limited Civ Ref No. 14/2002

Libertel (2003) E.T.M.R 80 ECJ

Liverpool Cable's Application (1929) 46 RPC 99

Magnolia Metal Co (1897) 14 RPC 265

Mbeya Rukwa Autoparts and Transport Limited v. Jestina Mwakyoma (2003) T.L.R 253

Megavite.v. Megavit (1976) 1 PLR

Merit's Case (Merit and Label Trademarks) (1989) RPC 687

M/s Jagdish Sweets and Farsan Ltd.v. Jagdish Food Private Limited

Mbogo and Another v. Shah (1968) E.A. 93

Ngurangwa & Others v. Registrar of Industrial Court of Tanzania and others (1999) 2 E.A. 245

Orient Express (1996) R.P.C 25 (Ch D)

Philip Morris Inc.'s Application (1980) RPC 527

R.T. Eng & Electronics Co (1972) Bom 157, 159 and 163

Springwall Case Australia High Court 99 C.L.E 300

Sabuni Detergent Limited v. Murzah Oil Mills Limited, Commercial Case No. 256 of 2001, at the High Court Commercial Division at Dar es Salaam

Trade and Service Mark Opposition of trademark "Hanna" in class 3 under No.TZ/T/2019/581 of M/S Issardas Motiwala (U) Limited opposition by M/s Yiwu (China) Kinko Company Limited

Unilever Ltd's (Stripped Toothpaste) (1987) RPC 13

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LIST OF ABBREVIATIONS AND ACRONYMS

ARIPO	African Regional Intellectual Property Organization
AU	African Union
BIPS	Bilateral Intellectual Property Treaties
BITS	Bilateral Investments Treaties
BRELA	Business Registration and Licensing Agency
Cap	Chapter
COP	Conference of the Parties
CIPR	Commission of Intellectual Property Rights
DIP	Department of Intellectual Property
DOC	Document
DCs	Developing Countries
e.g.	Exemplum Gratia
EKLR	Electronic Kenya Law Report
EU	European Union
ECJ	European Court of Justice
EACC	East African Community Cooperation
EAC	East African Community
EDs	Editors
FDI	Foreign Direct Investment
G.N.	Government Notice
GATT	General Agreement on Tariffs and Trade
ICTs	Information and Communication Technologies
IPT	Industrial Property Tribunal

IPC	International Patent Classification
IPR	Intellectual Property Rights
ILO	International Labour Organization
MTN	Multilateral Trade Negotiations
MTNs	Multinational Trade Negotiations
MP	Member of Parliament
OAPI	Organisation Africaine de la Propriete Intellectuelle
OUT	Open University of Tanzania
Paris Convention	Paris Convention for the Protection of Industrial Property
R&D	Research and Development
TLT	Trademark Law Treaty
TOC	Tanganyika Order in Council
TZ	Tanzania
TRIPS	Trade- Related Aspects of Intellectual Property Rights
TSHS	Tanzania Shillings
UK	United Kingdom
USA	United States of America
UDSM	University of Dar es Salaam
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

CHAPTER ONE

INTRODUCTION

1.1 Overview

Trademarks are vital instruments for market regulation and the promotion economic efficiencies[1]. Conceptionally, trade or service marks consist of signs or symbols employed in commerce to indicate the origin or association of specific goods or services with a particular manufacturer or service provider[2]. They function primarily to differentiate the sources of products or services and their inherent qualities. In principle, trademarks fulfil two essential objectives: first, the protection of consumers from market confusion; and second, the safeguarding of investments made in developing and maintaining the goodwill associated with the mark. This legal protection is indispensable, especially in deterring unfair competition practices, such as the imitation of well-known trademarks by unscrupulous traders seeking to exploit established reputation without incurring corresponding investments[3].

Trademarks are protected as intellectual property rights (IPRs) owing to their distinctive characteristics and the underlying goodwill. Goodwill that stems from sustained innovation and quality control efforts by the proprietors. The legal threshold for trademark protection is primarily assessed by examining whether the allegedly infringing trademark is likely to cause confusion among consumers when used in the same market as a registered trademark.[4] Unlike other forms of intellectual property rights that are subject to fixed duration of protection,

[1] Saudin Mwakaje, 'Intellectual Property Rights in Tanzania: An Appraisal of the Law and Development Issue' (2022) 20(1) Tanzania Journal of Development Studies at Pg 118.
[2] Ibid
[3] Ibid
[4] Ibid

trademarks can be maintained perpetually through successive renewals. As proprietary assets, trademarks are transferable through various legal mechanism such as licensing, assignment, and franchising.

The proprietor of a trademark enjoys exclusive rights to use the trademark in commerce and to prevent others from using confusingly similar trademark within the protected jurisdiction. This exclusivity serves as a critical business asset, enabling enterprises to establish and maintain market control while deterring competitors from copying their brands from both legal and commercial standpoints, such exclusive rights provide trademark owners with a competitive advantage. Furthermore, the assurance of sustained exclusivity incentivizes proprietors to invest in higher standards of quality control, enhancing product performance, consumer satisfaction, and ultimately driving sustainable business growth.[5]

A Registrar of trademarks is the designated authority responsible for registering trademarks in a given jurisdiction. This function is critical in ensuring the effective implementation of trademark laws and regulations, particularly those that delineate the administrative scope and timeframes governing the Registrar of trademarks mandate. In the absence of robust regulatory mechanisms and oversight, delays in the registration process may arise, undermining the efficiency of the trademark system. Such delays can have detrimental effects on businesses, including revenue losses resulting from the proliferation of counterfeits goods by competitors. These counterfeits products may erode the market share and goodwill associated with the

[5] Saudin Mwakaje, Intellectual Property Rights in Tanzania: An Appraisal of the Law and Development Issues, (2022) 20(1) Tanzania Journal Development Studies at Pg 118

original trademark. Crucially, failure to register a trademark means that the proprietor cannot assert legal exclusivity over the trademark. Without formal registration, the trademark enjoys no statutory protection, leaving it vulnerable to infringement and depriving the owner of enforceable rights.

Moreover, trademarks serve to integrate various elements such as names, terms, sign, symbols, logos, and design to form distinctive representation of a company's product or services. These representations are crucial in building brand identity and generating economic value and competitive advantage. The full benefits of trademark protection, however, are contingent upon timely and proper registration. Without formal registration, the intended economic and legal advantages of a trademark cannot be effectively realized[6].

1.2 Background to the Problem

The background to the problem is best understood by tracing the origin and historical development of trademark law as it evolved in England. This approach is justified because Tanzania is a common law jurisdiction and was formerly a British colony; consequently, most of its legal system including trademark law was derived from English law. By the nineteenth century in England, it had become evident that marks applied to goods had acquired distinctiveness and intrinsic commercial value, warranting legal protection. Such protection was available through Royal Charters and court actions. The courts recognised two principal forms of protection. First, a manufacturer could seek an injunction and damages against a party passing off his

[6] Rishi Ram Chapagai, 'Economic Perspectives of Trademarks' (2018) IX *The Saptagandaki Journal* 76 www.nepjol.info accessed 9 December 2024.

goods as those of the manufacturer, the basis of the action being the plaintiff's reputation acquired through use of the mark[7]. Second, an action for infringement of a trademark developed in the Courts of Chancery, which treated trademarks as a form of property. The difficulty with the infringement action, however, was that plaintiffs were required to prove title each time, and courts were repeatedly confronted with the challenge of determining what constituted a trademark.[8]

To address these challenges, the Trademark Registration Act, 1875[9] was enacted which for the first time, a formal register of trademarks was established. The principal objective of the Act, 1875[10] was to eliminate the need for repeated proof of title based on use and reputation.[11] The Act[12] provided that registration should be a *prima facie* evidence of the right of the registered proprietor to the exclusive use of the trademark[13] in connection with goods of the class for which it was registered and used and should, after expiration of 5 years be conclusive evidence of such right, so long as the trademark remained upon the register[14] and the proprietor of the trademark remained the owner of the goodwill of the business in which it was used.

To encourage compliance with the new registration system,, the Act,[15] further stipulated that from and after 1st July, 1876,[16] no person could bring an action before a court to prevent the infringement of a trademark unless that mark had been

[7] Kerly's, Law of Trademark and Trade Names, 9th Ed, Sweet & Maxwell, London, 1966 at Pg 4
[8] Ibid
[9] 38 & 39 Vict. C. 91
[10] Ibid
[11] Kerly's Law of Trademark and Trade Names, 9th Ed, Sweet & Maxwell, London, 1966 at Pg 6
[12] 38 & 39 Vict. C. 91
[13] Section 3 of the Trademark Registration Act, 1875
[14] Kerly's Law of Trademark and Trade Names, 9th Ed, Sweet & Maxwell, London, 1966 at Pg 6
[15] 38 & 39 Vict .C. 91
[16] (A date which was extended by the amending Acts) 39 & 40 Vict .C. 33, and 40 & 41 Vict .C. 37

registered pursuant to the Act.[17] All trademark applications were lodged at the UK Patent Office, and the 1875 Act[18] vested the Registrar of trademarks with authority to register trademarks that met the statutory conditions. Notably, the Act of 1875[19] failed to impose any regulatory controls such as timelines for processing applications on the Registrar's exercise of his functions. This clearly illustrates that the 1875[20] enactment granted the Registrar of trademarks unchecked administrative powers."

Further, in the year 1883, the Act of 1875[21] was amended by the Patent, Designs and Trademarks Act, 1883.[22] The principal innovation introduced by the amending Act, 1883[23] was the requirement that a registrable trademark consist of a "fancy word not in common use. However, the amended Act[24] failed to define what constituted a fancy word and the omission in the Act[25] was the cause of great deal of litigation.[26] In response to the growing uncertainty, the Committee[27] of 1887 was appointed by the Board of Trade to inquire into the duties, organizations and arrangements of the Patent Office under the Trademark Registration Act, 1883, as far as related to trademarks and designs.[28] The Committee issued reports in August 1887 and March 1888, addressing not only the specific matters referred to it but, also broader questions relating to the principles and practice of trademark registration. As a result,

[17] Section 1 of the Registration Act of 1875
[18] 38 & 39 Vict .C. 91
[19] Ibid
[20] Ibid
[21] Ibid
[22] 46 & 47 Vict .C. 57
[23] Ibid
[24] Ibid
[25] Ibid
[26] Kerly's, Law of Trademarks andTrade Names, 9th Ed, Sweet & Maxwell, 1966 at Pg 7
[27] Committee Presided by Lord Herschell
[28] Kerly's Law of Trademarks and Trade Names, 9th Ed, Sweet & Maxwell, 1966 at Pg 7

in the amending Act, 1888, which came into operation on 1st January, 1889, it provided *inter alia*, that for the fancy word phrase there should be substitute, "*An invented word or invented words; or a word or words having no reference to the character or quality of the goods, and not being a geographical name.*[29]" While this amendment refined the types of marks capable of registration, it did not disturb the fundamental principle established by the Act of 1875[30] namely, the broad and largely uncontrolled powers vested in the Registrar of trademarks.

Further, the Act of 1888 was amended and was replaced by the Trademark Act of 1905[31] and practically the whole of the statutory civil law was repealed by the Trademark Act of 1905.[32] This Act,[33] whilst re-enacting a considerable part of the previous law in a much-improved form, also introduced many new provisions.[34] For the first time in Registration Acts, a definition of a trademark was given.[35] The Act of 1905[36] with the introduction of new provisions in the law yet the powers of the Registrar of trademarks without control was maintained.

Further, the Act of 1905[37] was amended by the Act of 1919[38] which came into operation on 1st April, 1920 which divided trademark registry in two parts: Part A

[29] Section 10 of Act of 1888
[30] 38 & 39 Vict .C. 91
[31] 5 Edw .7. C 15
[32] Ibid
[33] Ibid
[34] Kerly's, Law of Trademarks andTrade Names, 9th Ed, Sweet & Maxwell, 1966 at Pg 8
[35] Section 3 of the Act of 1905 defined a trademark to mean and include: "In and for the purposes of this Act (unless the context otherwise requires):- A 'mark' shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof: "A trademark shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trademark by virtue of manufacture, selection, certification, dealing with, or offering for sale."
[36] 5 Edw .7. C 15
[37] 5 Edw .7. C 15
[38] 9 & 10 Geo .5. C 79

and Part B. Part B had lower rights compare to Part A, being only *prima facie* evidence that the proprietor had an exclusive right to the use of the trademark, and duration of 5 years was removed to 7 years registration.[39] The Act of 1919[40] was further amended 1938.

The amending Act of 1919[41] did not bring any significant changes upon the control on the powers of the Registrar of trademarks. The Act of 1919[42] was subsequently amended by the Trade Marks (Amendment) Act, 1937, and the Trade Marks Act, 1938, both of which recognized common-law rights and eliminated the distinction between registration under Part A and Part B. However, the broad powers vested in the Registrar of trademarks remained untouched and continued to be a defining feature of the legislation.

An examination of English trademark law reveals that, although the legislation has experienced multiple reforms, the expansive and unregulated powers accorded to the Registrar of trademarks have remained intact. To substantiate the proposition that Tanzania inherited this principle of unfettered administrative authority, it becomes necessary to further analyse the historical development of trademark law within the Tanzanian context.

During British colonial rule in Tanzania, numerous British statutes were extended to Tanganyika pursuant to the Foreign Jurisdiction Act, 1890 (UK), a statute that authorized the application of British laws to colonial possessions. The Tanganyika

[39] Kerly's Law of Trademarks and Trade Names, 9th Ed, Sweet & Maxwell, 1966 at Pg 7at Pg 12
[40] 9 & 10 Geo .5. C79
[41] Ibid
[42] Ibid

Order in Council of 1920 further conferred authority upon the Governor to legislate for the territory and to incorporate British enactments, either verbatim or as adapted for use in India.[43] Through the process of colonial administration, Tanzania inherited the United Kingdom's Trade Marks Act of 1938, together with its defining features, including the conferral of broad and largely uncontrolled powers on the Registrar of trademarks. The legislative assembly enacted in the year 1957 the Trademark Ordinance[44] which came into force on 1958 and in the year 1986, the new trademark law[45] was enacted and replaced the Trademark Ordinance. The enactment was viewed facilitating the then existing new political and economic atmosphere within Tanzania and international level.

However, enacting the trademark law of 1986[46]did not eliminate the colonial legacy embedded in Tanzania's legal framework; rather, it reaffirmed the same principles found in the UK trademark Law.[47] The new Act[48] failed to establish any form of control or oversight mechanism over the powers of the Registrar of trademarks. This was consistent with the UK trademark law,[49] this similarly conferred broad administrative authority upon the Registrar of trademarks without corresponding procedural safeguards.

Moreover, the Tanzania trademark legislation did not provide any legal or judicial recourse for applicants to challenge unreasonable delays caused by the Registrar of

[43] Through reception clause Article 17 of Tanganyika Order in Council, 1920. The same imported Common Law, equity and statutes of general application in force in England on 22nd July, 1920
[44] Chapter 216 of the Laws of Tanganyika
[45] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[46]Ibid
[47]Trademark Act, 1938 of UK
[48] Act No. 12 of 1986 as amended in the year 2021 of the Laws of Tanzania
[49] Trademark Act, 1938 of UK

trademarks. As a result, the regulatory vacuum persisted, and the colonial administrative structure remained entrenched within the trademark system. Therefore, the enactment of the new law effectively preserved the colonial atmosphere within Tanzania's trademark legal regime.[50].

Even though the Trademark Act[51] was amended in 2021,[52] the foundational principles originally adopted from the UK Trademark law of 1938 remain largely intact. These enduring principles continue to influence the structure and operation of trademark administration in Tanzania, including the extensive administrative powers granted to the Registrar of trademarks.

The legal response to the unchecked administrative powers of the Registrar of trademarks lies in incorporating specific statutory provisions that introduce an effective control mechanism within the framework of the trademark Act.[53] However, from an international perspective, the Madrid Agreement Concerning International Registration of Marks[54] and its Protocol Relating to that Agreement[55] Remain silent on matters relating to regulatory checks over the administrative functions of national trademark Registrars. These international instruments focus primarily on facilitating the international registration of trademarks, but they do not provide a mechanism for supervising or limiting the powers of national Registrar; this absence of oversight not only weakens regulatory consistency but also poses a risk to international trade confidence and the interests of the broader business community.

[50] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021of the Laws of Tanzania
[51] Ibid
[52] Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021(Tanzania)
[53] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[54] Madrid Agreement Concerning International Registration of Marks 1891
[55] Protocol Relating to that Agreement (1989)

Furthermore, benchmark comparative experience from neighboring jurisdiction such as Kenya reveals that their trademark legislation,[56] is similarly silent on the establishment of control mechanism over the administrative powers exercised by the Registrar of trademarks. Both at the domestic and international level, these powers remain largely unchecked. Neither legal nor judicial avenues are adequately provided for applicants to challenge undue delays or administrative inertia by the Registrar of trademarks. The institutional deficiency underscores the relevance of the present study, which aims to critically examine the legal, Institutional and Practical challenges posed by Registration of Trademarks, specifically within the context of Mainland Tanzania's trademark legal framework.

1.3 Statement of the Problem

The study addresses the legal challenges associated with trademark registration in Tanzania, with a particular focus on the exercise of administrative powers by the Registrar of Trademarks. A core concern lies in the inadequacy of the prevailing trademark law, which grants broad administrative powers to the Registrar of trademarks without imposing any meaningful control mechanisms or procedural safeguards.

In Tanzania, all trademarks are registered through the office of the Registrar of trademarks, operating under the Business Registration and Licensing Agency (BRELA). The principal legislation governing this process is the Trade and Service Marks, 1986.[57] The Act[58] delegates extensive administrative powers to the Registrar

[56] Trademark Act Cap 506 of the Laws of Kenya
[57] Act No. 12 of 1986 R.E. 2002 of the Laws of Tanzania as amended in the year 2021

of trademarks, including the allocation of trademark numbers, examination of trademarks, and advertisement of trademarks in the trade and service mark journal. Further, the Trademark Act[59] authorises the Registrar of trademarks to issue a registration certificate, resolve opposition proceedings, cancel registrations, and oversee the assignment of trademarks. While these powers are essential for administrative efficiency, the absence of legal provisions to regulate or review the Registrar of trademarks administrative powers presents a significant challenge. The unchecked nature of this authority has led to procedural inconsistencies and delays, ultimately undermining the trademark registration framework in Tanzania. Thus, the problem central to this study is the lack of a legal or judicial accountability mechanism governing the Registrar of trademarks exercise of administrative powers, raising concerns over transparency, timeliness, and the protection of trademark rights within the jurisdiction.[60]

For instance, the Act,[61] together with its accompanying Regulation,[62] obliges the Registrar of trademarks to examine any goods or services submitted for registration.[63] The underlying purpose of these provisions is to ensure that the Registrar of trademarks verifies whether the proposed trademark relates to goods or services for which identical or closely resembling trademarks have already been registered. This mandate requires the Registrar of Trademarks to assess the potential

[58] Act No. 12 of 1986 R.E. 2002 of the Laws of Tanzania as amended in the year 2021
[59] Ibid
[60] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 Laws of Tanzania together with Trademark Regulation G.N. No. 40 of 2000
[61] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 Laws of Tanzania together with Trademark Regulation G.N. No. 40 of 2000
[62] G.N. No. 40 of 2000
[63] Section 26(1) of the Trade and Service Mark Act No. 12 of 1986 as amended in the year 2021 and Rule 26 of the Trade and Service Mark Regulation G.N. 40 of 2000 of the Laws of Tanzania

for consumer confusion by determining whether the applied trademark is deceptively similar to any existing trademarks on record. The objective is to prevent the registration of trademarks that may mislead the public or cause confusion in the marketplace.

The broader interpretation of the Act[64] and its Regulation[65] suggests that trademark law[66] merely empowers the Registrar of Trademarks to conduct an examination. However, neither the Act[67] nor its Regulation[68] Provide a clear timeframe within which such an examination must be conducted. During the examination, the Registrar of Trademarks is vested with the authority to either accept the application outright or express willingness to accept it subject to conditions, amendments, disclaimers, modifications, or limitations as deemed appropriate. Importantly, the law does not prescribe any timeline within which the Registrar of Trademarks must issue an examination report determining whether a trademark is accepted absolutely or conditionally.[69] Thus, the issuance of examination reports occurs entirely at the discretion of the Registrar of Trademarks, raising concerns about administrative delay and unpredictability in the trademark registration process.[70]

Upon acceptance of a trademark application, the Trademark Act[71] and its accompanying Regulations[72] mandate the Registrar of trademarks to cause the

[64] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[65] G.N. No. 40 of 2000
[66] Act No. 12 of 1986 as amended in the year 2021 and Trade and Service Mark Regulation, G.N. No. 40 of 2000
[67] Ibid Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[68] Trade and Service Mark Regulation, G.N. No. 40 of 2000
[69] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[70] Trade and Service Mark Regulation, G.N. No. 40 of 2000
[71] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[72] G.N. No. 40 of 2000 of the Laws of Tanzania

trademark application to be advertised in the trademark journal for a statutory period of 60 days.[73] However, while the law specifies the duration of the advertisement period, it remains silent on the timeframe within which the Registrar of trademarks must initiate such advertisement following acceptance.[74]

This legislative gap effectively grants the Registrar of trademarks power to determine when the advertisement will be published. As a result, the advertisement of accepted trademarks is conducted at the Registrar of trademarks' convenience, without any legal obligation to adhere to a specific timeline.[75] These administrative powers or discretion further compound procedural delays and underscore the absence of statutory controls over the Registrar of trademarks' function.

In addition, the Trademark Act[76] and its corresponding regulations[77] require the Registrar of Trademarks to issue a certificate of registration to the applicant, which remains valid for a period of seven years. However, neither the Act[78] nor its Regulation[79] Stipulate a specific timeframe within which the certificate must be issued. As a result, the issuance of the registration certificate is left entirely to the discretion of the Registrar of trademarks, further evidencing the lack of time-bound administrative accountability in the trademark registration process. The foregoing legal shortcomings have effectively constrained applicants, particularly when seeking to challenge undue delays by the Registrar of trademarks. The existing legal

[73] Section 26(2) of the Trade and Service Mark Act No. 12 of 1986 as amended in the year 2021 and Rule 32 of the Trade and Service Mark Regulation, G.N. No. 40 of 2000 of the Laws of Tanzania
[74] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[75] G.N. No. 40 of 2000 of the Laws of Tanzania
[76] Act No. 12 of 1986 as amended in the year 2021 of the Laws of Tanzania
[77] Trade and Service Mark Regulation, G.N. No. 40 of 2000
[78] Act No. 12 of 1986 as amended in the year 2021 of the Laws of Tanzania
[79] Trade and Service Mark Regulation G.N. No. 40 of 2000

framework does not accommodate a mechanism, whether judicial or administrative, for applicants to contest these delays. As a result, the Registrar of trademarks continues to exercise broad power and authority over trademark administration without accountability. It is worth noting that although the trademark law underwent amendments as recently as 2022, the absence of regulatory checks on the Registrar of trademarks power persists. The concept of administrative control remains unaddressed, and no legislative reforms have been enacted to safeguard the interests of applicants by introducing timelines or remedies for administrative inaction.

Moreover, the present trademark legislation[80] Tanzania does not adequately support regional or international trademark filing systems. This legislative lacuna not only hampers the protection of trademarks beyond national borders but also diminishes investors' confidence and impedes Tanzania's ability to fully leverage its participation in regional economic blocs. The result is a trademark regime that is inconsistent with the country's broader economic integration and development agenda.

These systemic deficiencies have eroded public trust in the trademark system and obstructed Tanzania's capacity to facilitate cross-border trade, safeguard intellectual property rights, and attract foreign investment. Therefore, an in-depth analysis of the legal, Institutional and Practical challenges during Registration of Trademarks in Mainland Tanzania is essential to identify reforms that can promote accountability, align national laws with international and regional standards.

[80] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

1.4 Literature Review

Intellectual Property (IP) jurisprudence has developed through a substantial body of scholarship at both global and local levels. This review synthesises those contributions to identify the extent to which prominent authors have examined: (i) the scope and exercise of the Registrar of Trademarks' administrative powers in Tanzania; and (ii) the existence, design, and effectiveness of control mechanisms such as statutory timelines, procedural safeguards, and judicial or administrative review intended to ensure accountability and timely decision-making.

Cornish[81]explain the discretionary powers exercised by the Registrar of trademarks and how these powers are limited in Britain. The author asserts that an application must be accepted once the Registrar of trademarks is satisfied that it meets the conditions prescribed in the Trademark Act. He further notes that limitations on the Registrar of trademarks' discretionary powers serve as an important safeguard to ensure an effective system for administering trademarks, particularly during the registration process.

The reviewed work makes an important contribution by underscoring that restricting the Registrar of trademarks' discretionary powers is vital for enhancing the efficiency and fairness of trademark administration, and by correctly observing that such discretion should only be exercised where expressly authorised by statute. Yet, the author's focus remains confined to the question of discretion, without extending the analysis to the institutional mechanisms that regulate how such powers are

81 Cornish. W.R, Intellectual Property, Universal Law Publishing Co. PVT Ltd, 2001, New Delhi at Pg 574

exercised in practice. In particular, the work overlooks statutory timeframes and other control devices that ensure the Registrar of trademarks' administrative responsibilities are discharged in a timely and accountable manner. This omission is significant, as the absence of enforceable timelines fosters uncertainty, inefficiency, and the potential for maladministration in trademark processes. Moreover, the analysis is situated within the British context, which presupposes a regulatory environment markedly different from that of Mainland Tanzania. By shifting the focus to the Tanzanian framework, the present study not only interrogates the Legal, Institutional and Practical challenges during registration process but also explores the absence of effective control mechanisms as part of a broader inquiry into accountability and institutional reform in intellectual property governance.

Miller and Davis[82] Articulate the position of the trademark law in the U.S.A., with particular emphasis on the federal registration system. The authors explain that an application for a trademark registration is presumed to meet the statutory requirements once the applicant satisfies the essential legal conditions. However, they note that the registration process often gives rise to disputes concerning the fulfilment of those requirements. This structural feature of U.S. Trademark Law has led to the development of a system designed to resolve disputes expediently. The U.S system provides a mechanism through which an aggrieved applicant may seek recourse. Specifically, an applicant whose registration is refused by an examiner has the right to request a review of that decision. If the refusal is maintained upon review, the applicant may further appeal to the Trade Marks Trial and Appeal Board,

82 See Miller A and Davis M, (1987), Intellectual Property: Patents, Trademarks and Copyright, west publishing company, Minnesota, Pg 218.

which comprises a panel of three members. Should the applicant remain dissatisfied with the Trade Mark Trial and Appeal Board, an additional appeal may be lodged either to the Court of Appeal for the Federal Circuit or to a district Court for *a* judicial trial.

The assessment by Miller and Davis is valuable in illustrating the position in the United States, where trademark law provides an institutional framework for the expeditious resolution of disputes arising from refusals by the Registrar of trademarks. Their analysis highlights the layered mechanisms of review and the availability of judicial bodies to ensure that applicants are not left without recourse. Yet, the effectiveness of such a system presupposes that the Registrar of trademarks exercises administrative powers within reasonable and predictable timeframes.

Without timeliness at the administrative level, the existence of appellate or judicial remedies risks becoming illusory, as applicants may already have suffered the loss of rights or commercial opportunities. Miller and Davis confine their discussion to the procedural availability of judicial redress, but do not interrogate the regulatory mechanisms that control the Registrar of trademarks' administrative conduct. This limitation is particularly important in the Tanzanian context, where the absence of statutory timelines and effective accountability structures contributes to systemic delays.

By shifting attention to these institutional dynamics, the present study extends the discourse beyond judicial recourse to examine how control mechanisms or their

absence shapes the efficacy of registration of trademarks in Tanzania. Sarkar,[83]writes succinctly on the law and practice of trademarks in India. The learned author notes that, the Registrar of trademarks administers trademarks in India under the Controller-General of Patents, Designs and Trademarks. According to the author, under the 1958 Trademarks Act of India, the Registrar of Trademarks exercises full discretion to accept or reject applications for registration of trademarks. This discretionary power persists regardless of whether or not the application has been contested. In any cases, the applicant must persuade the Registrar of trademarks that the trademark is both registrable and acceptable, with the burden of proof resting upon the applicant.

The contribution by the learned author is instructive in demonstrating how the Registrar of trademarks exercises discretion in matters of acceptance and refusal, which form a core component of the Registrar of trademark's administrative powers. The analysis confirms that the Registrar of trademarks is vested with the authority to admit or reject applications, but it remains confined to affirming the existence of this discretion. What is not addressed is the temporal dimension of such authority namely, the timeframe within which the Registrar of trademarks must act.

The absence of this discussion is significant because an open-ended exercise of discretion risks undermining the efficiency and predictability of the trademark system, leaving applicants vulnerable to delay and uncertainty. While the author situates the debate within the Indian framework, where the institutional context differs markedly, this study turns to the Tanzanian position, where the absence of

[83]Sarkar, J.S, on Trademarks Law and Practice, (2000) Kamal Law House, Calcutta, Pg 38

clear statutory timelines underscores key legal and institutional concerns regarding accountability and administrative justice, as well as practical challenges affecting the efficiency of trademark registration.

E, Nigel, [84]discusses the administration of intellectual property matters in England. He notes that, in England, it generally takes between six to eighteen months, to obtain a trademark registration where no opposition is filed. However, if the application is opposed, or if further such as proof of distinctiveness is required, the registration process can take several years.

The above analysis is significant in showing that, even in a developed jurisdiction such as England, trademark registration is susceptible to delays: unopposed applications typically require 6 to 18 months to complete, while opposition proceedings may extend the process for several years. This underscores the inherent inefficiencies that can arise when the Registrar of trademarks' administrative powers are not subject to strict regulatory controls. For efficiency to be realised, trademark law must incorporate mechanisms, particularly statutory timeframes that compel the Registrar of trademarks to discharge duties within a predictable and reasonable period.

The experience of England, where even unopposed applications take well over a year, is instructive for developing countries. In Tanzania, with comparatively fewer institutional resources and weaker procedural safeguards, the risk of prolonged

[84]Nigel. E, etal, (2004), Intellectual Property Law and Taxation, 6th Ed, Sweet & Maxwell, London, at Pg 41

delays is even more acute. This disparity underscores the need for contextual inquiry and justifies the present study's focus on the Tanzanian framework, where the adequacy of control mechanisms over the Registrar of trademarks' administrative powers remains a pressing legal and institutional concern, alongside practical challenges that affect the overall effectiveness and efficiency of trademark registration.

Philips[85] outlines several advantages of registering a trademark. First, it offers legal protection from the date of registration. Second, it simplifies enforcement, allowing a proprietor to take legal action against infringers without the need to establish prior registration. Third, once a trade mark is registered, it becomes less likely for competitotors to adopt a similar trade mark. Fourth, registration confers nationwide protection of the trademark.

The evaluation is pertinent in demonstrating the benefits that flow from successful trademark registration, including enhanced legal protection, commercial certainty, and competitive advantage. Yet, these advantages are only realised once registration has been completed, which underscores the importance of ensuring that administrative processes are carried out within a reasonable timeframe. While the author highlights the advantages of registration, the analysis is silent on the scope of the Registrar of trademark' administrative powers and the regulatory mechanisms necessary to guarantee timely decision-making. This omission is significant because the absence of effective controls risks delaying the enjoyment of the very benefits

85 Philips J, etal, (1990), Introduction to Intellectual Property Law, 2nd Ed, Butterworth's, London, at Pg 3

the author identifies. Framed within the context of the United Kingdom, the discussion presupposes a more robust institutional framework than exists in Tanzania. By focusing on the Tanzanian framework, the present study analyses the legal issues surrounding the Registrar of trademarks' administrative powers, assesses the sufficiency of institutional control mechanisms, and highlights the practical challenges that arise during trademark registration.

Narrayan[86], in line with Jeremy and Philips, underscores the advantages of trademark registration from a trader's perspective, aptly noting that "a product can be quickly outdated, but a successful brand is timeless." This observation reinforces the enduring value of trademarks as instruments of brand identity and commercial protection. Implicit in this reasoning, however, is the need for trademark law to ensure that the Registrar of Trademarks' administrative powers are exercised efficiently and within reasonable timeframes, so that the benefits of registration are not undermined by delay.

While the author persuasively sets out the commercial importance of registration, the analysis does not extend to the procedural and regulatory safeguards necessary to secure timely registration or to prevent administrative inefficiency. This limitation is particularly salient in the Tanzanian context, where the absence of statutory timelines has long raised concerns about administrative accountability. By interrogating these challenges, the present study seeks not merely to affirm the advantages of trademark registration but to situate them within a broader evaluation of the adequacy of Tanzania's legal, institutional, and practical control mechanisms

86 Narrayan, P (2000) Law of Trademarks and Passing off, Eastern Law House, Calcutta, at Pg 5

over the Registrar of trademarks' administrative powers." Tarim elucidates the rights of employees over inventions made during the course of employment. The author notes that the Business Registration and Licensing Agency (BRELA) is the statutory body mandated to oversee trademarks and patent matters in Tanzania. He further clarified that (BRELA) constitutes the Registrar of trademarks, who has been given key responsibilities in the administration of intellectual property rights, including those relating to trademarks.

The appraisal is significant in drawing attention to the broader legal framework governing intellectual property administration in Tanzania. Yet, the discussion remains largely descriptive and does not provide a detailed account of the Registrar of trademarks' specific statutory duties, particularly those central to the administration of trademarks. Equally, there is no assessment of the operational efficiency of BRELA as the implementing authority. These omissions are important, as both the scope of the Registrar of trademark's powers and the institutional capacity of BRELA are critical determinants of how effectively trademark administration functions in practice.

By moving beyond a descriptive overview of Tanzania's institutional framework, the present study seeks to interrogate the legal challenges arising from the exercise of administrative powers by the Registrar of trademarks and to evaluate the adequacy of the legal, institutional, and practical mechanisms established to regulate and control those powers. Mbeva Joseph[87]explained that in Kenya, the Industrial

[87]Mbeva J.M, Experiences and Lessons Learned Regarding the use of Existing intellectual Property

Property Institute (KIPI) is the statutory authority responsible for administering five out of the seven recognized categories of intellectual property rights (IPRs), namely: trademarks and service marks, Patents, Utility Models, Industrial Designs and Rationalisation models. The author further observed that, in response to widespread public unawareness regarding intellectual property rights, (KIPI) launched a nationwide outreach programme aimed at enhancing understanding of the role of IPRs in fostering industrial growth and trade development. The initiative had a measured impact, as demostrated by the increased number of individuals visiting KIPI offices to make trademark-related inquiries.

The Kenyan experience, as outlined by Mbeva, is relevant to this study in two principal respects. First, it positions Kenya as a credible comparator within the East African region, offering a useful benchmark for assessing the administration of intellectual property rights. Second, it demonstrates the operational reach of the Kenya Industrial Property Institute (KIPI) and the effectiveness of its public-awareness initiatives in stimulating demand for intellectual property services. The significant rise in applications following KIPI's outreach campaigns illustrates how public engagement can generate institutional pressure, compelling administrative bodies to enhance efficiency and responsiveness.

While this contribution is valuable in showing the impact of institutional outreach, it does not elaborate on the specific regulatory or procedural mechanisms that ensure the Registrar of trademark's discharges statutory duties within prescribed timelines.

Rights instruments for Protection of Traditional Knowledge, a paper presented in UNCTAD Expert Meeting on systems and National Experiences for protecting Traditional Knowledge, Innovations and Practices, Geneva, 30th October to 1st November 2000.

This omission is critical, for without effective control frameworks, the benefits of increased demand may be undermined by administrative delay. Ensuring compliance with statutory timelines is essential to the provision of prompt and reliable services to the public.

This limitation marks a point of departure for the present study, which interrogates the legal challenges surrounding the exercise of administrative powers by the Registrar of trademarks in Tanzania. Specifically, it examines the adequacy of regulatory controls, the presence or absence of statutory timelines, and the overall efficiency of institutional mechanisms. Whereas Mbeva's discussion is situated within the Kenyan context, this study is anchored in Tanzania's legal and administrative realities and seeks to contribute to the broader scholarly discourse on accountability and efficiency in intellectual property governance."

Adewopo[88]outlines that the global economy is undergoing rapid transformation, whereby the traditional brick and mortar model is increasingly supplanted by an economy centred on ideas and intellectual property. Intellectual property rights (IPRs) continue to play a pivotal role in the socio-economic development of countries and regions globally. The learned author emphasises that the establishment and consolidation of a common market in Africa necessitates the free movement of goods and services, and that intellectual property laws assume a critical facilitative role in this intergration. Moreover, Adewopo underscores that an effective Intellectual Property Rights (IPR) system is contingent on the sound administration

[88]Adewopo A, Developments in Intellectual Property in Africa, at Pg 1 www. atrip.org accessed on 2/12/2019

of IPRs, identiifying this as a crucial component of regional economic efficiency. In this regard, he evaluates the performance of regional African institutions charged with IPR administration, including the African Regional Intellectual Property Organization (ARIPO) which caters to Anglophone member states or English speaking countries and Organisation Africaine de la Propriete Intellectuelle(OAPI) which serves Francophone countries or French speaking countries.

The work is noteworthy for the present study as it underscores the critical role of Intellectual Property Rights (IPRs) in national development. It convincingly argues that IPR administration is a central determinant of systemic efficiency and assesses the competence of regional institutions charged with implementing these rights. Importantly, it situates effective IPR regulation as a prerequisite for establishing a functional common market in Africa, where the free movement of goods and services depends upon credible and harmonised intellectual property governance.

Yet, while the contribution is significant, the analysis does not sufficiently interrogate the criteria or indicators used to evaluate efficiency within the administrative bodies responsible for IPR enforcement. Nor does it engage with the institutional control mechanisms necessary to guarantee accountability and effectiveness. These omissions are important because without clear benchmarks or enforceable safeguards, institutional capacity may be overstated while systemic inefficiencies remain unaddressed.

Against this backdrop, the present study turns to the Tanzanian context to examine the legal challenges surrounding the exercise of administrative powers by the

Registrar of trademarks. In particular, it interrogates how power is exercised, the adequacy of legal and institutional checks and balances, and the practical implications of these dynamics for accountability, efficiency, and timely decision-making in trademark registration. By situating the inquiry within Tanzania's regulatory framework, the study not only complements regional perspectives but also contributes to a deeper understanding of trademark governance in the context of a developing economy.

Wakhungu[89]conducted a critical analysis of intellectual property rights (IPRs) protection across five selected countries. With specific reference to Kenya, she observed that by the year 2006, 1,303 foreign applications were filed compared to only 539 local or domestic applications revealing a significant disparity. This disparity is emblematic of broader systematic challenges within intellectal Property administration. The author attributes this imbalance to several interrelated issues: inadequate infrastructure, insufficient human resources, limited fundings, lack of essential technological tools such as computers, and poor dissemination of information. Further, she notes that the persistent lack of financial support impedes the ability of countries to recruit and retain qualified personnel within intellectual property offices. As a result, administrative inefficiency continue to hinder effective IPR implementation and enforcement.

The insights from Wakhungu's study are of clear utilitarian value to the present research. By drawing attention to the acute infrastructural and institutional

[89]A Journal Published by African Center for Technology Studies, Nairobi, Ecopolicy Series No.16, 2006, pg 22 and 28.

deficiencies that constrain IPR administration in developing jurisdictions, the study offers important empirical grounding. The 2006 Kenyan data, which quantify the disparity between foreign and domestic filings, also reveal the operational weaknesses of intellectual property institutions and underscore the systemic challenges faced in fostering indigenous innovation.

While analytically rigorous, Wakhungu's work remains limited to an empirical diagnosis and does not extend to the normative and legal dimensions of administrative discretion and accountability. In particular, the study does not interrogate the control mechanisms necessary to regulate the Registrar of trademark's exercise of administrative powers or to ensure that statutory duties are discharged within predictable timeframes. This omission is critical because efficiency in trademark administration cannot be sustained without robust oversight frameworks that compel timely and effective performance.

Building on Wakhungu's empirical foundation, the present study advances the discourse by focusing on the legal constraints and institutional oversight mechanisms governing the Registrar of trademark's in Tanzania. Strengthening such mechanisms is essential for enhancing institutional credibility, encouraging increased domestic filings, and developing a more responsive and streamlined system of trademark registration. Whereas Wakhungu's analysis is situated within the Kenyan experience, this study is anchored in Tanzania's legal-administrative context, thereby contributing to a more nuanced understanding of how control frameworks shape trademark governance in a developing economy.

Mbote[90] explicates that the administration of industrial property rights in the form of trademarks, patents, industrial designs and utility models under the mandate of the Kenya Industrial Property Institute (KIPI), which operates under the general supervision of the Ministry of Trade and Industry. The author hughlights that trademark law is the most frequently applied branch of Intellectual Property Law in Kenya. The author observes that Kenya Industrial Property Institute (KIPI) receives a significantly higher number of foreign applications than domestic ones, with local applications constituting merely 10% of the total. This reveals that approximately 90% of all trademark applications in Kenya originate from foreign entities. Moreover, Kenyan trademark law mandates the use of local agents by foreigners seeking to register their trademarks. Mbote also notes a rise in trademark infringement cases in Kenya, many of which have progressed to litigation.

The reviewed work is relevant to the present study as it provides important insights from a neighbouring jurisdiction, highlighting the dominance of foreign applications in Kenya's trademark registration system. With the full operationalisation of the East African Community Common Market, it is reasonable to anticipate a comparable surge of foreign applications in Tanzania, a development that will place increasing pressure on the Registrar of trademark to deliver services efficiently. The analysis underscores that effective and timely performance cannot be achieved without the establishment of robust control mechanisms within trademark law, particularly those designed to regulate the scope and exercise of administrative powers.

[90]Mbote, P.K, Intellectual, Property Protection in Africa: An Assessment of the Status of Laws, Research and Policy Analysis on Intellectual Property Rights in Kenya, IELRC Working Paper, 2005-2, Pg. 7

The author also notes the rising incidence of trademark infringement in Kenya, a trend that reinforces the urgency of timely and efficient administrative responses. Without enforceable oversight mechanisms, trademark owners risk losing the ability to realise or enforce their rights, as registration delays or failures can render legal protection ineffective. While the study makes a valuable contribution by documenting these empirical patterns, its geographical limitation to Kenya highlights the need for contextualised inquiry.

Against this background, the present study extends the debate by situating the analysis within Tanzania's legal and institutional framework. It interrogates the legal challenges arising from the Registrar of trademarks' exercise of administrative powers and evaluates the adequacy of existing control mechanisms. In doing so, the study advances proposals for reform aimed at strengthening accountability, enhancing procedural efficiency, and ensuring that Tanzania's trademark regime responds effectively to both domestic needs and regional integration demands..

Murunga[91]outlines the procedural stages involved in the registration of trade marks in Kenya. The author delineates the processes which include;- firstly, conducting an official search on the availability of the trademark for registration. However, the search is optional. The second stage is filing the application, whereby the applicant fills in the details in a pre-designed form contained in the Trade Marks Forms. At this juncture, the applicant *inter alia,* also presents the proposed logo or trademark which he intended to have registered.

[91]Murunga B, Trademarks and Industrial Designs: A Legal Practitioner's Perspective paper presented on the 5th day of May 2005 at Hotel Sirikwa, Eldoret to Members of the Law Society of Kenya, under the Continuing Legal Education Program, Pg 6.

The third stage involves a substantive examination by officials at the trademark registry. If no similar or identical trademark is found in the registry, a letter of acceptance is issued, accompanied by an examination report duly signed by the Registrar of trademarks. However, if the examiner deems the trademark unregistrable or finds certain words objectionable, the applicant may be required to make amendments, a disclaimer, or clarification again these are to be submitted in writing and duly endorsed by the Registrar of trademarks.

Subsequently, the fourth stage entails publication of the trademark in the Industrial Property Journal or the Kenya Gazette to notify the public and invite opposition. Should no objections be lodged within sixty days, the process culminates in the issuance of a certificate of registration. Murunga's contribution is significant as it provides a detailed procedural account of trademark registration in Kenya, shedding light on the extensive powers exercised by the Registrar of trademark at each stage of the process. This descriptive clarity is useful for comparative purposes. However, the analysis remains narrowly procedural and does not engage with the critical question of statutory timelines or mechanisms designed to constrain administrative powers. Without such consideration, the work overlooks a central determinant of efficiency, namely, whether the Registrar of trademarks' duties are discharged in a predictable and accountable manner.

The present study departs from this procedural emphasis by adopting a normative and analytical perspective. It focuses on the Tanzanian framework, examining the scope of the Registrar of trademarks' powers and the adequacy of the mechanisms intended to safeguard accountability, institutional efficiency, and practical

effectiveness. In doing so, it moves beyond procedural exposition to engage with broader debates on administrative law, governance, and reform in trademark regulation.

Omeke[92] Further elaborates on the opposition procedure in Kenya's trademark registration framework. The author explains that, under Kenyan law, opposition to registration of a trademark must be filed within 60 days from the date of its publication. This is done by submitting a formal statement of opposition. Upon receipt of such a statement, the Kenya Industrial Property Institute (KIPI) invites the applicant to submit a counterstatement or reply. This process initiates a quasi-judicial proceeding resembling litigation. The opposition procedure culminates in a decision rendered by the Registrar of Trademarks, which is binding upon both parties. Any dissatisfied party retains the right to appeal to the High Court. This highlights the quasi-judicial nature of the Registrar of trademarks role in adjudicating trademark disputes within the administrative framework.

The work assessed is of particular relevance to this study as it highlights the adversarial character of trademark opposition proceedings and the significant decision-making authority vested in the Registrar of trademark. This contribution is valuable in demonstrating the centrality of the Registrar of trademarks' role in safeguarding the integrity of the registration system. Yet, Omeke's analysis does not engage with the timeliness of decisions rendered in opposition matters, an omission

[92]Omeke I**,** Intellectual Property and its Registration Procedure in Kenya, a Lecture presented as part of initiative to teach students the technological frameworks and entrepreneurship skills to create their own start-ups14th July, 2010**.**

that has direct implications for both the efficiency and fairness of the process. Nor does the discussion interrogate whether existing laws provide adequate safeguards or control mechanisms to regulate the Registrar of trademarks' exercise of powers, particularly in relation to the timeframes within which opposition proceedings should be concluded.

The present study, therefore, departs from this procedural focus by examining the Tanzanian context, where the absence of statutory timelines and limited oversight mechanisms heightens the risk of administrative delay and uncertainty. By analysing the legal framework governing the Registrar of trademarks' administrative powers, the study interrogates how power is exercised, the adequacy of existing checks and balances, and the broader implications for efficiency and accountability in trademark governance.

According to Wangwe et al,[93] the Kenya Industrial Property Institute (KIPI) maintained a staff complement of 97 individuals, comprising 26 professionals among legal experts, engineers, and senior management and 71 administrative staff. These included personnel such as secretaries, public relations officers, and financial administrators. The study identifies two major financial challenges confronting KIPI: insufficient allocation of resources for intellectual property management and a structural imbalance wherein projected expenditures consistently surpass projected service-derived income.

[93]Wangwe S et al, Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement: case study of Kenya Economic and Social Research Foundation, Dar es Salaam, Tanzania, a report commissioned by the IPR Commission as a background paper

The observations made by Wangwe et al. are valuable in clarifying the structural and financial framework of the Registrar of Trademarks in neighbouring jurisdictions, particularly with respect to the challenge of inadequate resources. The authors rightly emphasise that financial sufficiency is a critical factor in sustaining the operational efficiency of trademark institutions. However, their analysis presumes that efficiency follows automatically from adequate resourcing, without interrogating the legal and administrative mechanisms that regulate how such institutions exercise their powers. This narrow focus is significant, for even well-funded offices risk inefficiency and arbitrariness in the absence of statutory safeguards and accountability structures.

Building on this insight, the present study advances the debate by examining Tanzania's trademark regime through a different lens: the legal challenges arising from the Registrar of trademarks' exercise of administrative powers. Specifically, it investigates the adequacy of oversight mechanisms, the presence or absence of statutory timelines, and the accountability frameworks that shape whether financial and institutional resources translate into efficient and predictable service delivery. By shifting the analysis from Kenya to Tanzania, the study demonstrates that resource sufficiency, while important, cannot substitute for legal control and institutional accountability within the trademark regulatory framework.

According to Sope,[94] the Trademarks Act of Kenya governs the registration of both trademarks and service marks. A trademark is defined as a distinctive sign or

[94]Sope A, "Intellectual Property Rights in Sub-Saharan Africa" (2011). *CMC Senior Theses.* Paper 289 http://scholarship.claremont.edu/cmc_theses/289/, accesed on 19/8/2015

indicator used by an individual, business entity, or other legal person to signify that the goods or services associated with it originate from a specific source, thereby distinguishing them from those of other entities. The Act stipulates that for a mark to be registered; it must exhibit distinctiveness and originality. Applications for marks that are deceptive, likely to cause consumer confusion, or substantially similar to existing registered trademarks are rejected. Notably, the Trademarks Act is among the most frequently utilised pieces of legislation in Kenya's legal framework.

The Trademarks Act of Kenya is responsible for registering trademarks and service marks. A trademark is a distinctive sign or indicator used by an individual, business organisation, or other legal entity to identify the products or services to consumers with which the trademark appears originate from a unique source, and to distinguish its products or services from those of other entities. The criteria for registering trademarks and service marks are distinctiveness and originality. Products and services likely to deceive consumers or cause confusion, or resemble existing trademarks, do not qualify and will not be registered. The Trademarks Act is the most frequently used legislation in Kenya**.**

The foregoing analysis is useful for this research in clarifying the statutory foundation of trademark registration in Kenya, particularly the central role of the Trademarks Act in governing the protection of marks and service marks. While this contribution is valuable, the study remains narrowly focused on the legislative framework and does not interrogate the scope of administrative authority vested in the Registrar of Trademarks. In particular, it overlooks whether such powers are constrained by statutory timelines or procedural safeguards, an omission that raises

concerns about unregulated powers and potential inefficiency.

The present study departs from this limited treatment by turning to Tanzania, where the Registrar of trademarks' wide-ranging administrative powers have generated sustained concern regarding timeliness, predictability, and accountability. By analysing the scope of these powers and evaluating the adequacy of existing control mechanisms, the study contributes to a deeper understanding of legal, institutional, and practical dimensions of administrative accountability in trademark regulation. In doing so, it situates Tanzania's experience within the broader regional discourse on institutional effectiveness in intellectual property governance.

Mwalimu[95] Explains that, pursuant to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, member states of the World Trade Organisation (WTO) is obligated to incorporate into their national legal systems minimum standards for the protection of each category of intellectual property rights (IPRs). She emphasises that TRIPS establishes universal baseline standards for IPR protection, requiring member countries to amend or align their domestic intellectual property legislation to ensure compliance with the Agreement's provisions.

The reviewed work underscores the obligation of WTO member states to harmonise their intellectual property laws with the TRIPS Agreement to guarantee minimum standards of protection. While this harmonisation establishes a baseline of equal treatment across jurisdictions, it does not in itself resolve the legal and administrative

[95] Mwalimu, U, The Implication of WTO and TRIPS in Tanzania: A Focus on Pharmaceuticals presented in seminar titled Globalization and East Africa, paper presented on July, 2003 at Dar es Salaam ESRF

challenges surrounding the implementation of trademark rights. Effective and timely administration depends equally on the regulation of the Registrar of trademarks' powers at the national level. In the absence of statutory controls such as time-bound duties and oversight mechanisms, even a harmonised legal system may fail to deliver predictable and efficient trademark protection.

This study builds on that insight by focusing specifically on Tanzania, where the Registrar of trademarks exercises broad administrative powers with limited statutory guidance. By analysing the scope of these powers and the adequacy of the control mechanisms provided under Tanzanian law, the research interrogates the legal challenges that undermine timely, efficient, and accountable trademark administration. In this way, the study shifts the discussion from international harmonisation under TRIPS to the concrete issue of administrative authority within Tanzania's trademark regime.

Kamau, Maema and Muigai[96] Observe that violations of intellectual property rights (IPRs) are increasingly prevalent across all member states of the East African Community (EAC). They note that the EAC is working to deepen the implementation of a regional customs union and improve the overall business and investment climate. To achieve these objectives, the EAC has identified the prohibition and control of trade in counterfeit and pirated goods as a strategic priority. This illicit trade, which is widespread throughout the region, is recognised as a significant deterrent to both domestic and foreign investment.

[96]Formulation of an EAC Policy on Anti-Counterfeiting, Anti-Piracy, and other intellectual property rights (IPRs) violations, final progress report, a consultancy report submitted to the EAC, September, 2009

The evaluation of the reviewed work is pertinent to the present study as it highlights the escalating problem of intellectual property rights (IPRs) violations across all East African Community (EAC) member states. The authors rightly observe that the EAC aims to strengthen its customs union to curb the trade in counterfeit and pirated goods, a policy direction that is both valid and commendable. However, their analysis overlooks a critical dimension: the effectiveness of regional initiatives is heavily dependent on the strength of national legal frameworks.

In particular, trademark laws must incorporate control mechanisms such as statutory timelines and accountability measures to govern the timely and predictable exercise of administrative powers by national Registrar of trademarks. Without such mechanisms, trademark offices risk inefficiency, and beneficiaries may be unable to register marks promptly or seek effective redress before customs authorities in cases of counterfeit or pirated goods.

This study departs from regional generalisations by situating the inquiry within Tanzania, an EAC member state whose trademark regime is characterised by broad administrative powers and limited statutory oversight. By interrogating the Registrar of trademarks' powers and the adequacy of existing control mechanisms, the research examines how domestic legal and institutional challenges undermine both the efficiency of trademark administration and the credibility of regional enforcement efforts. In doing so, the study grounds the EAC discussion in Tanzania's experience and contributes to a broader understanding of how national administrative law interacts with regional integration objectives.

Omari, Muumbi and Kiragu[97] provide a comprehensive exposition of the trademark registration framework in Kenya, situating the Kenya Industrial Property Institute (KIPI) as the institution responsible for administering trademarks, under the leadership of a Managing Director. Both Kenyan nationals and foreign individuals or corporate entities are eligible to apply for trademark registration. However, applications by foreign parties must be submitted through a local agent, typically a licensed advocate or another authorized individual.

The authors further explain that an applicant may first seek preliminary advice on the registrability of a proposed trademark by submitting Form TM27 along with the requisite fee. The Registrar, within approximately two weeks, provides feedback on whether the trademark is likely to be accepted. If deemed registrable, the applicant proceeds to formally apply using Form TM2 and pay the applicable registration fees. Following the submission, a trademark examiner conducts a substantive assessment to determine the trademark's compliance with registration requirements. If the trademark satisfies all conditions, it is published in the KIPI journal after payment of the advertisement fee, thereby initiating a 60-day period for public opposition. If no objection is lodged, the Registrar issues a certificate of registration, which may either be posted to the applicant or collected in person.

The reviewed work is significant to the present study as it outlines the procedural framework for filing trademarks in Kenya. The authors note that once the prescribed fee is paid, the Registrar of trademarks is required to notify the applicant within two

[97]See Omari, A et al., on Trademark Registration in Kenya quoted from http://www.omkadvocates.com accessed on 24/3/2016

weeks whether the proposed mark is registrable. If deemed registrable, the trademark is advertised in the official journal for 60 days, and in the absence of opposition, a certificate of registration is issued. This procedural account provides valuable comparative insight into how neighbouring jurisdictions structure their registration processes.

Nevertheless, the analysis does not extend beyond the initial two-week availability search. It remains silent on whether Kenyan law prescribes definitive timelines for the advertisement period or for the issuance of registration certificates, and it does not assess the existence of mechanisms to guarantee timely and accountable performance of the Registrar of trademark's duties. The absence of such discussion is important, as predictability and oversight are critical to ensuring that administrative powers are exercised efficiently and without arbitrariness.

The present study departs from this procedural focus by examining the Tanzanian position, where broad administrative powers and the absence of statutory timelines have long raised concerns about delay and inefficiency. By interrogating the legal challenges associated with the exercise and regulation of the Registrar of trademarks' administrative powers, this research situates Tanzania's experience within the wider discourse on accountability and institutional reform in trademark administration.

Sreenivasulu[98] elaborates on the core functions of the Registrar of trademarks, asserting that the Registrar serves as the central authority responsible for actualizing

[98]Sreenivasulu N.S, Law Relating to Intellectual Property, Penguin Random House, 2013, India at Pg 85-86.

the objectives of the trademark system. The primary role of the Registrar is to facilitate the registration of trademarks, with all applications for trademark registration being directed to this office. In executing this mandate, the Registrar is vested with powers analogous to those of a Civil Court, particularly in the context of proceedings related to trademark registration. These powers include summoning witnesses, collecting evidence, conducting inquiries and investigations, executing search and seizure operations involving goods bearing invalid trademarks, ordering the production of documents, requesting information, accepting or abandoning applications, publishing trademark applications, issuing certificates of registration, and adjudicating opposition proceedings. the basic function of the Registrar of trademarks. The author further asserts that, the Registrar of trademarks is the authority which executes the vision of trademark system.

The basic function of the Registrar of trademarks is to provide for the registration of trademarks. All the application seeking registration of trademarks shall be addressed to the Registrar of trademarks. The Registrar of trademarks shall have the powers of Civil Court in conducting the proceedings with reference to the registration of trademarks. Such powers include: - summoning witness, collecting evidence, inquiry and investigations, search and seizure of goods bearing invalid trademarks, orders for the production of documents, call for information, abandonment of application, acceptance of application, publication of trademark application, issue of certificate of registration and dealing with opposition matters.

The foregoing assessment is relevant to the present study as it outlines the fundamental functions and powers of the Registrar of trademarks. This contribution

is valuable in clarifying the statutory basis for the Registrar of trademarks' role. However, the author does not engage with a critical dimension of trademark administration, namely, the existence or absence of control mechanisms, particularly those relating to the timeframe within which administrative responsibilities must be discharged. Nor does the work evaluate whether the trademark law imposes oversight structures or performance standards to ensure that the Registrar of trademarks' duties are executed efficiently and accountably.

These omissions are significant because, without enforceable timelines and effective oversight mechanisms, administrative powers risk being exercised arbitrarily or subject to delay, thereby undermining the efficiency that the registration system is intended to promote. Building on this insight, the present study shifts the focus to Tanzania, where broad powers and weak statutory controls have generated sustained concern. By examining the legal challenges associated with the Registrar of trademarks' exercise of administrative authority and by evaluating the adequacy of mechanisms designed to regulate that authority, this research situates the Tanzanian experience within wider debates on administrative accountability and institutional reform.

Acharya[99] outlines the procedural steps involved in trademark registration in India. Upon receipt of an application accompanied by the requisite enclosures and fees, the Registrar of Trademarks issues a formal acknowledgement by returning a copy of the submitted documents, which includes the application number and the date of submission. Thereafter, the Registrar of trademarks initiates a search to determine

[99] Acharya N.K, Text Book on Intellectual Property Rights, 4th Ed, Asia Law House, 2007, India at Pg54

whether the proposed trademark conflicts with any existing registered marks. If no objection arises, the trademark is accepted for registration, and the Registrar of trademarks orders its publication in the trademarks journal. Notably, the Registrar of trademarks also has power to publish a proposed trademark before formal acceptance if such publication is deemed appropriate.

The reviewed work is relevant to the present study as it sets out the procedural framework for trademark registration in India, particularly the administrative functions performed by the Registrar of trademarks such as the examination of applications and the advertisement of marks in the official journal. While this descriptive account is useful, the analysis does not consider whether the Indian trademark law prescribes control mechanisms most notably statutory timelines governing the discharge of these administrative functions. The absence of such engagement is significant, since timeliness and accountability are central to ensuring that administrative powers is exercised efficiently and fairly.

Building on this limitation, the present study turns to Tanzania, where the Registrar of trademarks is vested with wide administrative authority but operates under limited statutory controls. By interrogating the legal challenges that arise from this framework and assessing the adequacy of mechanisms designed to regulate the Registrar's powers, this research contributes to a deeper understanding of how administrative powers affects the effectiveness and predictability of trademark administration in Tanzania. Michaels with Andrew[100] outlines the trademark

[100]Michaels A and Andrew N, A Practical Approach to Trade Mark Law, 4th Ed, Oxford University

registration process in the United Kingdom, emphasizing that each application must undergo examination by the Registrar of trademarks to ensure compliance with the substantive and procedural requirements of the relevant trademark legislation and its associated regulations. Concurrently, the Registrar of trademarks conducts a search for potentially conflicting prior registrations. The authors note that the standard time frame for issuing an examination report is relatively short, with the UK Intellectual Property Office aiming to respond within one month of receiving the application.

Additionally, the author's notes that for applicants requiring accelerated processing, the office offers an expedited examination service for single-mark applications submitted online, provided the applicable fee is paid at the time of filing. Under this service, the Registrar of trademarks communicates its preliminary view on registrability within ten business days.

The reviewed work is particularly relevant to the present study as it outlines several core elements of trademark registration in the United Kingdom. It confirms that all applications are examined for compliance with the law, that searches are conducted for potentially conflicting trademarks, and that the standard examination process takes approximately one month. It further notes the availability of an expedited service through online filing and immediate payment, under which the Registrar of trademarks is expected to render a decision within ten working days. These observations are valuable in demonstrating the practical significance of time-bound administrative processes in a developed jurisdiction.

Press, 2010 New York at Pg 34

Nonetheless, the analysis is limited in several respects. While the authors recognise the Registrar of trademark's role in examining applications, they do not address other crucial functions such as publishing accepted marks, handling opposition proceedings, or issuing registration certificates. Moreover, although the one-month examination period and expedited service are described in detail, it remains unclear whether these timelines are legally mandated or are simply matters of administrative practice. This distinction is critical, since statutory safeguards provide greater predictability and accountability than procedural norms left to administrative powers.

The present study takes up these concerns within the Tanzanian context, where broad administrative powers and the absence of legally enforceable timelines have generated persistent challenges for applicants and stakeholders. By interrogating the legal framework governing the Registrar of trademarks' authority, this research examines how administrative powers are exercised, whether effective control mechanisms exist, and how their absence undermines efficiency, accountability, and fairness in trademark administration.

Nwabachili,[101] outlines the powers and responsibilities of the Registrar of trademarks in Nigeria, noting that the registry is to be maintained under the control and supervision of the Registrar of trademarks at the Registrar of trademark's office. The classification of goods and the determination of the applicable class for trademark registration are decisions vested solely in the Registrar of trademarks, whose

[101] Nwabachili C. C, Intellectual Property and Law in Nigeria, 1st Ed, Malthouse Press Limited, 2016 Nigeria at Pg 115-116

judgment on such matters is final. The Registrar of trademark also has discretionary authority to permit the registration of identical or similar trademarks in cases of honest concurrent use. Conversely, the Registrar of trademarks may withhold registration where conflicting trademarks are identified, pending the determination of their respective rights.

The author further explains that the Registrar of trademarks is responsible for renewing trademark registrations upon application by the registered proprietor and is empowered to remove trademarks from the register for non-payment of renewal fees. In cases of breach of registration conditions, the Registrar of trademarks may strike out or vary a registration. Additionally, the Registrar of trademarks must ensure that the trademark registry remains open to the public at all reasonable times and is required to submit an annual report to the Minister before the 1st of July each year.

The reviewed work is relevant to the present study as it provides a detailed account of the statutory powers and responsibilities of the Registrar of trademarks, including registration, renewal, and removal of marks. This contribution is valuable in clarifying the range of administrative functions undertaken by trademark registries. However, the analysis does not address whether trademark legislation incorporates control mechanisms particularly statutory timelines or performance standards to regulate the discharge of these functions. The absence of discussion on oversight and accountability mechanisms is significant, as efficiency and predictability in trademark administration depend not only on the scope of powers but also on the safeguards that govern their exercise.

The present study therefore engages directly with this dimension by analysing the legal challenges that arise from the exercise of administrative powers by the Registrar of trademarks in Tanzania. It specifically interrogates whether adequate control mechanisms exist to ensure accountability, timely performance, and institutional efficiency within the Tanzanian trademark administration framework. Rakesh Ainapur,[102] explains that the advent of the digital age has significantly transformed the landscape of intellectual property (IP), giving rise to the concept of Cyber Intellectual Property (Cyber IP).

Cyber IP refers to the application of traditional IP rights within the vast and interconnected realm of cyberspace, a non-physical domain characterized by the exchange of data and communication across global computer network. The expansion of IP into the digital environment presents both opportunities and challenges, particularly in safeguarding the rights of creators and innovators in a setting that is inherently anonymous, broaderless, and difficult to regulate. This complexity underscores the growing difficulty of protecting intellectual creations in cyberspace, where infringement can occur with unprecendented speed and across multiple jurisdictions.

While this literature provides a useful starting point in highlighting the opportunities and threats arising from the evolution of IP in cyberspace, it remains largely descriptive. It emphasizes the novelty of the digital environment but offers limited critical analysis of the institutional or administrative mechanism that should regulate

[102] Dr. Rakesh Ainapur, Intellectual Property Rights-I, 1st Ed, Orange Book Publication, Bhilia, Chhattisgarh, India, 2024 at Pg 85

the enforcement of such rights. Specifically, the discussion does not address how national trademark registries such as Tanzania's Registrar of trademarks are adapting to these digital realities, nor does it consider the absence of statutory control mechanisms, including time-bound obligations, to ensure efficiency and accountability in the administration of trademark rights.

The scholarly discussion therefore leaves unexamined the critical issue of how administrative authorities in developing jurisdictions manage the complexities of intellectual property in both traditional and digital contexts. By focusing primarily on the conceptual emergence of Cyber IP, the author overlooks the practical challenges of administration, regulation, and enforcement that are essential to maintaining an effective and credible trademark system. The present study seeks to address these concerns by examining the legal challenges associated with the exercise of administrative powers by the Registrar of trademarks in Tanzania.

Satyajee Srivastava Subharun Pal, S. Bharathidasan, and Amit Chauhan[103] defined intellectual property (IP) as the intangible creation of the human mind that hold both economic and cultural value. It encompasses innovations, artistic work, brand identities, trade secrets, and technological advancements. These forms of IP require legal protection to prevent unauthorized use or exploitation. Unlike tangible property such as land or machinery, IP is inherently non-physical, exisiting in the form of knowledge, ideas, and creative expression. The authors further stated that it is important in the modern economy is well established. Intellectual property operates

[103] Dr. Satyajee Srivastava Subharun Pal, Dr. S. Bharathidasan, Dr. Amit Chauhan, Fundamental of Intellectual Property Rights, 1st Ed, R.K. Publication, India at Pg 14

as a catalyst for technological progress, artistic development, and commercial success. The legal framework surrounding IP provides exclusive rights to creators and innovators, thereby ensuring that their contributions are recognized and renwarded. In this way, IP regimes foster broader advancement in science, technology, and culture by incentivizing continued creativity and innovation.

While this literature provides a comprehensive description of the economic, cultural, and technological value of intellectual property, its orientation is largely conceptional and normative. It highlights the significance of granting exclusive rights but does not interrogate how these rights are administered in practice. The emphasis is on the value of IP as an engine of progress, yet it overlooked the institutional and procedural dimensions that determine how effectively such rights are protected.

This shortcoming is particularly relevant in jurisdictions such as Tanzania, where the Registrar of trademarks exercises wide administrative powers under trademark law. The absence of statutory timelines and effective oversight mechanisms frequently results in inefficiencies and delays in registration and enforcement. These practical challenges are generally overlooked in existing scholarship, which often assumes the smooth functioning of intellectual property administration.

From the foregoing review, it is evident that although several scholars have examined the powers of the Registrar of trademarks within the broader context of trademark administration, very few have considered whether effective control mechanisms particularly statutory timelines exist to regulate the exercise of those

powers. Notably, none of the reviewed works address the legal challenges arising from the absence of such mechanisms or the remedies available to applicants facing administrative delay. This lack of sustained engagement reveals a substantive gap in the literature. The present study therefore positions itself to fill this void by analysing the legal challenges associated with the Registrar of trademarks' administrative powers in Tanzania, with specific emphasis on the availability, adequacy, and effectiveness of control mechanisms intended to promote accountability, timeliness, and institutional efficiency.

Accordingly, while the reviewed authors acknowledge the principle-based importance of intellectual property, they do not sufficiently examine the practical realities of administration and enforcement, leaving unresolved the question of how exclusive rights are safeguarded in practice. This gap provides the foundation for the present study, which critically analysis the legal, institutional and practical challenges in the registration of trademarks in mainland Tanzania.

1.5 Objective of the Study

The objectives of this study include the following: -

1.5.1 General Objective

This study seeks to critically examine the administrative powers vested in the Registrar of trademarks in Tanzania, evaluate the presence and effectiveness of legal control mechanisms governing such powers, and propose reforms aimed at enhancing procedural fairness, efficiency, and compliance with regional and international intellectual property norms.

1.5.2 Specific Objectives

i. To evaluate the adequacy of Tanzania's trademark law in providing control mechanism, particularly timeframes, for the discharge of administrative powers by the Registrar of trademarks, and in offering legal or judicial remedies for delay;

ii. To examine the compatibility of Tanzania's trademark legislation with international and regional frameworks, and purpose targeted amendments to enhance efficiency, accountability, and global alignment.

iii. To propose amendments in the trademark law in order to first incorporate control mechanism upon the Registrar of trademarks especially on timeframe for trademark administration and; secondly to incorporate legal provision in the trademark law for legal or judicial remedy which will give room to challenge unnecessary delays encountered by the Registrar of trademarks.

1.6 Significance of the Study

This study is significant in both practical and academic terms.

Firstly, the study will assist the Parliament and relevant law reform bodies to identify gaps in the existing trademark law, particularly the absence of clear control mechanisms such as statutory timeframes that guide the exercise of administrative powers by the Registrar of trademarks. By exposing these gaps and their impact on trademark applicants, the study provides a basis for legal reform that aims to improve efficiency, accountability, and transparency in the registration and administration of trademarks in Tanzania. Secondly, the findings will further benefit the judiciary by offering a clear and well-reasoned legal framework for addressing

undue delays in trademark registration and for interpreting the limits of administrative discretion under Tanzanian law. Likewise, legal practitioners, intellectual property agents, and business entities will benefit from a better understanding of the extent and limits of the Registrar of trademarks' powers, and the available remedies in cases of administrative inaction or delay.

Thirdly, academically, this study makes a unique contribution by addressing a research gap in Tanzanian legal literature. While various foreign scholars have examined the powers and duties of trademark Registrar in their respective countries, no previous study has systematically examined the Tanzanian context, especially in terms of legal control mechanisms, timelines procedures, and judicial remedies related to administrative delays. The existing literature has also not analysed the compatibility of Tanzanian trademark law with regional and international frameworks.

Fourth, this study further contributes to legal knowledge in several important ways:

i. Empirically, it identifies the real-world effects of administrative delay in the trademark system of Tanzania, highlighting the lack of clear timelines and its consequences for trademark owners and applicants.
ii. Methodologically, it uses a doctrinal and comparative approach, analysing Tanzanian trademark law alongside the laws of selected countries including Kenya, India, and the United Kingdom. This comparative analysis provides a benchmark for evaluating the strengths and weaknesses of the Tanzanian legal framework.
iii. Conceptually, the study contributes to a better understanding of administrative control mechanisms in trademark law, particularly the role of

timeframes in ensuring procedural fairness, legal certainty, and access to justice.

iv. Theoretically, the study contributes to the development of administrative law theory by demonstrating how unchecked administrative powers or discretion can affect the enforcement of intellectual property rights, and why legally enforceable time standards are necessary for regulatory institutions.

In conclusion, the study not only offers concrete recommendations for legal and institutional reform in Tanzania, but also makes an original academic contribution by filling a significant gap in the scholarly understanding of administrative law and trademark governance in the country and once the recommendation contained herein are implemented and the Registrar of trademarks effectively and timely performs the trademark administration, there will be cost saving and prevention of corrupt practices.

1.7 Research Questions

This study is guided by the following Research questions:

i. Is there any control mechanism, particularly with regard to timeframes, provided under the trademark law of Tanzania to regulate the discharge of administrative powers by the Registrar of trademarks, and are there any legal or judicial remedies available to applicants to challenge undue delays?

ii. Is the trademark law of Tanzania compatible with international and regional instruments governing trademark registration and administration, particularly with respect to timelines administrative control and accountability?

iii. Will the proposed legal reforms to the trademark legislation in Tanzania

enhance the efficiency, accountability, and effectiveness of trademark administration?

1.8 Research Methodology

This chapter presents the research design and methodology adopted for the study. The research investigates the legal challenges on the discharge of administrative powers of the Registrar of trademarks, with a particular focus on the absence of statutory control mechanism (especially timeframes), the availability of remedies for administrative delays, and the compatibility of domestic laws with international and regional trademark frameworks. To comprehensively address these questions, the study employed doctrinal, and empirical research methods.

1.8.1 Doctrinal Method

The Doctrinal method serves as the principal research tool. This approach involves critical examination of legal sources including statutes, case law, regulations, and scholarly works to identify existing legal standards, evaluate their adequacy, and suggest reforms. Additionally, under the doctrinal legal research method, two subsidiary analytical orientations namely the analytical perspective and the applied perspective are employed to deepen the examination. These are not separate methodologies but complementary dimensions within doctrinal analysis. This method was appropriate given the legal nature of the research and the need to assess both the letter and spirit of the law.[104] There are two reasons for selecting doctrinal

[104] Singhal A.K. and Malik I, Doctrinal and Social Legal Methods: Merits and Demerits, Educational Research Journal, Vol. 2(7) pp 252-256, 2012. P.252 cited by Helen Benjamin Kiunsi, Transfer Pricing in East Africa: Tanzania and Kenya in Comperative Perceptive, a thesis submitted in fulfilment of the requirement for the degree of Doctor of Philisophy in Laws of the Open University of Tanzania, 2017 at Pg 22

method. First, primary data for the study were obtained from legislation through reading the relevant sources. Doctrinal research is the main methodology of legal research because it primarily focuses on what the law is as opposed to what the law ought to be.[105] Under doctrinal methodology, a researcher's main goal is to locate, collect the law (legislation or case law) and apply it to specific set of material facts in view of solving legal problem.[106]

1.8.2 Analytical Perceptive

Under analytical level, the approach critically evaluated the sufficiency of current law in addressing delays and inefficiencies. The analysis focus on whether administrative powers are guided by statutory frameworks; the exitence (or absence) of legal or judicial remedies for aggrieved applicants; and the regulatory framework's alignment with procedural fairness and accountability principles.

1.8.3 Applied Perceptive

Under applied level, the study examined how the law is implemented in practice, particularly by the Business Registration and Licensing Agency (BRELA), which accomdates the Registrar of trademarks. It aimed to determine whether the administrative powers of the Registrar of trademarks are exercised in a manner that ensures timely, efficient, and fair service delivery.

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[105] Makulilo A.B.., Protection of Personal Data in Sub-Sahara Africa, PhD Thesis, University of Bremen, 2012 at P. 52 cited from Helen Benjamin Kiunsi, Transfer Pricing in East Africa: Tanzania and Kenya in Comperative Perceptive, a thesis submitted in fulfilment of the requirement for the degree of Doctor of Philisophy in Laws of the Open University of Tanzania, 2017 at Pg 22

[106] McGrath J.E., Methodology Matters: Doing Research in the Behavioural and Social Sciences, in R.M. Baecker et al., (eds), Readings in Human-Computer Interaction: Toward the Year 2000, Morgan Kaufmann Publishers, 1995, P. 154, as quoted in Makulilo A.B., note 124. Cited from Helen Benjamin Kiunsi, Transfer Pricing in East Africa: Tanzania and Kenya in Comperative Perceptive, a thesis submitted in fulfilment of the requirement for the degree of Doctor of Philisophy in Laws of the Open University of Tanzania, 2017 at Pg 22

1.8.4 Documentary Review

Documentary review and analysis were also included but, not limited to legislation, international and regional instruments such as treaties, conventations, cases, articles, books, journal, parliamentary hansards, dissertations, thesis, bills, court decisions and commentaries by various scholars on legal challenges on the discharge of administrative powers of the Registrar of trademarks and its control mechanism. As for documentary review, the researcher used various libraries such as Open University of Tanzania, High Court Commercial Division library and University of Dar es Salaam library. Websites were also used to access information from various sources in the world, which are relevant to the current work. Legislation was used as a primary source of information by analyzing how they are effective in regulating the legal challenges on the discharge of administrative powers of of the Registrar of trademarks and its control mechanism issues.

1.8.5 Empirical Method

The empirical method was employed to bridge the gap between law and practice. Its purpose was to capture the operational realities of trademark registration in Tanzania and to evaluate the practical effects of the Trade and Service Marks Act as administered by the Business Registration and Licensing Agency (BRELA). By combining doctrinal and empirical inquiry, the study assessed whether the law on paper corresponds with actual practice.

1.8.6 Sampling Technique

The study adopted a purposive sampling technique, which is appropriate in legal research where the aim is to obtain expert and experience-based insights rather than

generalized public opinion. The sample consisted of stakeholders directly involved in or affected by trademark registration, including:

i. Officials from the Office of the Registrar of Trademarks (BRELA);
ii. Trademark beneficiaries (business owners, corporate applicants, and SMEs);
iii. Advocates practicing Intellectual Property Law; and
iv. Licensed trademark attorneys.

A total of 30 participants were engaged through interviews and questionnaires. Participants were selected based on their institutional role, professional expertise, and direct involvement in trademark administration. This ensured the inclusion of diverse perspectives from both institutional actors and private-sector beneficiaries. The purposive approach enhanced the relevance of responses and the validity of the findings by targeting informed stakeholders who could provide credible evidence on the realities of trademark administration.

1.8.7 Data Collection Tools

Two complementary tools were employed to collect empirical data:

1. **Semi-structured interviews**

Conducted with BRELA officials, advocates, and trademark attorneys. An interview guide was used to ensure comparability while allowing flexibility for follow-up questions. Interviews focused on administrative delays, institutional bottlenecks, awareness of remedies, and perceptions of accountability. All interviews were recorded (with consent) and transcribed for analysis.

2. **Questionnaires**

Distributed to trademark applicants and intellectual property law firms. Most of them who were provided with the questionnaire responded on estimation number of 20. Included both closed-ended questions (to quantify experiences such as average waiting periods) and open-ended questions (to capture detailed perceptions and suggestions). The design allowed the study to combine measurable trends with narrative evidence. The use of both tools allowed for triangulation of data, improving reliability and ensuring that qualitative narratives were reinforced by quantifiable patterns.

1.8.8 Data Analysis

The study employed thematic analysis to organize and interpret the data. The process involved: Coding transcripts and questionnaire responses into categories such as delays, institutional barriers, legal gaps, and reform proposals; Identifying recurring themes across stakeholder groups, including “absence of statutory timelines,” “administrative inefficiency,” and “weak accountability mechanisms”; Cross-referencing empirical findings with doctrinal analysis to assess the alignment or divergence between law and practice. This structured approach ensured that the findings were not anecdotal but systematically organized. The integration of empirical insights with doctrinal analysis strengthened the overall evaluation of trademark law in Tanzania

Table 1.1: Thematic Matrix of Empirical Findings on Trademark Registration in Tanzania (No = 30)

Theme	Stakeholder Group	Illustrative Evidence	Frequency (out of 30)	Percentage
Administrative delays	Applicants, Attorneys	Processing often takes more than a year with no clear updates."	15	50%
Absence of statutory timelines	BRELA officials, Applicants	"The Act does not prescribe deadlines, leading to uncertainty."	8	26.7%
Institutional bottlenecks	BRELA officials	"Limited staffing and outdated systems cause backlogs."	6	20%
Lack of accountability	Advocates, Applicants	"There is no remedy if the Registrar fails to act on time."	5	16.7%
Suggested reforms	All stakeholder groups	"Introduce statutory timeframes and strengthen judicial oversight."	4	13.3%

1.8.9 Benchmark Analysis

To evaluate the compatibility of Tanzania's legal framework with regional and international trademark instruments. The researcher was interested to understand the compatability of Tanzania instrument with international and regional instrument on filing of trademarks. Further, the researcher selected United Kingdom, India and Kenya. United Kingdom as the origin of Tanzania's common law system and a model of mature trademark governance, India as a developing common law jurisdiction that has implemented statutory timeframes and expedited procedures in trademark registration and Kenya as a regional comparator facing similar institutional and legal challenges.

Although no separate literature review chapters are dedicated to the United Kingdom and India, their inclusion is methodologically justified. Both jurisdictions share Tanzania's common law heritage and are frequently cited in comparative legal scholarship for their procedural innovations and administrative accountability in

intellectual property law. Their use in this study is aimed at extracting best practices relevant to Tanzania's legal and administrative context. The comparative analysis also focused on the existence and enforcement of statutory timeframes for administrative decision-making; the availability of legal or judicial remedies for delays; and alignment with international and regional framework.

1.9 Ethical Consideration

The research adhered to established legal research ethics as well as the ethical standards applied in social science inquiry. Prior to conducting the fieldwork, ethical clearance was obtained from the Open University of Tanzania, thereby ensuring institutional oversight of the study design and data collection process. Consent was obtained from all participants, including interviewees and questionnaire respondents. Each participant was informed of the purpose of the research, the voluntary nature of participation, and their right to withdraw at any time without consequence. Consent was recorded either in writing or verbally prior to participation.

Confidentiality and anonymity were maintained throughout the data collection, handling, and reporting stages. Participants' names and personal identifiers were not recorded in the final analysis; instead, stakeholder categories were used (e.g., "a BRELA official" or "a trademark applicant"). Data were securely stored in password-protected files accessible only to the researcher. Academic integrity was observed through proper citation of all doctrinal sources and strict avoidance of plagiarism. Empirical data were presented faithfully without manipulation or selective reporting. By embedding these measures, the research safeguarded participants, ensured compliance with professional and academic standards, and

upheld the integrity of socio-legal scholarship.

1.10 Scope of the Study

This study is situated within the domain of intellectual property law, which encompasses a variety of legal branches including copyright, patents, and trademarks. To ensure a focused and manageable inquiry appropriate for doctoral-level research, the scope of this study is limited to the legal framework governing trademark law in the United Republic of Tanzania.

Specifically, the research will examine the administrative powers exercised by the Registrar of trademarks during the trademark registration process, along with the legal challenges associated with the discharge of those powers. The Registrar of trademarks plays a pivotal role in administering the registration of trademarks, a process that constitutes the legal foundation for the acquisition and enforcement of exclusive trademark rights.

Although the Registrar of trademarks is also legally empowered to perform other administrative functions such as opposition proceedings, assignment of trademarks, and the registration of users these areas raise distinct legal and procedural issues that fall outside the scope of this research. Their exclusion is deliberate, aiming to avoid conceptual overreach and to facilitate a more rigorous and in-depth analysis of a single, foundational aspect of trademark law. Accordingly, this study is limited to the following key areas:

The statutory and regulatory framework underpinning the Registrar of trademarks' powers in trademark registration; The legal and procedural challenges encountered

in the exercise of those powers; The control and accountability mechanisms, if any, available under Tanzanian law; And potential avenues for legal reform or administrative enhancement in the execution of those powers. By narrowing its scope to the registration process, this study seeks to generate original and practically relevant insights into the exercise of administrative authority in Tanzanian trademark law, with the broader goal of informing future legal and institutional reforms in the field of intellectual property governance.

1.11 Limitation of the Study

Although every effort was made to ensure the comprehensiveness and accuracy of this study, certain limitations were encountered during the field research phase. These challenges are acknowledged below, together with the steps taken to ensure that they did not compromise the quality or credibility of the findings. Firstly, the study was geographically limited to Dar es Salaam due to financial constraints. As a self-sponsored researcher, it was not feasible to conduct extensive fieldwork in other regions of Tanzania, such as Arusha, Mwanza, or Zanzibar. While this restricted geographical diversity, the limitation did not materially affect the study because Dar es Salaam hosts the majority of trademark practitioners, the principal BRELA offices, major law firms, and industry actors who engage directly with trademark registration processes. Thus, the respondents accessed in Dar es Salaam reasonably represented the national experience.

Secondly, access to key stakeholders particularly officials in the Registrar of trademarks' office and certain industry representatives was at times limited. Some interviews were delayed, rescheduled, or cancelled due to unavailability of

respondents. To mitigate this challenge and maintain data quality, the study employed methodological triangulation by interviewing diverse categories of participants, including advocates, applicants, and trademark agents. In addition, documentary analysis of statutory instruments, procedural manuals, government reports, and decided cases was used to corroborate and fill any gaps arising from stakeholder unavailability. This ensured that findings did not rely on a single group of respondents.

Thirdly, the availability of legal and administrative documents posed challenges. While most legislation and regulations were accessible, certain internal administrative circulars, practice notes, or policy guidelines were not publicly available or not digitized. This limitation was addressed by supplementing missing documents with interviews from practitioner's familiar with the Registrar's procedures, reviewing relevant case law, and analysing publicly available official publications. This allowed reconstruction of the administrative framework with sufficient accuracy.

Lastly, time constraints arising from balancing academic research with personal and professional obligations meant that some planned follow-up interviews and site visits could not be completed. To ensure this did not affect the integrity of the study, the researcher prioritised data saturation in the completed interviews and conducted member-checking with selected participants to confirm the accuracy of interpreted themes. Through these mitigation strategies triangulation, documentary verification, purposive sampling of representative stakeholders, and member-validation the study ensured that the limitations did not compromise the validity, credibility, or analytical

depth of the findings. The research therefore provides a reliable and representative assessment of the administrative challenges within Tanzania's trademark registration system and offers a strong foundation for future, broader studies.

1.12 Structure of the Thesis

This thesis is organized into six chapters; each designed to systematically address the research objectives and provide a comprehensive analysis of the legal and administrative challenges related to trademark registration in Tanzania. Chapter One provides Introduction and Background to the Problem. This chapter sets the foundation for the study. It outlines the background, statement of the problem, research objectives, research questions, justification, scope, limitations, and the methodology adopted. It also highlights the significance and contribution of the study.

Chapter Two provides Conceptual and Theoretical Framework. This chapter explores the key concepts and legal theories relevant to trademarks. It provides a theoretical basis for the study by examining trademark related doctrines and conceptual interpretations that inform the analysis of administrative powers and legal frameworks in trademark law. Chapter Three provides Trademarks under International and Regional Legal Regimes. This chapter discusses how trademarks are governed at the international and regional levels. It outlines the procedures for filing trademarks internationally and regionally, and examines major international and regional instruments such as the Paris Convention, Madrid Agreement and its protocol and Banjul Protocol, and others. The roles, functions, and objectives of relevant international and regional trademark bodies were also elaborated.

Chapter Four provides Trademark Law in Tanzania. This chapter provides a detailed examination of trademark legislation in Tanzania. It discusses the current legal framework. It also analyses the legal basis for the appointment and powers of the Registrar of Trademarks, and how such powers are exercised. Additionally, the chapter evaluates the institutional structure of administrative bodies tasked with trademark regulation and their core functions.

Chapter Five provides Discussion of Research Findings and Recommendations. This chapter presents the empirical findings derived from interviews and consultations with key stakeholders, including officials from the office of the Registrar of trademarks, trademark attorneys, and trademark beneficiaries. It compares and contrasts the perspectives of administrators and users of the trademark system, and discusses the legal and practical challenges identified during fieldwork.

Chapter Six provides Conclusion and Recommendations. The final chapter summarizes the major findings of the study and draws conclusions based on the research objectives. It also offers recommendations aimed at improving the legal and administrative framework for trademark registration in Tanzania, wit a view to strengthening transparency, efficiency, and accountability.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK ON TRADEMARK PROTECTION

2.1 Introduction

Trademarks constitute a fundamental component of intellectual property law and serve as the legal basis for the powers conferred upon the Registrar of trademarks under the relevant trademark legislation. The Registrar's administrative mandate including the authority to register, reject, or regulate the use of trademarks derives directly from the statutory framework governing trademarks. This chapter provides the conceptual and theoretical foundation for the study. It begins by clarifying the key concepts of trademarks, which are frequently referenced and occasionally used interchangeably throughout this thesis. A clear understanding of these concepts is essential to appreciate the legal nature and role of trademarks within administrative law.

Furthermore, this chapter explores the theoretical underpinnings of trademark law that inform the Registrar's functions. Trademark theories offer insight into the rationale behind legal protection, the scope of rights granted, and the balancing of private and public interests. These theories are crucial for understanding the extent and limitations of the administrative powers exercised by the Registrar of trademarks and the control mechanisms available under Tanzanian law. Through this conceptual and theoretical lens, the chapter sets the groundwork for later chapters that examine the trademark legislation in Tanzania. Therefore, this chapter unpacks key terms (concepts) and theories relevant to the study.

2.2 Concepts Related to Trademarks

2.2.1 Trademarks

A trademark refers to any distinctive word, phrase, symbol, logo, design, or combination thereof that is used in commerce to identify and distinguish the goods or services of one enterprise from those of others. Its primary function is to serve as an indicator of origin, thereby allowing consumers to recognize the source of a particular product or service. Examples of well-known trademarks include Ford (automobiles), IBM (computing technology), and Microsoft (software and operating systems). These trademarks not only symbolize corporate identity but also embody the goodwill and reputation associated with the respective brands.

In the legal context, the term "distinctive" is central. It denotes the capacity of a mark to uniquely identify the origin of a product in the marketplace. A mark must be sufficiently unique or capable of acquiring distinctiveness to qualify for trademark protection. This distinctiveness ensures that consumers are not confused or misled as to the source of goods or services and underpins the legal enforceability of trademark rights.[107]

In addition to statutory and conventional definitions, various scholars have also contributed to the understanding of the concept of trademarks. For instance, Peter[108] defines a trademark as "anything that is adopted and used to identify the source or origin of goods and is capable of distinguishing them from goods emanating from a

[107]Trademark FAQ's, Trademark Center accessed from www.tmcenter.com accessed on 12/03/2020 at 7.19pm

[108]See D.R. Peter, Patent Law Fundamentals, Matthew Bender, New York, 1989 cited by Kihwelo P.F., in his dissertation titled: "Implication of Trade Related Aspects of IP Rights (TRIPs) Agreement in Law and Administration of Industrial Property in Tanzania" for Master of Laws Degree at UDSM at Pg. 5

competitor." According to this view, a trademark functions not only as a legal identifier but also as a commercial signifier, capable of exclusive appropriation by the rights holder. In essence, a trademark creates a limited form of legal monopoly, protecting the owner's market identity and reputation. Peter[109]further emphasizes that a trademark serves as a symbolic representation of a product's origin and, by extension, of the quality, reputation, and goodwill associated with it. As such, a trademark is not merely a legal right but also a merchandising tool, closely tied to the marketing and economic strategy of a business. This interpretation underscores the dual role of trademarks as both legal instruments and commercial assets.

Similarly, Duncan defines a trademark as "a symbol that is applied or attached to goods offered for sale in the market, so as to distinguish them from similar goods and to identify them with a particular business." According to this definition, a trademark serves a dual function: it acts as a means of differentiation in the marketplace and as an indicator of source or origin. Duncan further explains that a trademark distinguishes goods that are manufactured, processed, imported, selected, certified, or sold by a particular entity.

By affixing a trademark to a product, the trader communicates the origin of the goods to the public namely, the consumers thereby promoting consumer awareness, trust, and accountability. This interpretation emphasizes the identificatory and communicative function of trademarks in facilitating informed consumer choices and

[109] See D.R. Peter, Patent Law Fundamentals, Matthew Bender, New York, 1989 cited by Kihwelo P.F., in his dissertation titled: "Implication of Trade Related Aspects of IP Rights (TRIPs) Agreement in Law and Administration of Industrial Property in Tanzania" for Master of Laws Degree at UDSM at Pg. 5

maintaining market.[110] In a more formal and comprehensive legal sense, Bouchoux E. Deborah[111] defines a trademark as "a word, name, symbol, or device, or a combination thereof, used by a person (including a business entity), or that a person has a *bona fide* intention to use in commerce, to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source of those goods." This definition underscores both the identification function and the source-indicating purpose of a trademark.

Notably, Bouchoux also highlights the intention to use a mark in commerce as a legal basis for trademark protection suggesting that the mere intent to distinguish one's goods in the marketplace can establish grounds for acquiring trademark rights under certain jurisdictions. This approach reflects the principle that a trademark does not merely denote current commercial activity, but also protects future business plans where there is a *bona fide* intention to enter the market. In this way, Bouchoux's definition integrates both legal theory and practical application, offering a robust understanding of how trademarks function in commercial and regulatory contexts.[112]

Drawing from the definitions offered by various prominent authors, it is evident that trademarks serve multiple but interrelated functions identifying the origin of goods, distinguishing one trader's products from another's, and protecting commercial goodwill.

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110 Blanco White, T.A., Kerly's Law of Trademarks and Trade Names, 9th Ed London, Sweet & Maxwell, 1966, at Pg. 18

111 Bouchoux E. Deborah: The Law of Trademarks, Copyright, Patent and Trade Secrets, 4th Ed, Delmar Cengage Learning, USA, 2012 at Pg 20

112 Ibid

From the above account, it is evident that a trademark constitutes a distinctive word, phrase, logo, graphic symbol, or other visible sign used to identify the source of a product or service and to distinguish one manufacturers or merchant's goods from those of others. Trademarks function as commercial identifiers, enabling consumers to associate specific goods or services with a particular producer or business entity. This identification role not only facilitates market recognition and brand loyalty but also forms the foundation for legal protection under both domestic and international intellectual property regimes.

2.2.2 Service Marks

In modern commerce, consumers are confronted not only with a vast array of goods, but also with an increasingly diverse range of services, many of which are offered at both national and international levels.[113] This commercial expansion has created a growing need for distinctive signs that enable consumers to differentiate between various service providers such as insurance companies, car rental firms, airlines, and others.[114] These signs are referred to as service marks, and they perform essentially the same origin-indicating and distinguishing functions for services as trademarks do for goods.

Service marks help consumers identify the source of a particular service, ensure consistency in quality, and reduce confusion in the marketplace, thereby reinforcing the broader objectives of trademark law in the service sector.[115] Service marks

[113]World Intellectual Property Organization: Introduction to trademark law and practice, A WIPO Training Manual, 2nd Ed, WIPO Publication No. 653(E), 1993 Geneva, accessed from www.wipo.int/edocs accessed on 17/02/2021 at 6.24PM

[114] Ibid

[115] World Intellectual Property Organization: Introduction to trademark law and practice, A WIPO

represent a specific category of trademark that designates a service rather than a physical product.[116] Although legally distinct, the terms "service mark" and "trademark" are often used interchangeably in both legal discourse and commercial practice.

Additionally, the broader term "mark" is frequently employed to encompass both trademarks and service marks. Like trademarks, service marks serve the essential function of identifying the source of a service and distinguishing it from similar offerings in the market.[117] Prominent examples of well-known service marks include American Express (financial services), Hilton Hotels (hospitality), and American Airlines (aviation).[118] These marks not only convey the identity of the service provider but also act as indicators of reputation, reliability, and quality assurance within their respective industries.

As with other forms of trademarks, service marks exist to differentiate a distinct class of services offered by one entity from those provided by competitors.[119] They afford the same legal protections as conventional trademarks, safeguarding brand identity, preventing consumer confusion, and preserving commercial reputation. However, because services are often less tangible and more difficult to define than physical goods, the processes of registering a service mark may demand more substantive evidence that the service in question constitutes a legitimate and ongoing

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Training Manual, 2nd Ed, WIPO Publication No. 653(E), 1993 Geneva, accessed from www.wipo.int/edocs accessed on 17/02/2021 at 6.24PM

[116] Reference for Business, "Service Marks" accessed from www.referenceforbusiness.com accessed on 8/11/2019 at 2.35pm

[117] Ibid

[118] Ibid

[119] Ibid

business operation.[120] Service marks confer several strategic advantages to their owners.[121] By offering a recognizable name or symbol, they facilitate consumer recognition, enhance word-of-mouth advertising, and contribute significantly to the development of customer loyalty.[122]

More importantly, service marks foster goodwill the positive association consumers form with a company's services which, in turn, encourages repeat patronage and strengthens the service provider's market position. In this way, service marks play a vital role not only in branding and marketing but also in the legal and commercial architecture of service-based industries.[123]

A service mark attracts the attention of consumers and helps them distinguish between competitors and locate the services offered under a particular mark.[124] The essential components of a typical service mark include a name, a visual representation of the name (such as a logo), and, in some cases, the appearance of the environment in which the service is performed.[125] The name is simply whatever a company calls its service.[126] The name refers to whatever a company calls its service. It may be a commonly used word or phrase, or it may be a unique or original name created by the company.[127]

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[120] Reference for Business, "Service Marks" accessed from www.referenceforbusiness.com accessed on 8/11/2019 at 2.35pm
[121] Ibid
[122] Ibid
[123] Ibid
[124] Ibid
[125] Ibid
[126] Ibid
[127] Reference for Business, "Service Marks" accessed from www.referenceforbusiness.com accessed on 8/11/2019 at 2.35pm

Generally, the more unique or distinctive a name is, the stronger the legal protection it is likely to receive under trademark law. Choosing a unique name can also be a strategic marketing decision, as it helps a brand stand out in a competitive marketplace. The design or logo aspect of a service mark refers to how the name appears in advertising, branding, and other company materials. This includes elements such as colour schemes, typeface styles, and any graphical representations accompanying the name.[128]

The concept of distinctive design in service marks also extends to a broader category of visual branding known as trade dress. Trade dress encompasses the overall visual appearance or presentation of a product or service, including features such as store layout, décor, packaging, or the ambiance in which the service is delivered. These visual elements, when distinctive and consistently used, may also be eligible for protection under trademark law.[129] From the foregoing discussion, a service mark may be understood as a legally registered name or symbol used in a manner similar to a trademark, specifically to distinguish an organization's services from those offered by its competitors.

2.2.3 Advertisement

Advertisement is a crucial step in the trademark registration process, serving both a public notification and transparency function. Advertisement is where an application for registration of a trademark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar of trademarks shall, as soon as may be

[128]Ibid
[129]Ibid

practicable after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner.[130]

According to Kerly's,[131] advertisement refers to the process by which an accepted trademark application is published by the Registrar in the Trademark Journal. This publication serves as a formal notice to the public and enables third parties to oppose the application. Observations or objections may be submitted in writing to the Registrar of trademarks by any person who believes that the trade mark should not proceed to registration.

Kerly further emphasizes that the published representation of the trade mark must clearly and accurately depict the essential features that are intended to be protected through registration. If the advertisement fails to properly reflect these key elements, it may be rendered null and void, thus undermining the legal validity of the application process. This underscores the importance of precision and transparency in the advertisement stage, as it forms the basis for opposition proceedings and ensures that the rights claimed are clearly presented to the public.[132]

Kitchen,[133] explains, in the same context, the position in Britain. He states that in Britain, a Trademark Journal is published weekly. The Trademark Journal contains details of all trademark applications accepted that week, as well as registrations,

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[130] Sarkar, Trademarks Law and Practice, 4th Ed, Kamal Law House, 2000, India at Pg 135
[131] Kerly's Law of Trade Marks and Trade Names, 13th Ed, Sweet & Maxwell, 2001, London at Pg 76
[132] Ibid
[133] Kitchen, D, Kerly's Laws on Trademarks and Trade Names, 13th Ed, (2001), Sweet & Maxwell, London at Pg 55

renewals, assignments, licences, and other applications that affect the status and scope of registered trademarks. It also includes news and notices of interest to the trademark community.[134]

Another author who discusses the concept of advertisement from the perspective of India is P. Narayanan.[135] He explains that if the applicant satisfactorily overcomes all objections raised by the trademark office, the application will then be advertised in the Trademark Journal. The advertisement will include a representation of the trademark, the application number and date, the office where it was filed, as well as particulars such as the name and address of the applicant, a description of the goods or services, and the relevant class or classes under which the application falls.[136]

Over and above, advertisement is a critical stage in the trademark registration process, undertaken once the Registrar of trademarks is of the firm view that the trademark falls within the ambit of registrability. Furthermore, advertisement serves to provide an opportunity for third parties to object to the registration on the grounds that the proposed mark conflicts with their existing trademark rights.

2.2.4 Associated Trademarks

Association arises where a trademark that is registered or is the subject of an application for registration in respect of certain goods is identical to another trademark which is also registered, or pending registration, in the name of the same proprietor for the same category of goods. In such cases, the Registrar of Trademarks

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[134] Ibid
[135] P. Narayanan, Law of Trade Marks and Passing Off, 5th Ed, Swapna Printing Works Private Limited, 2000, India at Pg 57
[136] Ibid

is required to enter both trademarks in the register as associated trademarks.[137] From the above, associated trademarks refer to marks that are similar or identical, and upon discovering that both trademarks are held by the same proprietor, the Registrar of trademarks may formally associate the trademarks with one another in the register.

2.2.5 Certificate of Trademark Registration

Upon successful registration of a trademark, the Registrar of Trademarks issues a certificate of registration to the applicant, bearing the official seal of the registry.[138] However, this certificate is not admissible for use in legal proceedings or for the purpose of obtaining trademark registration abroad. Duplicate copies of the certificate may be obtained by submitting a request using the prescribed form.[139] The Registrar of trademarks also has the authority to amend the certificate of registration for the purpose of correcting clerical errors or obvious mistakes. No specific procedure is prescribed by law for such corrections. It therefore appears that the Registrar may act *suo motu* (on his own initiative) to correct errors, provided such mistakes are brought to his attention either by the proprietor or by the Registrar of trademark's office itself.[140]

Sarkar explains that when an application for the registration of a trademark has been accepted, and either no opposition has been filed within the prescribed period, or the application has been opposed but the opposition has been decided in favour of the applicant, the Registrar of trademarks is required to proceed with the registration of

[137] Sarkar, Trademark Law and Practice, 4th Ed, Kamal Law House, 2000, India at Pg 122-123
[138] P. Narrayan, (1990), Introduction to intellectual property law, 2nd Ed, Butterworth's London at Pg 63
[139] Ibid
[140] P. Narrayan, (1990), Introduction to intellectual property law, 2nd Ed, Butterworth's London at Pg 63

the trademark. Upon registration, the Registrar of trademarks shall issue to the applicant a certificate of registration in the prescribed form, duly sealed with the official seal of the Trademark registry.[141]

From the foregoing, it is evident that a trademark registration certificate is issued by the Registrar of trademarks only after full compliance with all statutory prerequisites, including the lapse of the opposition period without any challenge. This certificate constitutes conclusive evidence of ownership, granting the registered proprietor the exclusive legal right to use the trademark in connection with the specified goods or services. It affirms the proprietor's entitlement to enforce trademark rights against infringement and unauthorized use, thereby securing both commercial identity and legal protection in the marketplace.

2.2.6 Renewal Certificate

Renewal of a trademark certificate refers to the process by which the proprietor of a registered trademark applies to the Registrar of trademarks to extend the validity of the registration. Foreign authors have also offered perspectives on the renewal of trademark registration. For instance Sarkar[142] explains that the initial registration of a trademark is valid for a period of seven years, but it may be renewed from time to time thereafter.[143] According to Sarkar, the Registrar of trademarks shall, upon application made by the registered proprietor in the prescribed manner, within the prescribed time, and subject to the payment of prescribed fees, renew the registration for a further period of seven years either from the expiration of the original

[141] Sarkar, Trademark Law and Practice, 4th Ed, Kamal Law House, 2000, India at Pg 143
[142] Sarkar, Trademark Law and Practice, 4th Ed, Kamal Law House, 2000, India at Pg149
[143] Ibid

registration or from the last renewal, as applicable.[144] Sarkar further outlines that, within the prescribed time before the expiration of the trademark's current registration, the Registrar of trademark is required to send a formal notice to the registered proprietor. This notice must inform the proprietor of the date of expiration, along with the conditions and fees applicable for renewal. If, by the end of the prescribed period, those conditions are not satisfied, the Registrar of trademarks may remove the trademark from the register for failure to comply with the renewal requirements.[145]

P. Narayanan[146] provides further insight into the concept of trademark renewal, noting that there is no statutory prohibition against retrospective renewal of a trademark registration.[147] Referring specifically to the Indian trademark law, Narayanan explains that while the Registrar of trademarks is empowered to remove a trademark from the register for failure to renew, such removal is not mandatory.[148] If the registered proprietor fails to meet the renewal requirements within the prescribed time and the Registrar of trademarks does not effect removal, it appears that the registration may still be renewed even after a significant lapse of time by paying the required renewal fee along with any additional fees imposed for the condonation of delay.[149] However, in such cases, the proprietor must provide a satisfactory explanation for the delay in payment. This position illustrates a degree of administrative discretion in the renewal process and recognizes the potential for

[144] Ibid
[145] Ibid
[146] P. Narayanan, Law of Trademarks and Passing Off, 5th Ed, Eastern Law House, 2000, India at Pg 64
[147] Ibid
[148] Ibid
[149] P. Narayanan, Law of Trademarks and Passing Off, 5th Ed, Eastern Law House, 2000, India at Pg 64

reinstating lapsed trademarks under justified circumstances.[150]

In addition, P. Narayanan further explains that an application for renewal of a registered trademark can only be made by the registered proprietor or by an assignee of the registered trademark.[151] In cases where the renewal application is submitted by an assignee, it must be accompanied by an application for the registration of the assignee as the subsequent proprietor. This ensures that the renewal process is carried out only by parties who hold legally recognized rights over the trademark, thereby maintaining the integrity and accuracy of the trademark register.[152]

From the foregoing, it is evident that a registered trademark has a specific duration of validity. Upon the expiration of this period, the trademark is considered expired. It has been observed by various legal scholars' renewal of an expired trademark is not automatic. Rather, the registered proprietor must submit a formal application to the Registrar of trademarks. Further analysis of foreign commentary reveals that failure to renew a trademark may result in its removal from the registry by the Registrar of trademarks. Nevertheless, such a trademark may be reinstated through a formal restoration application, accompanied by the prescribed fees, thereby allowing the trademark to be renewed and restored in the official registry.

2.2.7 Discretionary Power

The word discretionary power has diversity of meanings and interpretations by various scholars. Such diversity being on wording does not defeat the common

[150] Ibid
[151] Ibid
[152] Ibid

meaning of it. One scholar defines it as power to make a reasoned choice within a class of permissible actions.[153] Lord Halsbury utters that discretion means when it is said that something is to be done within the discretion of authorities, such thing is to be done according to private opinion. Generally, discretionary power means the power to choose to act or not to act, using one's rational judgment. Discretionary powers are usually granted by the law.

Harloveleen defines discretionary power as power to make a reasoned choice within a class of permissible actions.[154] This power also ought to be reasonably and not unreasonably applied, and whatsoever may fairly be regarded as incidental to or consequential upon those things which the legislature has authorized ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.[155] Discretionary powers are not justifiable by simply being exercised by proper person but the exercise must also be proper, that is to say the exercise must be within the limit. It is said in one literature that, an act will however be ultra vires even if done by the proper person properly appointed if he exceeds the powers given to him.[156]

From the above, discretionary power is essential for flexible and efficient governance, it must be exercised within the bounds of legality, rationality, and fairness. Despite varied definitions by scholars and jurists, the common understanding affirms that discretion is not absolute it is constrained by statutory

[153] K. Harloveleen, "An Introduction to Administrative Law, 15th Ed, Punjab, Central Law Publication, 2011 at Pg 73
[154] Ibid
[155] A statement by Lord Seibourne in A.G. v. Great Eastern Rail. Co (1880), S App. Cas 473 at P 478 as referred in Fouikes, D.J. (1972), Introduction to Administrative Law, 3rd Ed, London, Butterworths, at Pg 129-130
[156] K. Harloveleen (2011), "An Introduction to Administrative Law, 15th Ed, Central Law Publication, Punjab, at Pg 129

limits and subject to judicial review. The legitimacy of such power lies not only in its delegation to the right authority but also in its proper and reasonable application. Any action taken beyond the authorized limits, no matter how well-intentioned, remains ultra vires and thus invalid in law.

A good illustrative can be seen in the case of C.S. Rowjee. V. State of A.P,[157] in this case the Chief Minister of Andhra Pradesh took on a proposal of the State Government to nationalize certain bus routes. It was purported that the Chief Minister had acted with mala fide intentions while giving the instructions. The allegations against him were that the specific route way had been chosen for the reason that he sought to take revenge from the private operators on those routes because they were his political opponents. Considering the facts of the case, the Supreme Court held that the Chief Minister had mala fide intentions and in law is ultra vires and thus invalid in law.

2.3 Theoretical Framework Regarding Trademark

This chapter sets out the theoretical foundations underpinning the study of the powers of the Registrar of Trademarks and the mechanisms established to control those powers within the legal framework of Tanzania. The use of theory in legal research is not merely to describe existing legal rules but to provide a deeper analytical structure through which regulatory authority, discretion, and accountability can be critically examined.

[157] AIR 1964 SC 72

Given that the Registrar of trademarks occupies a pivotal position in the administration of trademark law exercising quasi-judicial and executive functions the application of theory is crucial to understand both the scope and limits of this authority. This study engages with a combination of theories drawn from public law, regulatory studies, and trademark jurisprudence, each of which contributes to analyzing how the Registrar's decisions are formed, guided, and potentially restrained within the broader goals of justice, transparency, and market order.

Accordingly, this chapter introduces and discusses the key theoretical lenses through which the research is framed. These include: Good Governance Theory, which emphasizes accountability and transparency; and from the intellectual property domain, the Economic Theory of Trademark and the Consumer Decision-Making Theory, which help explain the societal and market-based functions of trademark registration. These frameworks collectively provide a comprehensive basis for assessing whether and how the powers of the Registrar in Tanzania align with the principles of sound legal administration and trademark policy.

2.3.1 Good Governance Theory

Good governance theory emphasizes the importance of effective, efficient, and accountable public institutions in managing a country's resources and affairs to achieve sustainable development and improve citizen well-being. It involves ensuring human rights are realized, corruption is minimized, and the rule of law is upheld. Key principles include transparency, accountability, public participation, and responsiveness to societal needs.

Good governance theory sets some basic principles according to which government must be run.[158] In fact, the theory develops from a set of principles or policies first introduced by the World Bank in relating with and in assisting developing or third world countries.[159] These principles include includes accountability, control, responsiveness, transparency, public participation, economy, efficiency etc. Adherence to these principles will reveal that good governance is about how the public sector in third world countries will be responsive to the needs of the people, having realized that for a government to be regarded as good it, will not only be efficient, it must make accountability between the state and its citizens a core task.[160]

2.3.2 Consumer Decision Making Theory

The Consumer Decision Making Theory commonly known as Search Cost Theory has dominated discussed of trademark law for the last several decades. According to this theory, trademark law aims at increasing consumer's welfare by reducing the cost of shopping for goods or services, and it accomplishes this goal by preventing uses of trademark that, may confuse consumers about the sources of the goods with which the trademark is used.[161] According to this theory consumers may rely on the trademark as repositories of information about the source and quality of products, this reduces costs of searching for goods that, satisfy their preferences. For instance, consumers who are shopping for shoes may rely on the presence of the NIKE trademark as an indicator of the quality of the shoes they are purchasing to which

[158] Emeh Ikechukwu Eke Jaffer and others, Good Governance: The Concept and Contextual Perceptive, ACTA Universitatis Danubius, Vol 11 No. 1/2019 at Pg 122
[159] Ibid
[160] Ibid at Pg 123
[161] Mark McKenna, A Consumer Decision-Making Theory of Trademark Law, 98 Va.L. Rev. 67 (2012) at Pg 73

that, trademark is affixed. Consumers who previously had good experiences with NIKE shoes can simply look for the NIKE trademark the time they go shopping because they can assume the new pairs of NIKE shoes come from the same company that produced their last pair; therefore, they will be similarly satisfied with the new NIKE.

The theory further assumes stability of source designation as a good proxy for consistent quality. On the other hand, first time consumers benefit from protection too since they can rely on the NIKE trademark as shorthand for information they have learned from advertising or by word of mouth.[162] By virtue of its ability to convey information and facilitate purchase decisions that trademark is given legal protection. This is explicitly acknowledged by the modern statutes which confer legal protection to a trademark on condition of its being 'inherently distinctive', that is, able to directly fulfil its stated function.

Additionally, the trademark being a marketing tool it becomes an economic device which requires legal protection as a private property. Although theoretically trademarks do not require registration to establish ownership, however, registration confers security and exclusive rights to use the trademark without proof of prior use in marketing of particular products.[163] This makes registration of trademarks important as it reduces conflicts between producers and reduces confusion among consumers to make decisions on products to purchase.[164]

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[162]Ibid

[163]Rammelo, B.G; What is in a Sign?, Trademark Law and Economic Theory; Journal of Economic Survey Vol 20 No. 4 of 2006

[164]Ibid at Pg 550

Also as propounded by Landes and Posner[165] "The value of a trademark to the firm that, uses it to designate its brand is the saving in consumers' search cost made possible by the information that, the trademark conveys or embodies about the quality of the firm's brand. The brand's reputation for quality and thus the trademark's value depends on the firm's expenditures on product quality, service, advertising, and so on. Once the reputation is created, the firm will obtain greater profits because repeat purchases and word-of-mouth references will add to sales and because consumers will be willing to pay a higher price in exchange for a savings in search costs and an assurance of consistent quality."

2.3.3 Economic Theory of Trademark

Trademarks being private property can be analyzed on the basis of the economic theory of property rights as expounded by Richard Posner. According to Posner Intellectual Properties contains the essential elements of other properties and therefore the analysis of intellectual properties must be evaluated on the basis of several aspects such as the pros and cons, the scope and limits of Intellectual Property on intellectual goods.[166]Posner provides that, a property rights is a legally enforceable power to exclude others from using a resource- all other (with exceptions unnecessary to get into here, such as the government when exercising its eminent domain power), and so with no need to make contracts with would-be users of the resource forbidding their use.[167]

[165]Landes. W.M and Posner, A.R. The Economist Structure of Intellectual Property Law; London England, The Belknap Press of Havard University Press Massachusetts 2003 at Pg 168
[166]Landes. W.M and Posner, A.R. The Economist Structure of Intellectual Property Law; London England, The Belknap Press of Havard University Press Massachusetts 2003 at Pg 12
[167] Ibid

Drawing an example from an owner of the pasture he explains that "if A owns a pasture, he can, with the backing of the Courts and the police, forbids others to graze their cattle on it. He does not have to negotiate with them an agreement entitling him to exclusive use; that would be an infeasible alternative because the whole world could threaten to graze their cattle on his property in order to be paid by him not to do so. Conversely, if B wants to have the exclusive use of the pasture, he must acquire it on terms acceptable to A. Thus, a property right includes both the right to exclude others and the right to transfer the property to another",[168]

According to the Economic theory of property rights as expounded by Posner it confers two economic benefits the first being static economic benefits and the second being dynamic economic benefits.[169] With static benefits means the right to exclude others from using a particular property while dynamic benefits entail the incentive that possession of such property right to invest in creation and improvement of recourse. It enables people to reap what they saw.[170]

From the foregoing, the three theories discussed are of significant importance to this study. The Good Governance Theory provides a normative lens for assessing the legality, fairness, and accountability of administrative action, ensuring that the powers of the Registrar of Trademarks are exercised in accordance with democratic principles and the rule of law. The Consumer Decision-Making Theory underscores the role of trademarks in shaping consumer behavior, thereby justifying the need for

[168] Ibid
[169] Ibid
[170] Landes. W.M and Posner, A.R. The Economist Structure of Intellectual Property Law; London England, The Belknap Press of Havard University Press Massachusetts 2003 at Pg 12

rigorous oversight to prevent the registration of misleading or confusing marks. Lastly, the Economic Theory of Trademark highlights the economic justification for trademark protection, focusing on the benefits it provides to trademark proprietors, market competition, and overall economic efficiency. Together, these theories offer a comprehensive analytical framework through which the Registrar's powers and the relevant control mechanisms in Tanzania can be critically examined.

2.4 Integration of Concepts and Theories

By combining these concepts and theories, the study establishes a coherent framework for evaluating the administrative powers of the Registrar of trademarks in Tanzania. Good Governance Theory provides the normative foundation, underscoring the importance of accountability, transparency, efficiency, and the rule of law in the exercise of public authority. Consumer Decision-Making Theory highlights the market function of trademarks, demonstrating that efficient and credible administration is essential for enabling consumers to distinguish goods, avoid confusion, and build trust.

The Economic Theory of Trademark complements these perspectives by showing how trademarks reduce search costs, safeguard fair competition, and stimulate innovation, all of which depend on timely and reliable registration. Integrated together, these theories reveal that trademark administration is not merely a bureaucratic exercise but a pivotal mechanism linking governance, consumer welfare, and economic development. Deficiencies such as the absence of statutory timelines or effective control mechanisms therefore erode institutional credibility, weaken consumer confidence, and distort market efficiency. This integrated

framework justifies the study's central argument: that reforming trademark administration through enforceable safeguards is both a governance imperative and an economic necessity.

2.5 Conclusion

In conclusion, the concepts and theories examined in this chapter collectively establish the intellectual foundation for analysing the legal, institutional, and practical challenges affecting trademark registration in Mainland Tanzania. Their integration illustrates that the functioning of the trademark system extends beyond statutory interpretation to encompass broader issues of administrative governance, institutional accountability, consumer protection, and economic efficiency. By situating the Registrar's administrative powers within these theoretical lenses, the chapter provides a coherent basis for interrogating how effectively the current regulatory framework addresses the systemic constraints that undermine efficiency, predictability, and fairness in trademark administration.

This theoretical anchoring enables the study to critically assess whether Tanzania's trademark regime incorporates adequate control mechanisms capable of restraining administrative discretion, ensuring transparency, and promoting effective service delivery. It also frames the analysis of institutional and practical barriers such as delays, resource limitations, and procedural uncertainties in a manner that highlights their implications for both rights holders and the broader business environment. Building upon this conceptual foundation, the next chapter examines the international and regional frameworks governing trademark registration. This comparative analysis establishes an evaluative benchmark against which Tanzania's

national system can be assessed, thereby illuminating areas of alignment, divergence, and potential reform necessary to strengthen the efficiency, integrity, and competitiveness of the trademark registration process in Mainland Tanzania.

CHAPTER THREE

INTERNATIONAL AND REGIONAL INSTRUMENTS FOR REGULATION OF TRADEMARKS

3.1 Introduction

This chapter examines the framework for trademark registration at both international and regional levels, focusing on the legal instruments that govern the process and their relevance to Tanzania. As a member of the international intellectual property community, Tanzania is not isolated from global and regional obligations regarding the protection of trademarks. Rather, it is a participant in various international and regional treaties and protocols that shape its trademark law[171] and administrative practices. The chapter aims to critically analyze the international and regional legal instruments applicable to trademark registration, along with the prerequisite requirements they impose on member states. It also considers whether these instruments provide for specific timeframes and procedural stages during the registration process, thereby influencing the efficiency and predictability of trademark administration.

Additionally, the chapter explores the institutional and administrative structures responsible for trademark registration at both the international and regional levels, such as the World Intellectual Property Organization (WIPO) and the African Regional Intellectual Property Organization (ARIPO). The analysis of these institutions will help to illuminate their procedural roles, jurisdictional mandates, and their significance in the context of Tanzania's trademark system.

[171] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

3.2 Trademark under International instrument

A number of international instruments govern the registration and protection of trademarks across borders. These include the Paris Convention for the Protection of Industrial property,[172] Madrid Agreement and its protocol on international trademark registration,[173] Nice Agreement concerning the international classification of goods and services,[174]and Agreement on Trade-Related aspects of Intellectual Property Rights which governs global minimum standards for protecting and enforcing nearly all forms of intellectual property rights (IPR).[175]

However, for the purposes of this study particularly with regard to the legal and procedural aspects of international trademark registration attention will be focused on the Madrid Agreement[176] and its protocol[177] which collectively form the Madrid System for the International Registration of Marks. This system, administered by the World Intellectual Property Organization (WIPO), provides a centralized mechanism for trademark owners to seek protection in multiple member states through a single application filed with their national or regional intellectual property office.

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[172] The Paris Convention, adopted in 188, applies to industrial property in the widest sense, including patents, trademarks, industrial design, utility models, service marks, trade names, geographical indications and the repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries. Accessed from www.wipo.int on 3/6/2023 at 3.39PM

[173] The Madrid system for the international registration of trademarks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a trademark in a large number of countries by obtaining an international registration that has effect in each of the designated contracting parties. Accessed from www.wipo.int on 3/06/2023 at 4:00PM

[174] The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks. The trademark offices of contracting states must indicate, in official documents and publications in connection with each registration, the number of the classes of the classification to which the goods or services for which the mark is registered belong. Accessed from www.wipo.int on 3/06/2023 at 7.25PM

[175] Trade-Related Aspects of Intellectual Property Rights (TRIPS) covers most forms of intellectual property including copyright, patents, geographical indications, trademarks, industrial designs, trade secrets, and exclusionary rights over new plant varieties. TRIPS came into force on 1st January, 1995 accessed from www.jagranjosh.com on 3/06/2023 at 7.37PM

[176] Madrid Agreement concluded in 1891

[177] Protocol relating to that Agreement, concluded in 1989.

3.2.1 Madrid Agreement and its Protocol

The Madrid System for the International Registration of Marks is governed by two principal treaties. The first is the Madrid Agreement, originally concluded in 1891 and subsequently revised at various diplomatic conferences, including Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957), and Stockholm (1967), and later amended in 1979. The second is the Madrid Protocol, adopted in 1989, which was introduced to enhance the flexibility of the system and to accommodate the legal frameworks of countries and intergovernmental organizations that had previously been unable to accede to the original Agreement. Together, these instruments form the legal foundation of the Madrid System, which is administered by the World Intellectual Property Organization (WIPO). States and intergovernmental organizations that are parties to either or both instruments are collectively referred to as Contracting Parties.[178]

The Madrid System enables trademark holders to seek protection for their marks in multiple jurisdictions by filing a single international application. Once granted, the international registration has legal effect in each of the designated Contracting Parties, as if the trademark had been registered directly with the national or regional office of those jurisdictions. This system significantly simplifies the international registration process and reduces the administrative and financial burden on trademark owners operating across borders.[179]

[178]Summaries of Conventions, Treaties and Agreements Administered by WIPO, at Pg 11 accessed on www.wipo.int on 17/12/2019 at 5.23pm and Article I of Madrid Agreement Concerning the International Registration of Marks as amended on September 28th 1979

[179]Summaries of conventions, treaties and agreements administered by WIPO, at Pg 11 accessed on www.wipo.int on 17/12/2019 at 5.23pm and Article I of Madrid Agreement Concerning the International Registration of marks as amended on September, 28th 1979

An international application for the registration of a trademark under the Madrid System may only be filed by a natural or legal person who has a qualifying connection either through establishment, domicile, or nationality with a Contracting Party to the Madrid Agreement[180] or the Protocol.[181] This ensures that only applicants with a legitimate legal or economic presence in a member state may access the benefits of the system.

A fundamental requirement of the Madrid System is that a trademark may be the subject of an international application only if it has already been registered, or in certain cases, applied for, with the trademark office of the relevant Contracting Party (referred to as the office of origin).[182] Under the Madrid Agreement, an existing registration is mandatory, whereas the Madrid protocol,[183] allows an international application to be based on a pending national application, provided all designations are made under the Protocol. This flexibility was one of the key innovations introduced to broaden participation and facilitate harmonization with diverse national legal systems. Importantly, the international application must be submitted to the International World Intellectual Property Organization (WIPO)[184] but not directly by the applicant. Instead, it must be filed through the office of origin, which

[180]Article 1(2) of the Madrid Agreement concerning the international Registration of Marks as amended on September 28th 1979

[181]Article 2(1) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12th 2007

[182]Summaries of Conventions, Treaties and Agreements Administered by WIPO- www.wio.int accessed on 18/12/2019 at 6.29pm

[183]Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12th 2007)

[184]WIPO is an international organization designed to promote the worldwide protection of both industrial property (inventions, trademarks and designs) and copyrighted materials (literary, musical, photographic, and other artistic works). The organization, established by a convention signed in Stockholm in 1976, began operations in 1970 and became a specialized agency of the United Nations in December 1974. Accessed from www.britannica.com on 14/05/2020 at 4.57pm

acts as an intermediary. This office verifies that the international application corresponds to the basic national or regional application or registration and then certifies it before forwarding it to WIPO for formal examination and publication.[185]

An application for international registration must designate one or more Contracting Parties in which trademark protection is sought.[186] Additional designations may be made after the initial filing. A Contracting Party can only be designated if it is party to the same treaty either the Madrid Agreement or the Madrid Protocol as the Contracting Party whose office is acting as the office of origin.[187] The office of origin itself cannot be designated in the international application.

The designation of a particular Contracting Party is governed by either the Agreement[188] or the Protocol,[189] depending on which treaty is common to the Contracting Parties concerned depending on which treaty is common to both the office of origin and the designated Contracting Party. If both Contracting Parties are party to the Agreement[190] and the Protocol,[191] the designation will be governed by the Protocol.[192] With regard to language, international applications may be filed in English, French, or Spanish, regardless of the treaty under which the application is

[185]Article 1(1) of the Madrid Agreement Concerning the International Registration of Marks as amended on September, 28th 1979, Article 2(1) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12, 2007 and Rule 9 of Common Regulations under the Madrid Agreement concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February, 1st , 2019

[186]Summaries of Conventions, Treaties and Agreements Administered by WIPO- www.wipo.int accessed on 18/12/2019 at 6.37PM

[187]Ibid

[188]Madrid Agreement Concerning International Registration of Marks (1891)

[189]Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12, 2007

[190]Madrid Agreement Concerning International Registration of Marks (1891)

[191]Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12 2007)

[192]Ibid

made. However, this choice may be subject to limitations imposed by the office of origin, which may restrict the available language options to one or two of the official working languages of the system languages.[193]

Once the International Bureau of WIPO receives an international application, it conducts a formal examination to ensure compliance with the requirements set out under the Agreement,[194] the Protocol[195] and their Common Regulations.[196] The examination conducted by the International Bureau of WIPO is limited to issues of formality, such as the classification and the clarity of the list of goods and/ or services.[197] If no irregularities are found, the Bureau proceeds to record the trademark in the International Register, publish the international registration in the WIPO Gazette of International Marks (hereinafter referred to as the Gazette), and notify each designated Contracting Party of the registration.[198]

It is important to note that substantive matters, such as whether the mark conflicts with an earlier registration in a given jurisdiction, fall within the exclusive competence of the designated Contracting Party. These determinations are made by the respective national or regional trademark offices in accordance with their domestic laws and procedures. The Gazette is available in electronic format (e-

[193]Rule 6(1) of Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February, 1st, 2019

[194]Madrid Agreement Concerning the International Registration of Marks as amended on September, 28th 1979

[195]Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12, 2007

[196]Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February, 1st, 2019

[197]Article 3(2) of the Madrid Agreement concerning the International Registration of Marks as amended on September, 28th, 1979 and Rule 8bis of Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February 1st, 2019

[198]Article 3(4) and (5) of the Madrid Agreement Concerning the International Registration of Marks as amended on September, 28th 1979

Gazette) and is accessible through the Madrid System section of the WIPO website, ensuring transparency and public access to published international registrations.[199]

Each designated Contracting Party is required to issue a statement of grant of protection in accordance with Rule 18ter of the Common Regulations.[200] Under the Madrid System. This statement confirms that the trademark has been examined and is deemed eligible for protection within that jurisdiction. However, when examining an international registration, if a designated Contracting Party determines that the mark fails to comply with substantive provisions of its domestic trademark legislation such as distinctiveness, conflict with earlier rights, or other grounds for refusal it retains the right to refuse protection within its territory. In such cases, the national office must communicate the refusal to the International Bureau of WIPO, including a clear indication of the legal grounds upon which the refusal is based.

This refusal must generally be issued within 12 months from the date on which the international registration was notified to the designated office. Some jurisdictions may, however, extend this period to 18 months, or beyond in the case of oppositions, if permitted under the Madrid Protocol and as notified to WIPO.[201] However, a Contracting Party to the Madrid Protocol[202] may issue a declaration extending the standard 12-month time limit for issuing a refusal to 18 months, when it is

[199]Summaries of Conventions, Treaties and Agreements Administered by WIPO- www.wipo.int accessed on 18/12/2019 at 7.02PM

[200]Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February, 1st, 2019)

[201]Article 5(1) and (2) of the Madrid Agreement Concerning the International Registration of Marks as amended on September, 28th, 1979

[202]Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12th 2007)

designated under the Protocol.[203] Additionally, such a Contracting Party may also declare that a refusal based on opposition proceedings may be communicated to the International Bureau of WIPO even after the expiration of the 18 months.[204] Once a refusal is issued, it must be communicated to the holder of the international registration or to the holder's appointed representative before the International Bureau.[205] The refusal is then recorded in the International Register and published in the WIPO Gazette of International Marks, thereby ensuring both legal effect and public notice.[206]

The procedure following a refusal, such as an appeal or review, is conducted directly between the holder of the international registration and the competent authority whether administrative or judicial of the Contracting Party that issued the refusal. The International Bureau,[207] of WIPO does not play a role in these proceedings. However, once a final decision has been reached concerning the refusal, it must be communicated to the International Bureau, which then records and publishes the outcome in the International Register and the WIPO Gazette of International Marks. The legal effect of an international registration in each designated Contracting Party is equivalent to that of a national registration. Specifically, from the date of the international registration, the rights conferred are the same as if the trademark had

[203]Ibid
[204]Article 5(2)(b) and (c) of Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12th, 2007
[205]Article 5(c) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12th, 2007) and Rule 16© of Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February, 1st 2019)
[206]Article 5(3)
[207]Article 5(6) of the Madrid Agreement Concerning the International Registration of Marks (as amended on September, 28th 1979)

been filed directly with the trademark office of that Contracting Party.[208] If no refusal is issued within the prescribed time limit, or if a previously issued refusal is withdrawn, the international registration is deemed to enjoy full protection in that jurisdiction from the original date of registration, as if it were registered under that Contracting Party's domestic trademark law.[209]

An international registration under the Madrid System is initially valid for a period of ten (10) years[210] from the date of registration. It may be renewed indefinitely for successive ten-year periods, provided that the prescribed renewal fees are duly paid within the stipulated time frame. The scope of protection afforded by an international registration may be restricted or modified. Specifically, protection can be limited in respect of certain goods or services, or it may be renounced with respect to specific designated Contracting Parties without affecting protection in other jurisdictions. Moreover, an international registration may be transferred, either in whole or in part, to another party. Such a transfer may relate to all or some of the designated Contracting Parties, and may also apply to all or only some of the goods or services originally covered by the registration. These features provide trademark owners with considerable flexibility in managing their international trademark portfolios.

In addition to procedural uniformity, the Madrid System offers several distinct advantages for trademark owners seeking international protection. Rather than filing

[208] Article 4(1) of the Madrid Agreement Concerning the International Registration of Marks (as amended on September, 28th 1979) and Article 4(1)(a) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12th 2007)

[209] Article 4(1)(a) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12th 2007)

[210] Article 6(1) of the Madrid Agreement Concerning the International Registration of Marks (as amended on September, 28th 1979) and Article 6(1) of the Protocol Relating to the Madrid Agreement Concerning International Registration of Marks (as amended on November, 12th 2007) provides that "An International registration is effective for 20 years"

separate national applications in each country of interest each subject to different languages, administrative procedures, and fee structures an applicant may obtain international registration by filing a single application with the International Bureau of WIPO, through the office of origin, in one language (English, French, or Spanish), and by paying a single set of fees.[211] Similar efficiencies apply to the maintenance and renewal of international registrations, as well as to administrative updates. For example, if the international registration is assigned to a third party, or if there is a change in the name or address of the holder, such modifications may be recorded with effect across all designated Contracting Parties through a single procedural action. This centralized approach significantly reduces administrative burdens, legal complexity, and long-term costs for right holders managing trademarks in multiple jurisdictions.[212]

The Madrid Agreement[213] and Protocol[214] are open to membership by any State that is a party to the Paris Convention for the Protection of Industrial Property (1883). The two instruments are parallel and legally independent, and a State may choose to accede to either one or both, depending on its domestic legal and administrative preferences. The two treaties are parallel and independent, and States may adhere to either or both of them. In addition to sovereign States, the Madrid Protocol also permits accession by intergovernmental organizations that maintain their own trademark

[211]World Intellectual Property Organization, "Treaties" accessed from www.wipo.int.treaties accessed on 17/12/2019 at 5:23pm
[212]Ibid
[213]Madrid Agreement Concerning the International Registration of Marks (as amended on September 28, 1979)
[214]Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12, 2007)

registration offices. This provision allows such entities such as the European Union to become Contracting Parties, thereby broadening the geographic and institutional reach of the Madrid System. To become a party to either instrument, a State or eligible intergovernmental organization must deposit its instrument of ratification or accession with the Director General of the World Intellectual Property Organization (WIPO), which serves as the depositary authority under the system. (WIPO).[215]

From the above observation, it can be observed that the Madrid Agreement and the Madrid Protocol operate as parallel instruments governing international trademark registration. Together, they provide a unified legal framework that enables trademark owners to secure international rights over their marks through a centralized application process. A fundamental requirement of the system is that a trademark may be the subject of an international application only if it has first been registered or at least applied for with the trademark office of a Contracting Party, commonly referred to as the office of origin.

The international application must be submitted to the International Bureau of WIPO through this office, which verifies compliance with the basic application before forwarding it for further processing. Once received, the International Bureau conducts a formal examination to ensure conformity with the relevant provisions of the Madrid Agreement, Protocol, and Common Regulations. If the application meets all formal requirements, it is published in the WIPO Gazette of International Marks and subsequently registered for an initial period of 10 years. The registration is then

[215]World Intellectual Property Organization WIPO, "Treaties" accessed from www.wipo.int/treaties.com accessed on 12/05/2020 at 1.46pm

subject to possible examination and refusal by the designated Contracting Parties based on their respective domestic laws.

Having examined the legal framework governing international trademark registration under the Madrid Agreement and the Madrid Protocol, it is essential to now turn attention to the administrative bodies responsible for implementing and overseeing the system. Understanding the institutional setup, particularly the role of the World Intellectual Property Organization (WIPO) and its International Bureau, is critical to appreciating how the Madrid System functions in practice. These bodies not only manage the procedural aspects of international applications but also ensure compliance with treaty obligations and facilitate communication between applicants and designated Contracting Parties.

3.3 Institution governing trademarks at International Level

As discussed above, legal instruments provide the normative framework for international trademark registration. In the interest of this study, it is now important to examine the international bodies that bring these frameworks to life through practical governance. Understanding their roles and functions offers critical insight into how international trademark systems operate in practice and how they support those seeking trademark protection.

3.3.1 The World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization (WIPO) traces its institutional roots to the late 19th century, beginning with the Paris Convention of 1883 and the Berne Convention of 1886. Both conventions called for the creation of an “International

Bureau" to oversee intellectual property matters. In 1893, these bureaus were consolidated, laying the groundwork for a unified international body. This structure was formally succeeded by WIPO, established under the WIPO Convention[216] signed in Stockholm on July 14, 1967, which came into force in 1970 and was later amended in 1979.[217]

WIPO's principal aim is to advance the protection of intellectual property on a global scale by fostering cooperation among member states and, when relevant, working in partnership with other international organizations. An essential aspect of its mandate includes ensuring administrative coordination among the unions it oversees.[218] To fulfill these objectives, WIPO, through its designated bodies and within the limits of each union's jurisdiction, promotes the creation and implementation of legal and administrative measures that enhance the efficiency of intellectual property protection and encourage legislative harmonization among nations.[219]

WIPO is responsible for carrying out the administrative tasks of the Paris Union and related special unions, as well as the Berne Union. Moreover, the organization may, by agreement, undertake or participate in the administration of any other international treaties aimed at advancing intellectual property protection. It is also empowered to promote the negotiation and adoption of new international agreements in this domain and to provide legal and technical assistance to countries seeking to

[216]World Intellectual Property Organization WIPO, "Treaties" accessed from http://wipo.int/treaties/en/convention accessed on 11/6/2017
[217] Ibid
[218] Article 3 of the Convention Establishing World Intellectual Property Organization, 1979
[219] Article 4 of the Convention Establishing World Intellectual Property Organization, 1979

strengthen their intellectual property infrastructure.[220]

Similarly, WIPO plays a central role in assembling and distributing information on intellectual property protection. It supports and conducts research in the field and ensures that the results are made publicly available.[221] Furthermore, the organization manages services designed to support the international registration and protection of intellectual property rights and oversees the publication of registration-related data. It also undertakes any additional measures deemed necessary to advance its mandate.[222]

Moreover, WIPO maintains an International Bureau, functioning as the secretariat of the organization[223] under the leadership of a Director General. The Director General, with the assistance of at least two Deputy Directors General,[224] is empowered to appoint the necessary personnel for the effective execution of the Bureau's responsibilities.[225] The appointment of Deputy Directors General is subject to approval by the Coordination Committee.[226] Employment terms are established through staff regulations proposed by the Director General.[227] and ratified by the Coordination Committee. Recruitment and service conditions prioritize the principles of efficiency, professional competence, and integrity.[228]

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[220] Article 4 of the Convention Establishing World Intellectual Property Organization, 1979
[221] Ibid
[222] Ibid
[223] Article 9 Convention Establishing World Intellectual Property Organization, 1979
[224] Ibid Article 9(2)
[225] Article 9(7) Convention Establishing World Intellectual Property Organization, 1979
[226] Article 9 Convention Establishing World Intellectual Property Organization, 1979
[227] Ibid
[228] Ibid

The organization shall enjoy, within the territory of each member state and in accordance with that state's legal framework, such legal capacity as is necessary for the fulfillment of its objectives and the exercise of its functions.[229] Furthermore, WIPO may enter into bilateral or multilateral agreements with member states to ensure that the organization, its officials, and the representatives of all member states benefit from the privileges and immunities required to effectively carry out its mandate.[230]

From the foregoing analysis, it is evident that the World Intellectual Property Organization (WIPO) serves as the central administrative body for international trademark governance. Its core mission is to advance the global protection of intellectual property and to ensure effective administrative coordination among the unions created by the treaties under its purview. Being acquaintance with international trademark registration and the responsible bodies administering trademark registration, it is significant to understand further the trademark registration at regional level together with the respective instrument applied and the administrative bodies. It is important to understand at this juncture the relevancy of the international regime to Tanzania.

3.3.2 The Relevance of Examining Trademark Registration within the International Regime

The examination of international instruments is relevant to this study because Tanzania, while not a member of the Madrid Agreement and its Protocol, remains a participant in the wider international intellectual property (IP) system. As a member of the World Trade Organization (WTO) and a contracting party to the Paris

[229] Article 12(1) Convention Establishing World Intellectual Property Organization, 1979
[230] Ibid Article 12(3)

Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Tanzania is bound by obligations that establish minimum standards for the protection, administration, and enforcement of trademark rights.

Considering these international commitments is necessary for this research because they provide the benchmark against which national trademark law and practice may be situated. They also serve to clarify the extent to which Tanzania's legal framework reflects international standards in the administration of trademarks, particularly in relation to procedural fairness and institutional accountability. Accordingly, the inclusion of the international regime in this study ensures that the analysis of Tanzania's trademark system is not conducted in isolation, but rather in light of the international legal framework to which the country has subscribed.

Having established the relevance of the international regime to Tanzania's trademark framework, it is equally important for this study to consider the regional dimension. The next section therefore examines the regional instruments governing trademark registration, with particular focus on Tanzania's participation in the African Regional Intellectual Property Organization (ARIPO) under the Banjul Protocol.

3.4 Trademark Registration under Regional Instrument

In the broader context of intellectual property governance, regional instruments serve as a critical intermediary between international frameworks and national implementation. While the previous discussion addressed the international filing procedures under the Madrid Agreement and its Protocol, the present section shifts

focus to regional trademark registration systems, particularly as they relate to African jurisdictions.

Among the mechanisms available on the continent, the African Regional Intellectual Property Organization (ARIPO) administers several key protocols that collectively aim to promote cooperation and harmonization of intellectual property laws. These include the Banjul Protocol on Marks (1993), the Harare Protocol (1982) on patents and industrial designs, and the Swakopmund Protocol (2010) on traditional knowledge and folklore.

For the purposes of this study, the analysis is confined to the Banjul Protocol, which establishes a regional framework for the registration and protection of trademarks. This focus aligns with the study's primary objective: to investigate the administrative powers of the Registrar of trademarks in Tanzania and the mechanisms available for their oversight. Protocols that address other forms of intellectual property are acknowledged but, excluded from detailed discussion, as they fall outside the study's scope. The Banjul Protocol provides an alternative to purely national trademark registration systems by offering a centralized filing procedure through ARIPO. Understanding this mechanism is essential to assessing the extent to which Tanzania is or is not integrated into regional registration processes, and how this influences the administrative discretion of the national Registrar.

3.4.1 The Banjul Protocol

The Banjul Protocol on Marks was adopted by the Administrative Council of the African Regional Intellectual Property Organization (ARIPO) on November 19,

1993, in Banjul, The Gambia. Since its adoption, the Protocol has undergone several amendments, reflecting its evolving regulatory and procedural scope. These amendments were made on: November 28, 1997; May 26, 1998; November 26, 1999; November 21, 2003; November 25, 2013; November 17, 2015; November 22, 2017; and November 23, 2018.

The Regulations for the Implementation of the Banjul Protocol were separately adopted on November 24, 1995, in Kariba, Zimbabwe, and have been amended in parallel with the Protocol on November 21, 2003; November 25, 2013; November 17, 2015; November 22, 2017; and November 23, 2018. These Regulations provide detailed procedural guidance for filing, examination, publication, and opposition of trademarks under the Protocol, enabling harmonized administration across member states. The Protocol and its accompanying Regulations together constitute the legal and procedural framework for regional trademark registration within the ARIPO system, 2018.[231] All applications[232] for the registration of a trademark shall be filed either directly with the office or with the industrial property office of a Contracting State by the applicant or his duly authorized representative,[233]where, an application is filed directly with African Regional Intellectual Property Organization (ARIPO) but, the applicant's principal place of business or ordinary residence is not in the host country or an application is filed with the industrial property office of a Contracting

[231]www.aripo.org accessed on 18/05/2020 at 3.56PM

[232] Rule 4(1) of the Regulations for Implementing the Banjul Protocol provides that: "An application for registration of a mark on Form No. M1 shall contain- (a) a request for the registration; (b) the name and address of the applicant; (c) a designation of one or more Contracting States for which the registration is requested to have effect; (d) four copies of a representation of the mark and (e) a list of the particular goods or services in respect of which registration of the mark is requested, with an indication of the corresponding class or classes in the international classification"

[233] Section 2(1) of Banjul Protocol on Marks within the Framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018 and Rule 5 of the Regulations for Implementing the Banjul Protocol provides: "The application for registration shall be made on Form No. M1; where an applicant is represented, a power of attorney on Form No. M2 shall be filed together with the application….."

State by an applicant whose principal place of business or ordinary residence is not in a Contracting State, the applicant shall be represented.[234]Representation shall be by a patent or trade mark agent or by a legal practitioner who has a right to represent applicants before the industrial property office of any of the Contracting States.[235] Where an application is filed with the industrial property office of a Contracting State, such office shall, within one month of receiving the application, transmit the application to the office.[236]

An application for the registration of a trademark shall identify the applicant and designate the Contracting States in which registration is being requested.[237]The application shall indicate the goods and/or services in respect of which protection of a trademark is claimed, including the corresponding class or classes provided for under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957 as revised.[238] For this purpose the African Regional Intellectual Property Organization (ARIPO) Office will check that, the applicant has made such indication of class or classes and that indication is correct and where the applicant does not give such indication or the indication is not correct, the African Regional Intellectual Property Organization (ARIPO) office shall classify the goods or services under the appropriate class or classes of the Nice Agreement on payment of a classification fee.[239]

[234]Section 2(2) (a) and (b) of Banjul Protocol on Marks within the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018
[235] Ibid Section 2(3) Banjul Protocol
[236]Ibid Section 2(4) of Banjul Protocol
[237]Ibid Section 3(1) of Banjul Protocol
[238]Section 3(2) of Banjul Protocol and Rule 3 of Regulations for Implementing the Banjul Protocol, 2013
[239] Section 3(2) of Banjul Protocol and Rule 3 of Regulations for Implementing the Banjul Protocol, 2013

Where colour is claimed to be a distinctive feature of the trademark, the applicant shall make a statement to that, effect as well as the name or names of the colour or colours claimed and an indication, in respect of each colour, of the principal parts of the trademark which are in that colour.[240]Where the trademark is a three-dimensional trademark, the applicant shall make a statement to that effect and attach to the application a reproduction of the trademark consisting of a two-dimensional graphic or photographic reproduction either of a single view of the trademark or several different views of the trademark.[241]

The application shall contain a declaration of actual use of the trademark or intention to use the trademark, or be accompanied by an application for the registration of a person as a registered user of the trademark, provided that, where there is an application for a registered user the Director General of the office is satisfied that, the applicant intends it to be used in relation to those goods or services; and that, person shall be registered as a registered user thereof immediately after registration of the trademark.[242]

Section 3bis[243] provides that, the office shall accord as the filing date of an application the date on which the following indications or elements were received by the Contracting State in which the application was filed or were received by the office, namely; an express or implied indication that, registration of a trademark is sought, an indication allowing the identity of the applicant to be established,

[240] Ibid
[241]Ibid Section 3(4) of the Banjul Protocol
[242]Section 3(5)(i) and (ii) of the Banjul Protocol
[243] Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018

indications sufficient to contact the applicant or his representative, if any, by mail, a clear reproduction of the trademark, and a list of goods and/or services for which the registration is sought; provided that, the office may accord as the filing date of the application the date on which it received only some of the indications or elements referred to.[244]

The applicant shall have the right to claim priority rights provided under Article 4 of the Paris Convention for the Protection of Industrial Property (1883) as revised.[245]The right to priority shall only subsist when the application is made within six months from the date of the earlier application.[246]The office shall examine whether the formal requirements have been complied with and shall accord the appropriate filing date to the application.[247]

If the office is of the opinion that, the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within a prescribed period.[248] If the applicant does not comply with the requirements within the said period, the office shall refuse the application.[249] If the application complies with all the formal requirements, the office shall within the

[244]Section 3(i)(ii)(iii)(iv)(v) bis of Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018

[245]Ibid Section 4(1) of Banjul Protocol and Rule 8of the Regulations for Implementing the Banjul Protocol, 1995 as amended in the year 2018

[246]Ibid Section 4(2) of Banjul Protocol and Rule 8(1) of the Regulation for implementing the Banjul Protocol, 1995 as amended in the year 2018

[247] Section 5(1) of Banjul Protocol, 1979 as amended in the year 2018

[248] Section 5(2) of Banjul Protocol and Rule 6(1) of the Regulation for Implementing the Banjul Protocol, 20 which provides that "The office shall examine whether the formal requirements of an application has been complied with the said requirements, it shall notify the applicant, inviting him to comply with the requirements within 2 months. Such notification shall be made on Form No. M4. If the applicant does not comply with the requirements within the specified period, the office shall refuse the application".

[249]Section 5(2) of Banjul Protocol on marks within the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018

prescribed period, notify each designated State.[250] Where the office refuses an application or a reconsideration is refused or an appeal is unsuccessful, the applicant may, within a period of three months from the date on which he receives notification of such refusal or result of appeal, request that, his application be treated, in any designated State, as an application according to the national laws of that State.[251]

Section 5(1) bis[252] provides that, the office refuses any application, the applicant may, within the prescribed period,[253] request the office to reconsider the matter. If after the office has reconsidered the application, the office still refuses the application, the applicant may lodge an appeal against the decision of the office to the Board of Appeal established in terms of Section 4*bis* of the Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization (ARIPO) (the Harare Protocol).[254]

Every application for the registration of a trademark shall be examined in accordance with the national laws of a designated State.[255]Before the expiration of twelve months from the date of the notification to each designated State may make a written communication to the office that, if a trademark is registered by the office, that registration shall have no effect on its territory on the basis of any grounds, both

[250]Ibid Section 5(3) of Banjul Protocol
[251]Op cit Section 5(4) Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018 and Rule 6(2) of the Regulation for Implementing the Banjul Protocol, 2018
[252]Banjul Protocol, 1979 as amended in the year 2018
[253] Rule 6bis of the Regulation for Implementing the Banjul Protocol, 2013 provides that the prescribed period referred to in section 5bis of the Protocol within which the applicant may request the office to reconsider the matter shall be two months after the date of notification of the decision of the ARIPO office that the application has been refused
[254]Section 5(2) bis of the Banjul Protocol on marks within the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018
[255]Ibid Section 6(1) of Banjul Protocol, 1979 as amended in the year 2018 and Rule 11(1) of the Regulation for Implementing the Banjul Protocol, 1995 as amended in the year 2018

absolute and relative, including the existence of third party rights.[256]

Where the designated State refuses the application[257] it shall give reasons under its national laws for refusing the application. These reasons shall within one month of the decision being made be communicated to the office which shall without delay communicate the same to the applicant.[258]The applicant shall be given an opportunity to respond, directly to the designated State concerned, to the decision to refuse the application. The decision shall be subject to appeal or review under the national laws of the designated State concerned.[259]

A communication to the office or a refusal by a designated State shall not prejudice the issuance by the office of a certificate of registration having effect in those designated states in respect of which the application has not been subject to a communication or has not been refused.[260]Where a designated State which makes a communication under Section 6.2[261] subsequently withdraws it or where the designated State initially refused the application but, subsequently accepts the same, the designated State shall within one month communicate this fact to the office. In this case, the office shall extend the registration to such designated State.[262]

[256]Section 6(2) of Banjul Protocol on marks within the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018
[257]Ibid Section 6.2 of Banjul Protocol
[258]Ibid Section 6(3) of Banjul Protocol
[259] Ibid Section 6(4) of Banjul Protocol
[260]Section 6(5) Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018
[261] Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018
[262] Ibid Section 6(6) Banjul Protocol

Section 6(1)*bis*[263]provides that, an application for registration of a trademark which has been accepted by any designated State or in respect of which any designated State has not made the communication shall be published in the Trademarks Journal as having been accepted by the designated State or designated states concerned three months after the publication of the journal,[264] the office shall register the trademark on payment of registration fees. Such registration shall be recorded in the Trade Marks Register and the office shall issue to the applicant a certificate of registration.[265]

The fact of registration of a trademark shall be published in the Journal.[266] At any time after the publication in the Trade Marks Journal of an application as accepted by the designated State or designated States in terms of Section 6(1)*bis,*[267] but, before the registration of the trademark in terms of Section 6(2)bis,[268] any person may give a notice of opposition to the application for registration in a designated State or designated States. Thereafter, the application shall be treated according to the opposition procedures laid down under the national laws of the designated State or designated States concerned.[269]

[263] Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018
[264] Section 6(2) bis of Banjul Protocol on marks within the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018
[265]Ibid Section 6(2) bis Banjul Protocol
[266] Section 6(3) bis Banjul Protocol on marks within the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018
[267] Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018
[268] Ibid
[269] Ibid Section 6(3) bis Banjul Protocol

The registration of a trademark shall be for a period of ten years from the filing date.[270] The registration of a trademark may be renewed for further periods of ten years on payment of the prescribed renewal fee.[271] The renewal of the registration shall be effected on or before the date of expiration of the original registration or of the last renewal of the registration provided that, a grace period of six months shall be allowed, in either case, on payment of a surcharge.[272] The registration of a trademark which has not been renewed because of non-payment of renewal fees within the period shall be deemed to have lapsed and shall be removed from the register.[273]

A trademark removed from the Register for non-payment of renewal fees may be restored at the request of the owner on payment of the prescribed restoration fee within the prescribed period.[274]The registration of a trademark by the office shall have the same effect in each designated State, with respect to rights conferred by the trademark, as if it was filed and registered under the national law of each such State.[275] The national laws of each Contracting State shall apply to the cancellation of a registration, whether based on non-use or any other grounds. Where registration has been cancelled, the Contracting State concerned shall, within one month of cancellation, notify the office. The office shall publish this fact in the Trade Marks Journal and record it in the register.[276] The indication of classes of goods or services

[270] Ibid Section 7(1) Banjul Protocol
[271] Ibid Section 7(2) Banjul Protocol
[272] Ibid Section 7(3) Banjul Protocol
[273] Ibid Section 7(4) Banjul Protocol
[274]Section 7(5) Banjul Protocol on marks withtin the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018
[275] Ibid Section 8(1) Banjul Protocol
[276] Ibid Section 8(2) Banjul Protocol

provided for shall not bind the Contracting States with regard to the determination of the scope of protection of the trademark.[277]

Where a trademark has been registered by the office or is pending registration in the office, the owner or applicant or, where applicable, his successor in title, shall have the right to designate any other State which becomes a party to this Protocol subsequent to the registration or filing of the application for registration of the trademark.[278] Where, the owner of a registered trademark or applicant for registration of a trademark designates any other State which becomes a party to this Protocol, such later designation shall be deemed to be an application for the registration of a trademark with respect to the State so designated and shall accordingly be subject to examination under the national law of such designated State as provided for under Section 6.[279] In such a case, the filing date of the application in the State so designated shall be the date on which the application for later designation is received.[280]

From the foregoing, it is clear that trademarks may be filed at the regional level under the auspices of the Banjul Protocol, which serves as the primary legal instrument for regional trademark registration in Africa. Under this system, an applicant may submit a single application designating specific Contracting States,

[277] Ibid Section 8(3) Banjul Protocol

[278] Section 9(1) of the Banjul Protocol and Rule 9(1) and (2) of the Regulation for implementing the Banjul Protocol 1995 as amended in the year 2018 which provides that (1) "The application for the later designation as provided in Section 9 of the Protocol shall be made on Form No. M3 and shall be subject to payment of the prescribed fees" (2) provides that "The contracting state subject to a later designation shall examine the application for registration which shall be contained in Form No. M3, under national law."

[279] Banjul Protocol, on marks with the framework of the African Regional Industrial Property Organization (ARIPO) 1979 as amended in the year 2018

[280] Ibid Section 9(2) of the Banjul Protocol

either directly to the ARIPO Office or through the industrial property office of a Contracting State. Tanzania has been a member of the Banjul Protocol since 1999, signifying its formal participation in the regional trademark framework, although the Protocol is yet to be fully implemented at the domestic level. This procedural arrangement enables businesses and individuals to seek trademark protection in multiple jurisdictions through a centralized filing process, thereby simplifying regional access to trademark rights.

Having understood the procedural mechanisms for trademark filing at the regional level, it is now necessary to examine the administrative body responsible for managing and overseeing trademark registration within the ARIPO framework. This analysis is essential for understanding the institutional infrastructure that supports regional trademark protection and its relevance to national systems such as that of Tanzania.

3.5 Institution Governing Trademark at Regional Level

As previously discussed, Banjul protocol[281] serves as the principal regional legal instrument for the registration of trademarks in Africa. This Protocol operates under the framework of the African Regional Intellectual Property Organization (ARIPO), which is mandated to administer regional intellectual property systems among its member states. In line with the objectives of this study, it is important to examine ARIPO as the administrative institution responsible for receiving, processing, and coordinating applications filed under the Banjul Protocol. A clear understanding of

[281] Banjul Protocol Banjul Protocol on marks within the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018

ARIPO's institutional structure and operational functions is critical for assessing how regional trademark registration is managed and how this may intersect with national practices particularly in the Tanzanian context. The analysis of ARIPO's governance mechanisms, its role in facilitating regional cooperation, and its approach to trademark administration will provide insight into the broader institutional dynamics influencing the effectiveness and accessibility of regional trademark systems in Africa.

3.5.1 The African Regional Intellectual Property Organization

The African Regional Intellectual Property Organization (ARIPO) is an intergovernmental organization (IGO) established to promote cooperation among African states in the field of intellectual property (IP). Its primary objective is to facilitate the effective use and protection of IP rights as a means of fostering economic, social, technological, scientific, and industrial development across the continent. ARIPO enables member states to pool financial, technical, and human resources, thereby creating a shared institutional framework for administering various forms of intellectual property, including trademarks, patents, industrial designs, and traditional knowledge. By centralizing certain administrative functions, ARIPO seeks to reduce duplication of efforts at the national level and to promote the harmonization of IP laws and procedures among member states[282] The organization also plays a strategic role in capacity-building, legal harmonization, and policy development, helping member countries align their domestic IP systems with international and regional standards. Through instruments such as the Banjul

[282] www.aripo.org assessed on 20/3/2018

Protocol on Marks, ARIPO offers mechanisms for regional trademark registration, providing applicants with an option to secure protection in multiple countries through a single, streamlined process.[283]

In the context of this study, ARIPO's role in administering the Banjul Protocol is particularly relevant, as it informs the institutional dynamics that influence trademark registration at the regional level and its potential intersection with national administrative structures, such as the Registrar of Trademarks in Tanzania.[284] The origins of the African Regional Intellectual Property Organization (ARIPO) trace back to the early 1970s, beginning with a Regional Seminar on Patents and Copyright held in Nairobi.[285] That seminar recommended the establishment of a regional industrial property organization set up.[286]

In 1973, the United Nations Economic Commission for Africa (UNECA) and the World Intellectual Property Organization (WIPO) responded to a request by these English-speaking countries for assistance in pooling their resources in industrial property matters by initiating the establishment of a regional organization.[287] Following a number of meetings at the Economic Commission for Africa (ECA) headquarters in Addis Ababa and at WIPO in Geneva, a draft agreement on the creation of the Industrial Property Organization for English-speaking Africa (ESARIPO) was prepared.[288] This agreement now known as the Lusaka Agreement

[283] Ibid
[284] Op cit www.aripo.org assessed on 20/3/2018 at 6.44pm
[285] Ibid
[286] Op cit www.aripo.org assessed on 20/3/2018 at 6.44pm
[287] Ibid
[288] Ibid

was adopted at a Diplomatic Conference held in Lusaka, Zambia, on December 9, 1976.[289]

The African Regional Intellectual Property Organization (ARIPO) was primarily established to enable member countries to pool their resources in industrial property matters, thereby avoiding the duplication of financial and human efforts. This objective is clearly articulated in the Preamble to the Lusaka Agreement,[290] which affirms that the member states are "aware of the advantage to be derived by them from the effective and continuous exchange of information and the harmonization and coordination of their laws and activities in industrial property matters."[291] Furthermore, the member states recognized that "the creation of an African regional industrial property organization for the study, promotion of, and cooperation in industrial property matters would best serve" this goal. The establishment of ARIPO thus reflects a shared commitment among its members to promote collective advancement in the administration, development, and enforcement of intellectual property rights across the region.[292]

In determining its objectives, the founding members of the African Regional Intellectual Property Organization (ARIPO) took into account the reality that, at the time of its creation, the majority of the member countries had "dependent industrial property legislations." These legal frameworks did not permit the original grant or

[289] Ibid
[290] Agreement on the Creation of the African Regional Intellectual Property Organization (Lusaka Agreement) (signed 9th December, 1976, entered into force 15th February, 1978)
[291] African Regional Intellectual Property Organization (ARIPO), About ARIPO http://www.aripo.org accessed on 20th March, 2018
[292] African Regional Intellectual Property Organization (ARIPO), About ARIPO http://www.aripo.org accessed on 20th March, 2018

registration of industrial property rights within the respective countries. Instead, such rights could only be extended to their territories based on grants or registrations obtained in foreign jurisdictions.[293]

The objectives of ARIPO, as articulated in Article III of the Lusaka Agreement,[294] emphasize that cooperation in the field of industrial property is designed to promote technological advancement as a means to support the economic and industrial development of the member states. The organization's mission, therefore, is rooted in empowering African nations to build autonomous and efficient intellectual property systems aligned with their developmental goals.

This cooperation is reflected in the objectives of the organization which are:- (i) to promote the harmonization and development of the industrial property laws, and matters related thereto, appropriate to the needs of its members and of the region as a whole;[295] (ii) to foster the establishment of a close relationship between its members in matters relating to intellectual property;[296] (iii) to establish such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the industrial property activities affecting its members;[297] (iv) to establish schemes for the training of staff in the administration of industrial property laws;[298] (v) organize conferences, seminars and other meetings on intellectual

[293] Ibid
[294] Lusaka Agreement (n 279)
[295] Agreement on the Creation of the African Regional Intellectual Property Organization (Lusaka Agreement) (1976), Article III(a)
[296] Lusuka Agreement (n284) Article III(b)
[297]Lusuka Agreement (n 284) Article III (c)
[298] Lusuka Agreement (n 284) Article III(d)

property matters;[299] (vi) to promote the exchange of ideas and experiences, research and studies relating to intellectual property matters;[300] (vii) to promote and evolve a common view and approach of its members on intellectual property matters;[301] (viii) to assist its members, as appropriate, in the acquisition and development of technology relating to intellectual property matters;[302] (ix) to promote, in its members, the development of copyright and related rights and ensure that copyright and related rights contribute to the economic, social and cultural development of members and of the region as a whole;[303] and (x) to do all such things as may be desirable for the achievement of these objectives.[304]

From the objectives outlined above, it is evident that the central theme running through ARIPO's mandate is cooperation. The concept of cooperation is not only foundational to the establishment of the organization[305] but also plays a crucial role in shaping its operational functions and strategic direction. By fostering collaboration among its member states, ARIPO aims to strengthen collective capacity in the administration and development of intellectual property systems across the region.

Furthermore, as previously discussed, Tanzania is a member state of ARIPO. This membership signifies Tanzania's commitment to the ideals of regional integration and cooperation in intellectual property matters, and it forms an essential backdrop

[299] Lusuka Agreement (n 284) Article III(e)
[300] Lusuka Agreement (n 284) Article III(f)
[301] Lusuka Agreement (n 284) Article III(g)
[302] Lusuka Agreement (n 284) Article III(h)
[303] Op cit Lusuka Agreement Article III(i)
[304] Ibid Article III(j) Lusaka Agreement, 1976
[305] www.aripo.org accessed on 21/3/2018 at 4.14pm

for examining the country's engagement with regional mechanisms such as the Banjul Protocol on Marks.

3.6 The Relevance of Examining Trademark Registration within the Regional Regime

The examination of trademark registration within the regional regime is relevant to this thesis because Tanzania is a member of the Banjul Protocol but has not incorporated the instrument into its domestic legal framework. This position raises a key question for the study, namely the extent to which regional trademark mechanisms correspond with, or diverge from, Tanzania's legislative framework.

The Banjul Protocol therefore provides an essential reference point for understanding how regional commitments interact with national trademark law. Its consideration enables the thesis to situate Tanzania's legislative framework within the broader regional context and to evaluate the position of the Registrar of trademarks in relation to regional obligations.

3.7 Conclusion

In summary, this chapter has examined the global and regional legal and institutional frameworks governing trademark registration. At the international level, the analysis focused on the Madrid Agreement, its Protocol, and the Common Regulations, which together form the Madrid System. This system enables trademark owners to seek protection in multiple jurisdictions through a single, centralized application administered by the World Intellectual Property Organization (WIPO).

However, Tanzania is not a member of the Madrid System. As a result, Tanzanian applicants cannot access the international registration route provided under that system and must instead file separate applications in each foreign jurisdiction. This places increased procedural and financial burdens on applicants and further underscores the importance of a well-functioning national trademark system. Notably, under the Madrid System, international filing is only possible if the trademark has first been registered at the national level highlighting the importance of administrative efficiency and legal certainty within the national trademark office.

At the regional level, the study examined the Banjul Protocol under the African Regional Intellectual Property Organization (ARIPO), which provides a streamlined procedure for filing trademarks across multiple African countries. The Protocol permits both residents and non-residents of Contracting States to file applications, provided that proper legal representation is secured. Unlike the Madrid System, it does not require prior national registration. However, although Tanzania is a signatory to the Banjul Protocol, it has not yet implemented it domestically. As a result, ARIPO-based registrations are not currently enforceable in Tanzania, and all trademark applications must still be filed through the national Registrar.

This chapter has also explored the international and regional administrative bodies responsible for managing trademark systems WIPO at the international level and ARIPO at the regional level. These institutions operate based on principles of cooperation, harmonization, and administrative efficiency. Their functions provide important comparative insights for evaluating Tanzania’s domestic framework. Crucially, however, it must be emphasized that while international and regional

systems often include structured oversight and procedural checks, Tanzania's national trademark system lacks clear and effective mechanisms for controlling the administrative powers of the Registrar of trademarks. The Trade and Service Marks Act, which governs trademark registration in Tanzania, grants significant discretion to the Registrar of trademarks but provides limited or no explicit control mechanisms to oversee or review how that discretion is exercised. This institutional gap poses serious challenges to transparency, fairness, and administrative accountability.

In this context, the regional trademark framework particularly the ARIPO system offers more than just comparative value; it presents practical procedural and institutional models that Tanzania could adapt to strengthen its national trademark regime. Mechanisms such as centralized filing, structured opposition processes, and enhanced legal harmonization among member states exemplify how regional cooperation can inform legislative reform at the domestic level. Thus, the regional analysis not only highlights Tanzania's current limitations but also provides a foundation for forward-looking legal reforms.

Accordingly, this gap forms the core problem addressed in the present study. The next chapter will examine the legal basis and scope of the Registrar of trademark's powers in Tanzania, and assess the absence of adequate control mechanisms, with the aim of identifying areas for legal and institutional reform.

CHAPTER FOUR

LEGAL AND INSTITUTIONAL FRAMEWORK ON TRADEMARKS IN MAINLAND TANZANIA

4.1 Introduction

Tanzania's legal system is grounded in the common law tradition, inherited from English legal principles, including those governing intellectual property rights such as trademarks. Trademark legislation serves as the primary legal framework through which exclusive rights are conferred upon trademark proprietors. These rights protect trademarks as intangible assets capable of generating future revenue, enhancing business identity, and securing market competitiveness.

With the rapid expansion of open markets in Tanzania, there has been a significant increase in both local and foreign investment across various sectors. As businesses grow, so does the need to protect their distinctive brands and services key components of commercial identity against unfair competition and unauthorized use. Effective trademark protection is crucial not only for brand recognition but also for fostering investor confidence in a liberalized market environment.

However, this protection can only be meaningful if the trademark law ensures administrative efficiency. This includes the imposition of clear timelines on the Registrar of Trademarks and providing legal avenues to challenge undue delays in registration and decision-making processes. Unregulated discretionary powers and procedural inertia can undermine both the integrity of the trademark system and the economic interests of rights holders. Accordingly, this chapter examines the current legal framework governing trademark registration and administration in Tanzania. It

will explore the structure, scope, and content of the governing statute the Trade and Service Marks Act with a particular focus on the powers vested in the Registrar of Trademarks and the extent to which such powers are subject to legal controls or procedural safeguards.

4.2 Laws Governing Trademarks in Tanzania

The principal legal framework governing trademarks in Tanzania is the Trade and Service Mark, Act,[306] which outlines the procedures for trademark registration, the rights conferred upon proprietors, and the powers of the Registrar of trademarks. Before delving into the specifics of this statute, it is important to consider its foundation within the broader constitutional framework of the country. As the supreme law, the constitution of the United Republic of Tanzania[307] provides the legal and normative basis upon which all other legislation, including intellectual property laws, must align. Therefore, this section begins by examining the constitutional[308] status of property rights, with a view to determining whether trademarks are recognized as a form of property under Tanzanian constitutional law.[309]

4.2.1 Constitution of United Republic of Tanzania, 1977

The Constitution of a nation is its most fundamental legal document.[310] It is the supreme law on which all other laws are based.[311] At times, it is referred to as a

[306]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 and the Trade and Service Mark Regulation, G.N. No.40 of 2000 of the Laws of Tanzania
[307]1977 as amended from time to time
[308] Ibid
[309] Ibid
[310]Prof Chris Maina Peter, Constitution Making In Tanzania: The Role of the People in the Process, University of Dar es Salaam, August, 2000 at Pg 4 accessed from www.repository.out.ac.tz accessed on 6/1/2022 at 6.27PM
[311]Ibid

social contract between the rulers and the ruled.[312] It is also the consensus among the people themselves.[313] It is also the consensus among the people themselves. The Constitution creates three independent and separate arms of government: the executive, the legislature, and the judiciary.[314] The Tanzanian Constitution sets out the applicable law of the land. The legislature has the duty to enact or amend laws,[315] the executive has the duty to implement them, and the judiciary exercises judicial authority.[316] Furthermore, the judiciary interprets the law and adjudicates disputes.[317] Moreover, the courts are guided by the Constitution of the United Republic of Tanzania, statutes, common law, and the doctrine of Equity.[318]

The Constitution guarantees that every person has the right to acquire and own property.[319] Property includes Intellectual Property (IP).[320] Intellectual Property is divided into the following branches: Trademark, Patent, Copyright and related rights, Geographical Indications, Industrial Design, and Trade Secrets.[321] There are three types of property that can be owned by a person or entity.[322] The first two types are real property (i.e., land and materials that are attached or fixed to the land) and

[312]Prof Chris Maina Peter, Constitution Making In Tanzania: The Role of the People in the Process, University of Dar es Salaam, August, 2000 at Pg 4 accessed from www.repository.out.ac.tz accessed on 6/1/2022 at 6.27PM
[313]Ibid
[314]Article 4 and Chapter two, three and Chapter five of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.
[315]Article 64(1) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.
[316]Article 107 of the Constitution of United Republic of Tanzania, 1977 as amended from time to time
[317]Ibid
[318]Section 2(3) of Judicature and Application of Laws, 1961 Chapter 358 R.E.2019
[319]Article 24 of the Constitution of United Republic of Tanzania, 1977 as amended from time to time
[320]Intellectual Property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial Property which includes patents for inventions, trademarks, industrial designs and geographical indications. Copyright covers literary work (such as novels, poems and plays,), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recording, and broadcasters in their radio and television programs. Quoted from www.wipo.int/edocs/pubdocs/en/ accessed on 29/08/2020 at 5.18PM
[321]www.researchgate.net accessed on 22/01/2021 at 5.55PM
[322]Andrew Bloomenthal, Property, updated on 24th January, 2022 accessed from www.investopedia.com/terms/p/property.asp accessed on 7/7/2022 at 1.36PM

chattel, also sometimes known as personal property (*i.e*. movable goods).[323] Ownership and the rights associated with ownership of these are relatively straightforward.[324] In general, ownership of these types of property means the right to possess, enjoy, sell, and exclude others from doing the same.[325] The third type of property that can be owned by a person or entity is Intellectual Property (IP).[326]

Ownership of Intellectual Property cannot be crystallized or defined as clearly as the other two types of property because the property itself is intangible it cannot be held, touched, or defined by physical boundaries. Instead, Intellectual Property refers to the ownership interest that a person or entity may have in a creation of the human mind.[327] Ownership of Intellectual Property means ownership of a concept or idea rather than ownership of a physical object or parcel of land. Of course, like real property and chattels, Intellectual Property can be sold or otherwise conveyed.[328] Intellectual Property is usually initially owned by the person who conceived the idea or concept that is the subject of the IP, although it can be transferred or released through agreement, transaction, operation of law, or the passage of time.[329] While it is held, ownership of Intellectual Property allows its owner to exclude others from using the ideas or concepts that comprise the (IP). Depending on the type of Intellectual Property and the governing law, this right may be limited to preventing

[323]Law Sheif National Paralegal collage, online article "What is Intellectual Property" accessed from www.lawsheif.com. on 7/7/2022 at 2.07PM
[324]Ibid www.lawshelf.com accessed on 24/08/2020 at 2.30PM
[325]Ibid
[326]Ibid
[327]Lawshelf, National Paralegal College, online article on "What is Intellectual Property" accessed from www.lawshelf.com accessed on 24/08/2020 at 2.30PM
[328]Ibid
[329]Ibid

others from using the IP for commercial purpose.[330]

This analysis affirms that the Constitution of the United Republic of Tanzania,[331] recognizes trademark as enshrined under Article 24 which provides that, every person is entitle to own property and property also falls under the ambit of Intellectual Property (IP) which includes also trademarks. This concludes that, the Constitution of United Republic of Tanzania[332] recognizes Intellectual Property (IP) which also includes trademarks. In light of this constitutional recognition, it becomes necessary to examine the specific legislation governing trademarks in Tanzania. The following section focuses on the Legal, Institutional and Practical Challenges in the Registration of Trademarks in Mainland Tanzania.

4.2.2 Trade and Service Mark Act, 1986[333]

The Trade and Service Marks Act, 1986 is the primary legislation governing the registration, protection, and enforcement of trademarks in Tanzania.[334] This Act confers broad administrative and regulatory powers upon the Registrar of Trade and Service Marks, establishing the framework for trademark administration in the country.[335] Under the Act, the President of the United Republic of Tanzania is empowered to appoint the Registrar of Trade and Service Marks, who is responsible for exercising the powers and performing the duties prescribed by the Act.[336] The

[330]Lawshelf, National Paralegal College, online article on "What is Intellectual Property" accessed from www.lawshelf.com accessed on 24/08/2020 at 2.30PM
[331]1977 as amended from time to time
[332]Ibid
[333]Chapter 326 R.E. 2002
[334]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[335]Section 4(1) of Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021
[336] Op cit Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

Registrar is charged with the general administration of the Act, including the examination of trademark applications,[337] registration of marks, maintenance of the trademarks register,[338] and oversight of related proceedings.

The specific powers and responsibilities vested in the Registrar under the Trade and Service Marks Act will be discussed in detail in the sections that follow. The powers imposed upon the Registrar shall be discussed as hereunder: Pursuant to the Trade and Service Mark Act, 1986[339] the Registrar of Trade and Service Marks is vested with the authority to oversee a registry wherein all conferred trade and service marks are recorded. Once a mark is granted,[340] it must be registered accordingly. The Registrar of trademarks is further charged with maintaining detailed records of proprietors, including their names, addresses, descriptions, and all relevant notifications concerning the assignment and transmission of such marks.[341]

A prominent example is found in the case of F. Reddaway & Co Ltd,[342] where the English Attorney General represented the Registrar of Trademarks before Lord Dunedin. Notably, the Attorney General identified himself as acting on behalf of the Registrar in an administrative role. The court clarified that the Registrar's appearance in such proceedings is not to advocate for any factual findings but solely to aid the

[337] Section 26 of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[338] Section 6(1) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[339] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[340] Section 6(1) of Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[341] Section 40 of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[342] Application, 1972

court in interpreting or clarifying the trademark registry's records.

Another illustrative can be seen in application of Union Carbide & Carbons[343] in which the court affirmed that "*the registry is being controlled and managed by the Registrar of Trademarks."* The court further emphasized that "one of the major objectives of the Registrar of Trademarks is to keep the purity of the register intact." This underscores the Registrar's critical role in maintaining the integrity and accuracy of the trademark registry.[344]" The analysis above demonstrates that under the trademark law of Tanzania, the Registrar of trademarks functions as an administrative officer endowed with the legal mandate to manage and preserve the trademark registry. This includes overseeing all documentation related to the registration, assignment, and transfer of trademarks.

The Registrar of trademarks is also empowered to refuse the registration of a trademark on the grounds of potential confusion or deception. This authority is exercised where the proposed trade or service mark, if registered and used, is likely to mislead the public regarding its nature, geographical origin,[345] or other essential characteristics. Moreover, the Registrar's discretion extends further to include refusals based on contraventions of law[346] or morality or where the trade mark is inherently misleading as to its nature, origin, or manufacturing process.[347]

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[343] (1952) RPC 310
[344] The same was observed in the case of Union Carbide & Carbon Corp's Application (1952) RPC 310
[345]Section 19(1) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[346] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021of the Laws of Tanzania
[347] Ibid

In light of the preceding analysis, it is evident that the Registrar of trademarks possesses the discretionary authority to refuse registration where, in their professional judgment, the proposed trademark is deceptively or confusingly similar to an existing mark. This power underscores the Registrar's pivotal role in safeguarding the integrity of the trademark registry and preventing consumer deception.

In addition to the power to refuse registration on the grounds of similarity and likelihood of confusion, the Registrar of trademarks may also reject applications that involve geographical names. Geographical terms are generally prohibited from registration as trademarks because a trademark is intended to identify the origin of goods from a specific trader.[348] If a geographical name is used, it could mislead consumers into believing that the goods originate from that location, thereby causing deception and undermining the function of the trademark.[349]

The Trade and Service Marks[350] provides that, the trade or service mark cannot be registered if the use of it would likely cause confusion as to the geographical origin. Under such circumstances, the Registrar of trademarks will refuse the registration of such trade or service mark. It is important to note that, one of the cardinal principles supplied by the trademark legislation in granting power to the Registrar of trademarks is to refuse a trademark which connects under the ambit of geographical origin. Based on the statutory provisions support the Registrar's power to refuse the

[348]Dr. B.L. Wadehra, Patents, Trademarks, Copyright, Design & Geographical Indications, 2nd Ed, Universal Law Publishing Co. Pvt Ltd, 2000, India at Pg 184
[349]Ibid
[350]Section 19(a) of the Trade and Service Mark Act No.12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

registration of a trademark when it appears to suggest a misleading geographical origin. This power is central to the legislative aim of ensuring that trademarks function as accurate indicators of trade origin.

In addition to the Registrar's power to refuse trademark applications particularly those that imply a misleading geographical origin the trademark legislation also grants the Registrar the authority to advertise trademark applications in the Trademark Journal. This procedural step plays a critical role in the trademark registration process by promoting transparency and safeguarding the rights of existing trademark holders.

Advertising a trademark application allows for public scrutiny and enables third parties, including owners of prior rights, to raise objections. The purpose of this requirement is to ensure that all relevant data contained in the trademark register such as applications, registrations, renewals, and changes of name, address, or ownership is made publicly available through publication in the journal or gazette.[351] This enables interested parties to take appropriate action, including lodging oppositions during the statutory period or initiating cancellation proceedings where necessary.[352] The publication of an application must include key information: the name and address of the applicant, a graphical representation of the trademark, the goods or services grouped according to the established classification system, any color claims, and whether the mark is three-dimensional or claims priority based on

[351] World Intellectual Property Organization WIPO, "Introduction to trademark Law and Practice the Basic Concepts, 2nd Ed, Geneva, 1993 at Pg 42 accessed from http://www.wipo.int on 30/09/2021 at 7:02PM

[352] Ibid

earlier filings[353] A well-maintained and transparent register depends on accurate and up-to-date entries for both registered and pending applications, regardless of the medium in which the data is stored.[354]

An application for registration of a trade or service mark requires to be advertised in the trademark journal. To effect registration, the applicant shall be required to pay the prescribed fees.[355] The law on trade and service marks[356] provides that, upon filing of an application for registration of a trade mark or service mark and the payment of the prescribed fees, the Registrar of trademarks shall cause an examination to be made as to conformity with the formalities required. If upon the examination it appears that, the applicant is entitled to registration of his trade or service mark, the Registrar of trademarks shall accept the application and cause the trade or service mark application to be advertised in the trademark journal for the statutory opposition period of 60 days.[357]

This observation underlines the procedural fairness embedded in trademark registration processes. The requirement to advertise an application before adjudicating issues such as likelihood of confusion ensures that all potentially affected parties have the opportunity to present evidence and contest the registration. It reflects the principle that trademark law must balance administrative efficiency with procedural justice and public participation.

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[353] Artice 4 of the Paris Convention (1883)

[354] World Intellectual Property Organization WIPO- "Introduction to trademark Law and Practice the Basic Concepts, 2nd Ed, Geneva, 1993 at Pg 42 accessed from http:www.wipo.into on 30/09/2021 at 7.02PM

[355] Sarkar, Trademarks Law and Practice, 4th Ed, Kamal Law House, 2000, India at Pg 433

[356] Section 26(1) of Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

[357] Section 34 of the Regulation of Trade and Service Marks Act, 2000 (G.N. No. 40 of 2000)

The power to advertise a trademark application must be understood in its proper context. It does not bestow legal ownership or exclusivity to the applicant, but rather acts as a safeguard mechanism. The purpose is to inform the public and give interested parties an opportunity to oppose the registration if it infringes upon existing rights. In this way, the advertisement serves more as a checkpoint than a conclusion in the registration process.

Following the earlier discussion on the standard procedure of advertising a trademark application after acceptance, it is important to note that trademark legislation also grants the Registrar discretionary authority to advertise an application prior to formal acceptance. While post-acceptance advertisement serves to notify the public following a preliminary determination of registrability, advertisement before acceptance (ABA) performs a more cautious, investigative function. It allows the Registrar to invite public scrutiny where the registrability of a trademark is uncertain particularly in cases involving borderline distinctiveness or potential conflict with existing marks.

A trademark under the "Accepted but Advertised" (ABA) status is published in the Trademark Journal with implicit reservations. This step begins the opposition period, allowing for public objections.[358] The Registrar typically invokes ABA when unsure about the mark's distinctiveness or potential conflict with prior marks. Here, publication functions less as approval and more as a procedural safeguard to elicit possible objections.[359]

[358] Raja Selvam, "Trademark Application Status" Advertised Before Acceptance or ABA, published on 13th October, 2014 and accessed from http://selvams.com accessed on 21/10/2021 at 7:25PM
[359] Ibid

Trademark opposition proceedings often highlight the fact that a mark was advertised before acceptance, suggesting that the Trademark Office harbored doubts about its registrability. Such advertising typically indicates concerns about the mark's distinctiveness or similarity to existing trademarks. However, if no opposition is raised, the distinction between a mark advertised before acceptance and one accepted outright becomes irrelevant both proceed to registration without prejudice.[360] The ABA designation holds procedural significance primarily at the opposition stage, reflecting the Registrar's lack of full endorsement.[361] it may also acquire evidentiary value in post-registration challenges such as cancellation or rectification petitions where the advertisement-before-acceptance status could be construed as a ground for questioning the mark's initial validity.[362]

The discussion thus far shows that when the Registrar harbors reservations about a mark's registrability, they may order its publication before formal acceptance. This power is grounded in the Trade and Service Marks Act.[363] The Trade and Service Marks Act provide that: -

> *"Where the Registrar notifies the applicant of his objection, he may, following representation by the applicant, indicate his willingness to accept the application subject to such amendment, modifications, conditions or limitations as he may deem fit. If the applicant does not object to such conditional acceptance and amends his application accordingly, the Registrar shall cause the application to be advertised in the trademark journal, provided that the Registrar may cause an application to be advertised before acceptance in any case where he considers there are exceptional circumstances for so doing.*[364]"

[360] Raja Selvam, "Trademark Application Status" Advertised Before Acceptance or ABA, published on 13th October, 2014 and accessed from http://selvams.com accessed on 21/10/2021 at 7:25PM
[361] Ibid
[362] Ibid
[363] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[364] Section 26(4) of Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the

From the foregoing, it is clear that the power vested in the Registrar of trademarks to advertise a trademark before acceptance is invoked in situations where there exists a degree of uncertainty concerning the registrability of the mark. This procedural mechanism serves a critical function: it enables the Registrar to solicit public input particularly in relation to potential similarity with prior marks before making a final determination. The essence of this power lies in the principle of transparency and participatory review, ensuring that the trademark register reflects only marks that withstand scrutiny not only from the office but also from third parties.

The Registrar of trademarks is also vested with statutory authority to remove a registered trademark from the register on the ground of non-use. It is imperative to understand the specific conditions under which this power may be exercised. Under trademark legislation[365] a registered trademark that has not been put to bona fide use within the prescribed statutory period typically from the date of registration or within a continuous period thereafter becomes vulnerable to removal.

The object of the provision of the trademark law[366] is that, a person cannot be permitted to register a trademark when he has not used it in relation to the goods or services in respect of which it is sought to be registered or does not intend to use it in relation to those goods or services, as the registration confers valuable rights upon the registered proprietor.[367] If a trademark is registered without any *bona fide*

Laws of Tanzania

[365] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

[366] Ibid

[367] http: www.trustman.org accessed on 7/3/2016

intention to use, and not used, or if it has not been continuously for a period of more than five years it may be removed on the grounds of non-user.[368]

In addition to the Registrar's discretionary power, it is essential to recognize that any interested party may initiate cancellation proceedings if a trademark owner fails to use the mark within the statutory grace period prescribed period provided for in the trademark law,[369] any interested party can, in principle, ask for its cancellation.[370] In such cases, the burden shifts to the registered proprietor to either demonstrate genuine use of the trademark or justify the reasons for non-use. Should the owner fail to do so, the court may order complete cancellation of the registration[371] However, if the owner establishes use or justifies non-use with respect to only some of the registered goods or services, the court may direct partial cancellation.[372] Such partial cancellation applies either to all goods for which use cannot be proven or to those not similar to the goods in actual use.[373]

Building upon the above, it is of principal importance to understand how the trademark law[374] has mandated power upon the Registrar of trademarks to remove a trademark for non-use. The Trademark Act[375] provides that, a registered trade or service mark shall be removed from the register in respect of any of the goods or

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[368] P. Naraayanan, Intellectual Property Law, 3rd Ed, Eastern Law House, 2001, India at Pg 195
[369] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[370] World Intellectual Property Organization (WIPO), Training manual on Trademark Law and Practice, 2nd Ed, Geneva, 1993 at Pg 65 accessed from http://www.wipo.int on 30/11/2021 at 7:17PM
[371] Ibid
[372] World Intellectual Property Organization (WIPO), Training manual on Trademark Law and Practice, 2nd Ed, Geneva, 1993 at Pg 65 accessed from http://www.wipo.int on 30/11/2021
[373] World Intellectual Property Organization (WIPO), Training manual on Trademark Law and Practice, 2nd Ed, Geneva, 1993 at Pg 65 accessed from http://www.wipo.int on 30/11/2021
[374] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[375] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

services in respect of which it is registered on application by an aggrieved person to the court or, at the option of the applicant under the provisions of section 55[376] of this Act,[377] to the Registrar of trademarks, on the ground that, up to one month prior to the filling of the application a continuous period of three years or longer had elapsed during which the registered proprietor did not use the trade or service mark in relation to those goods or services, provided that, failure to use the trade or service mark shall not be taken into account where- (a) it is attributable solely to special circumstances preventing use of the trade or service mark and not to any intention to abandon or not use the trade or service mark, or

(b) the non-use is within five years from the date of first advertisement of the trade or service mark in accordance with section 28[378] or within the period from such date extended to two years from the date of the final decision on the registration whichever period expires later. A practical illustration of the Registrar's statutory power to remove a trademark for non-use can be found in the case of Kouk Oil and Grains Pte Ltd.v. Murzah Oil Mills Limited.[379] In this case, the applicant petitioned

[376]Section 55 of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania which provides that where under any of the foregoing provisions of this Act an applicant has an option to make an application either to the court or to the Registrar and such application is made to the Registrar, the Registrar may, at any stage of the proceedings, refer the application to the court or may, after hearing the parties, determine the question between them, subject to appeal to the court.

[377] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

[378]Section 28(1) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania which provides that when an application for registration of a trade or service mark has been accepted, and either- (a) the application has not been opposed and the time for notice of opposition has expired; or (b) the application has been opposed and the opposition has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error register the trade or service mark, and the trade or service mark, when registered, shall be registered as of the date on which the application for registration was received, and that date shall be deemed, for the purposes of this Act, to be the date of registration, provided that the foregoing provisions of this subsection, relating to the date to be deemed to be the date of registration, shall, as respects a trade or service mark registered under this Act with the benefit of priority under the Convention, have effect subject to the provisions of the Convention.

[379]Civil Reference No. 14/2002

the Registrar for the removal of the trademark "KORIE," registered in the name of Murzah Oil Mills Ltd. The court upheld the request, holding that: "The lifespan of the trademark had elapsed and therefore the Registrar of Trademarks under the trademark law can bite and remove the trademark from the registry." This decision underscores that once the prescribed period of non-use has passed, the Registrar is empowered to act under statutory mandate.

Another instructive illustration is found in the case of Fatima Tile Works.v. Sudarsan Trading Co Ltd,[380] where the trademark in question was originally registered in the name of Madura Company Ltd, trading as Feroke Tile Works, Calicut, and had been consistently renewed over time. The petitioner sought removal of the trademark, which had been subsequently assigned to Sudarsan Trading Co. (STC), alleging improper assignment and non-use. However, the court rejected the petition, holding that the use of the trademark by STC constituted legitimate and continuous use, as such use by an assignee falls within the ambit of valid commercial use under trademark law. It was found that the petitioner failed to establish a sufficient case for removal, and accordingly, the Registrar lacked grounds to remove the mark from the register. This case underscores the principle that genuine use by an assignee or successor-in-interest is legally recognized and can protect a trademark from cancellation due to non-use.

This case neatly complements the earlier ones, offering a defensive perspective on how to retain trademark protection through proper assignment and consistent use.

[380]AIR (1992) Mad 12

An important judicial clarification on the meaning of "use" in trademark law is provided in the case of J.N. Nichols Ltd.v. Rose and Thistle[381] In this case, the appellant failed to establish the existence of any "special circumstances" that might justify non-use of the trademark. However, the court provided a significant interpretation of the term "use," holding that it does not necessarily require physical sale or commercial distribution of goods. The court affirmed that mere advertisement of a trademark even in the absence of the goods themselves can be deemed a valid form of trademark use.

As such, an entity may be considered to have used its trademark as long as it advertises the goods, regardless of whether actual sales have taken place. This interpretation expands the scope of what qualifies as genuine use, offering a broader protective umbrella for trademark owners who are engaged in pre-launch marketing or promotional campaigns. This case is particularly useful in contexts where market entry is delayed or where brand promotion precedes product availability a common scenario in sectors like pharmaceuticals,

Based on the above illustrations and statutory framework, it is evident that use is essential to the continued validity of a registered trademark. Once a mark is registered, failure to use it for three years or more can lead to its removal from the register. Such an action can be initiated either through a proceeding before the Registrar of Trademarks or by filing a petition before a competent court. This rule ensures that the trademark register reflects active and enforceable rights, not merely

[381](1993) (II) CHN 395 (Cal) (DB)

speculative claims.

The trademark legislation has also extended power upon the Registrar of trademarks to disclaim a trademark. Before addressing power of the Registrar of trademarks to disclaim a trademark under the trademark law.[382] It is foremost to first understand what amounts to a trademark disclaimer. A disclaimer is a formal declaration by the trademark applicant or registrant indicating that no exclusive rights are claimed over a particular element or component of the trademark. The primary purpose of a disclaimer is to allow registration of a composite mark that includes elements which, standing alone,[383] would be unregistrable such as generic or descriptive terms.

A disclaimer to a certain component of a trademark means that, nobody is entitled to possess exclusive right to that component. Importantly, a disclaimer does not remove the disclaimed component from the mark, nor does it affect the visual or structural integrity of the trademark. Rather, it serves to clarify that no proprietary rights are claimed over the disclaimed element. This disclaimer is recorded on the registration certificate, and the entire trademark taken as a whole remains protected. Notably, an entire trademark cannot be disclaimed, as doing so would defeat the purpose of registration itself.[384]

A trademark disclaimer serves as a renunciation of exclusive rights to a particular element of the mark, whether a word or device, affirming that the applicant makes

[382] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[383] http://www.definition.uslegal.com accessed on 7/3/2016
[384] The United States Patent & Trademark Office, "How to satisfy a disclaimer requirement" accessed from http://www.uspto.gov on 21/3/2016

no proprietary claim over that portion. To fully comprehend the legal framework surrounding trademark registration, it is significant to explore the Registrar's power to issue a disclaimer under the trademark legislation. This authority enables the Registrar to ensure that only inherently distinctive components receive exclusive protection, while others remain available for public use. The Trade and Service Mark Act[385] provides that: -

> *"If a trade or service mark contains a matter or matters common to disclaim the trade or it is of a or service non-distinctive character, in determining whether the trade or service mark should be entered or remain in the register, it shall be required as a condition of its being on the register that, the applicant or the proprietor shall disclaim any right to the exclusive use of any part of the trade or service mark, or to the exclusive use of all or any portion of such trade or service mark as aforesaid to the exclusive use of which he is not entitled; or that, the applicant shall make such other disclaimer as is considered necessary for the purpose of defining his rights under the registration, provided that no disclaimer on the register shall affect any right of the proprietor of a trade or service mark except such as arise out of registration of the trade or service mark in respect of which the disclaimer is made.*[386]

A compelling illustration of the legal implications of disclaimers is found in Merit's case (Merit and Label Trademarks),[387] the court held that, "When the descriptive matters of a trademark overwhelm distinctive matters, disclaimed elements may constitute infringement." In this case, although the overall label design was considered for registration, the court emphasized that the cigarettes would be sold and identified primarily by the name "MERIT," which appeared prominently on the label. The term "MERIT" was characterized as laudatory and hence descriptive raising concerns about its registrability and enforceability. The ruling illustrates that

[385]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[386]Section 18(a) and (b) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021
[387](1989) RPC 687

even disclaimed elements, particularly when they are the dominant feature of the trademark, may still pose legal risks, especially where their use could mislead consumers or suggest exclusivity over inherently non-distinctive terms.

Yet another instructive example is found in the case of Philips Morris Inc's Application,[388] where the Registrar of Trademarks exercised discretionary authority to disclaim certain features appearing on a cigarette packet. These disclaimed elements were determined to be non-distinctive or descriptive, and their continued inclusion in the mark without disclaimer could have unjustifiably restricted the rights of others to use similar, generic features. This case illustrates how the Registrar may proactively impose disclaimers as a tool to maintain the integrity of the public domain and to ensure that exclusive rights are not improperly extended to elements that are common to trade or descriptive in nature. It underscores the protective role played by the Registrar in balancing the interests of trademark proprietors with the broader principles of fair competition.

Another noteworthy illustration is found in the case of SpringWall Case[389] where the court elaborated on the circumstances in which disclaimers serve to balance competing interests. It was held that: "Where the parts or matter in question form an insignificant portion of the trademark as a whole, or the risk of another trader using such portion is trifling, the Registrar of Trademarks seeks to strike a fair balance between the rights of a proprietor and the public interest by disclaiming." This decision highlights the Registrar's discretionary role in ensuring that exclusive rights

[388](1980) RPC 527
[389]Australia High Court 99 C.L.E 300

are not asserted over trivial, commonly used, or non-distinctive elements of a mark. The court emphasized that disclaimers in such contexts are not punitive but protective, preserving the competitive landscape by preventing trademark owners from claiming monopoly over features with minimal distinctiveness or negligible source-identifying capacity.

In addition to the foregoing, it is essential to understand that a trademark disclaimer reflects the principle that certain words such as “flowers,” “mountains,” or other generic or descriptive terms are part of the common linguistic and conceptual pool and cannot be appropriated for exclusive use. Trademark legislation empowers the Registrar to disclaim such terms precisely because they are widely used in commerce and ordinary speech. The purpose of this power is to prevent any individual proprietor from gaining monopolistic control over language or imagery that rightly belongs to the public domain.

The Registrar of trademarks is also vested with the statutory authority to designate certain marks as associated trademarks. Before examining this specific power under trademark legislation,[390] it is essential to understand the concept of associated trademarks. Associated trademarks are trademarks which are registered as associated trademarks in cases where two trademarks registered under same class are identical or so nearly resemble each other as to be likely to deceive or cause confusion if used by a person other than the proprietor in respect of the same goods or description of goods or these are trademarks that are registered in the same class, and are either

[390] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

identical or so nearly resemble each other that their use by different proprietors in relation to the same or similar goods or services could lead to consumer confusion or deception.[391] The association serves to ensure that such marks remain under common ownership and are not assigned separately, thereby protecting the public from the misleading impression that similar marks belong to distinct commercial sources. Furthermore, trademarks filed through separate applications but which exhibit substantial similarity may be registered as associated trademarks at the discretion of the Registrar of trademarks.[392] Likewise, series trademarks submitted under a single application but varying in minor details are deemed to be associated trademarks upon registration.[393]

Although the principle of associating trademarks applies where identical or nearly similar marks are registered within the same class, it is important to note that this condition cannot be applied indiscriminately. A key judicial interpretation is provided in in the case of Birmingham Small Arms Co Ltd's Appl[394] where the court held that: "The condition of association could not be imposed if the goods under consideration were of different description." This decision underscores that the applicability of association is contingent not only on the similarity of marks but also on the nature and description of the goods or services involved. Where the goods are sufficiently distinct, even similar marks may be registered independently without invoking the association requirement. The ruling highlights the need for a contextual

[391] Himanshu Sharma, India Associated Trademarks: Genre of Contemporary Business Structure, published on 30th April, 2014 and accessed from www.mondaq.com on 9/12/2021 at 1.47PM
[392] Ibid
[393] Ibid
[394] (1907) 24 RPC 563

evaluation by the Registrar, balancing the potential for confusion with the commercial realities of differing product categories.

Furthermore, the effect of trademark association is that, once two trademarks are formally associated, they are legally treated as a single unit for most administrative and proprietary purposes. Although they may differ in visual presentation or practical usage, the associated trademarks are, for the purpose of ownership, inseparably linked, and cannot be assigned or transmitted independently of each other.[395] Although trademark law imposes a mandatory obligation to use a registered mark and non-use may result in its removal upon application by an aggrieved party an important exception exists in the case of associated trademarks. Where trademarks are registered as associated, use of one of them may be deemed sufficient to constitute use of the other(s). This principle acknowledges the functional unity of associated marks and prevents penalizing a proprietor who is actively using one trademark while holding others in reserve for strategic or market segmentation purposes.[396]

From the foregoing exposition, it may be conclusively stated that for trademarks to be deemed associated, the most fundamental requirement is that the identical or closely resembling marks must be registered in the name of the same proprietor, and the goods or services to which they relate must fall within the same or similar classification. The doctrine of association is therefore rooted in both proprietorship and commercial similarity. Where the goods or services are clearly distinguishable

[395] Himanshu Sharma, India Associated Trademarks: Genre of Contemporary Business Structure, published on 30th April, 2014 and accessed from www.mondaq.com on 9/12/2021 at 1:47PM
[396] Ibid

or unrelated in nature, the Registrar of trademarks lacks the authority to impose a condition of association. This limitation on the Registrar's discretion was clearly affirmed in the case of Birmingham Small Arms Co Ltd's Appl[397] (Supra), where the court held that the condition of association could not be applied where the goods were of different description. Such decisions serve to safeguard proprietors from arbitrary administrative actions and reinforce the need for a rational and legally grounded basis for invoking trademark association.

From the foregoing discussion on the concept and legal interpretation of associated trademarks, it is now essential to examine the statutory framework governing association under trademark law.[398] The Law of Trade and Service Marks[399] provides that: -

> "*Where a pending trademark or service mark or a trade or service mark registered in respect of any goods or services is identical with another trademark that is registered, or is pending, in the name of the same proprietor in respect of the same goods or service or closely related goods or services, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar of trademarks may at any time require that the trademark or service mark be entered in the register as associated trade or service mark.*[400]"

From the above analysis, it can safely be stated that, as a general rule under trademark law,[401] he registration of identical or deceptively similar trademarks is prohibited to avoid consumer confusion and protect the integrity of the register. However, an important exception arises where the Registrar finds that the trademarks in question though similar or identical are both sought to be registered in

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[397] (1907) 24 RPC 563
[398] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[399] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[400] Section 41(1) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[401] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

the name of the same proprietor and fall within the same or closely related classification of goods or services. In such cases, the Registrar is empowered to register both marks, provided they are formally associated and recorded as such in the register. This mechanism preserves legal clarity by preventing the independent transfer of confusingly similar marks to different owners, while allowing businesses to protect variant brand identities under a unified ownership structure.

In addition to the aforementioned powers, the Registrar of trademarks is also vested with the authority to issue a certificate of registration. This power is exercised upon the applicant's successful compliance with all procedural and substantive requirements prescribed under trademark law.[402] In Tanzania the trademark law provides that, an application for registration of a trademark has been accepted, advertised in the trademark journal and no opposition was raised, the Registrar of trademarks shall cause to be sealed and shall issue to the applicant a certificate in the prescribed form of the registration thereof.[403]

It may be unequivocally to state at this juncture that the Registrar of trademarks is statutorily mandated to issue a Certificate of Registration upon the applicant's fulfillment of all requisite legal and procedural conditions. This includes a successful examination of the application, the absence of opposition during the publication period or, where opposition was raised, a decision rendered in favour of the applicant. Upon satisfaction of these conditions, the Registrar of trademarks is obligated to confer the certificate, thereby formalizing the applicant's exclusive

[402] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[403] Section 28(1)(b) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

rights over the registered mark.

In addition to the powers discussed above, the Registrar of trademarks is further empowered to issue a Renewal Certificate upon compliance with the prescribed statutory conditions. In the context of Tanzanian trademark law[404] provides that, the registration of a trade and service mark shall be for a period of seven years from the date of registration but, may be renewed from time to time.[405] The trademark law[406] further provides that, the Registrar of trademarks shall, on application made by the registered proprietor of a trade or service mark in the prescribed manner and within the prescribed period, renew the registration of trade and service mark for a period of ten years from the date of expiration of original registration or of the last renewal of registration.[407]

The Registrar of trademarks shall notify the registered proprietor in writing of the approaching expiration of the term of registration and of the conditions as to payments of fees and other requirements necessary in obtaining renewal at least six months before the expiration date of the last renewal. Failure to send or receive the reminder, or any error in the reminder, shall not affect the expiration date.[408] The trademark law[409] further provides that, at the time not less than fourteen days and not more than one month before the expiration of the last registration of a trademark, the Registrar of trademarks may, if no fee has been received, send a notice in writing to

[404]Taler M. Raymond, Overseas Business Report (Formally World Trade Information Series) No. 58-42, US Department of Commerce, November, 1965 at Pg 3-4
[405]Section 29(1) of the Trade and Service Marks Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[406]Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[407]Section 29(1) and (2) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[408]Section 52 of the Trade and Service Mark Regulation, 2000
[409]Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

the registered proprietor at his trade or business address as well as at his address for service, if any.[410] Where, at the expiration of one month from the date of expiration of the trademark and fees therein have not been paid, the Registrar of trademarks may remove the trademark from the register as of the date of the expiration of the last registration but, may, upon payment of the renewal fees together with the restoration fees, restore the trademark to the register if satisfied that, it is just so to do, and upon such conditions as he may think fit to impose.[411]

From the foregoing, it is evident that the trademark regime is governed by comprehensive statutory legislation[412] which expressly confers a range of administrative and quasi-judicial powers upon the Registrar of Trademarks. At each procedural stage commencing with the filing and examination of applications, followed by advertisement for opposition, and culminating in the issuance of the certificate of registration the Registrar plays a pivotal role. The legislation thus ensures that the process of trademark registration is carried out under a clearly defined legal framework, with the Registrar acting as the central authority responsible for ensuring compliance, resolving procedural challenges, and upholding the integrity of the register.

4.3 Merchandise Marks Act, 1963[413]

The Merchandise Marks Act, 1963[414] was enacted in Tanzania as a legislative instrument aimed at combating the counterfeiting of trademarks and protecting the

[410]Section 53 of the Trade and Service Mark Regulation, 2000
[411]Section 54 of the Trade and Service Mark Regulation, 2000
[412] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[413] As amended in the year 2007 by the Written Laws (Miscellaneous Amendments No. 2 of No. 19 of 2007
[414] Act No. 20 of 1963

integrity of legitimate trade in Tanzania. Although the Act[415] which was established in the year 1963,[416] it did not come into operation immediately, as required by Tanzanian legislative procedure, due to the non-publication of the commencement notice in the Government Gazette. As a result, the Act only became operational on 15th April 2005, following the long-delayed official publication.[417] In response to growing concerns and critiques surrounding the increasing prevalence of counterfeit and pirated goods, the Act underwent significant amendments in 2007.[418] These amendments were pivotal in broadening the scope of enforcement and introducing practical strategies and regulatory frameworks to tackle counterfeiting more effectively and to align with international standards on intellectual property protection.[419]

Among other things, the 2007 Amendments, introduced the offices of Chief Inspector and other inspectors with various powers to implement the law.[420] The chief inspector has powers which included powers to investigate and cause investigation to be conducted on suspected person who breached the provision of the Act;[421] to initiate proceedings before the court against the suspects as per the provisions of this Act;[422] to examine any person either alone or in presence of another person as he thinks desirable with respect to the matters under this Act;[423] and to demand from the supplier of goods information relating to particular of the

[415] Ibid
[416] Act No. 20 of 1963
[417] G.N. No. 95 of 2005 Published on 8th April, 2005
[418] By Written Laws (Miscellaneous Amendments No. 2 of No. 19 of 2007)
[419] A.N. Mrema, "Recent Legislative Changes in the Trademark Law in Tanzania," Mkono and Company., 2009 at Pg 3 quoted from Nancy.S. Lugeye & Ferdinand.M. Temba, Position of the Law on Consumer Protection Against Counterfeit Cosmetic in Tanzania, Ruaha Law Review (RLR) Vol 5-6 No. 1 (2017-2018)
[420] Section 4 of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 19 of 2007
[421] Act No. 20 of 1963
[422] Act No. 20 of 1963
[423] Ibid

manufacturer of those goods suspected to violate the provision of this Act.[424]

If the supplier fails to supply the information within fourteen days, the supplier would be deemed to be the manufacturer of such goods.[425] The amendment of the law[426] which demands the information of the manufacturer seeks to know the source of the goods and if they turn to be counterfeits, destroy them and disrupt the manufacturing and the chain supply. Moreover, in dealing with counterfeit products, cosmetic inclusive, the Chief Inspector has power to entertain complaints in respect of counterfeited goods by the owner who are injured by the counterfeits; and may conduct summary trial under the procedures laid down in the regulations[427] made by the Minister.[428] Another important change that was introduced by the amendments is that the Minister has been given power to make Regulations for the better implementation of the Act.[429] The regulations[430] may prescribe the procedures for summary proceedings conducted by the Chief Inspector on complaint referred to him on alleged counterfeited goods by the owner of the trademark counterfeited.[431]

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[424] The Merchandise Marks Act, Section 2B (1)(a)-(d) as amended by Section 4(b) of the Written Laws (Miscellaneous Amendments) (No.2) Act No. 19 of 2007

[425] Op cit Section 2B (2) as amended by Section 4 (b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 19 of 2007

[426] Written Laws (Miscellaneous Amendments) (No.2) Act No. 19 of 2007

[427] Nancy.S. Lugeye & Ferdinand.M. Temba, Position of the Law on Consumer Protection Against Counterfeits Cosmetic in Tanzania, Rauha Law Review (RLR) Vol 5-6 No. 1 (2017-2018) at Pg 46

[428] The Merchandise Marks Act, Section 2C as amended by Section 4(b) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 19 of 2007

[429] Ibid Section 18 A (1) as amended by Section 4(c) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 19 of 2007

[430] Merchandise Marks Regulation, 2008, G.N. No. 89 of 2008

[431] Opcit Section 18A (2) (a) as amended by Section 4(c) of the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 19 of 2007

It is been observed that before the year 2007 amendments of the Act,[432] there was no possibility of making any regulations at all.[433] The amendment[434] brought practical solution as in 2008 the Minister made decisive Regulations referred as "Merchandise Marks Regulations, 2008."[435] These Regulations[436] have, to a large extent provided the hope of containing the problem of manufacture and supply of counterfeit goods in the country as they set the detailed legal framework addressing diverse legal issues pertaining to counterfeit goods.[437]

In the year 2010, the Merchandise Marks Regulations, 2008 were amended by the Merchandise Marks (Amendments) Regulation 2010.[438] The Merchandise Marks (Amendments) Regulations, 2010[439] improved the 2008 Regulations by explaining the powers of the Chief Inspector to investigate which, according to the amendment, the Chief Inspector may exercise such powers *suo moto* or upon request and payment of prescribed fees on the breach of the provisions of the Act.[440] Besides, the 2010 Amendment Regulations[441] have introduced prescribed Form *i.e.* Form L for making a claim made under regulation 34 of the 2008 Regulations.[442] Thus, the amendments brought by the 2010 Regulations are few, but have improved the operation of the office of the Chief Inspector and other institutions involved to deal with

[432] Act No. 20 of 1963
[433] A.N. Mrema, "Recent Legislative Changes in the Trademark Law in Tanzania," Mkono & Co, 2009 at Pg 98,3 quoted from Nancy.S. Lugeye & Ferdinand .M Temba, Position of the Law on Consumer Protection Against Counterfeits Cosmetic in Tanzania, Ruaha Law Review (RLR) Vol 5-6 No. 1 (2017-2018) at Pg 46
[434] Written Laws (Miscellaneous Amendments) (No. 2) Act No. 19 of 2007
[435] G.N. No. 89 of 20th June, 2008
[436] No. 89 of 2008
[437] Nancy.S. Lugeye & Ferdinand.M. Temba, Position of the Law on Consumer Protection Against Counterfeits Cosmetic in Tanzania, Ruaha Law Review (RLR) Vol 5-6 No. 1 (2017-2018) at Pg 47
[438] Government Notice No. 426 published of 12th November, 2010
[439] Ibid
[440] Regulation 4(1) of the Merchandise Marks Regulations, 2008 as amended by Regulation 2 of the Merchandise Marks (Amendment) Regulations, 2010
[441] Government Notice No. 426 Published on 12/11/2010
[442] Regulation 3 of the Merchandise Marks (Amendments) Regulations, 2010

counterfeited goods under the auspices of the Merchandise Marks Act.[443]

Further amendments with regard to the Merchandise Marks Act[444] were also made under Part V of the Business Laws[445] whereby counterfeit goods have been defined to mean goods that are a result of counterfeiting and include any goods generally known as pirated goods and any other means used for counterfeiting.[446] Also, this amendment of 2012 provides for offences on counterfeit goods.[447] The amendments of the Act and the Regulations have breathed some new life into our law and this has stepped up the on-going war to stamp out counterfeiting.[448]

Since the law now branded the importers and sellers of counterfeits as criminals, it is not possible to use the criminal machinery to fight counterfeits.[449] Furthermore, counterfeits in Tanzania were provided under the Penal Code 16[450] chapter XL but after the enforcement of Merchandise Marks Act, 1963[451] Section 367 and Section 368 were repealed by Act, 1963[452] under Section 19.

From the foregoing, it becomes clear that the Act[453] though enacted during the colonial era remained non-operative for several decades, only becoming effectively enforceable in 2007 following the formal publication of its commencement notice.

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[443] The Merchandise Mark Act No. 20 of 1963 as amended in the year 2007
[444] Ibid
[445] (Miscellaneous Amendments) Act No. 3 of 2012
[446] The Business Laws (Miscellaneous Amendments) Act No. 3 of 2012 under Section 36
[447] Ibid Section 38
[448] A.N. Mrema, "Recent Legislative Changes in the Trademark Law in Tanzania", Mkono & Co., 2009 at 98, 6.
[449] Ibid
[450] R.E. 2002
[451] Merchandise Marks Act No. 20 of 1963
[452] Merchandise Marks Act No. 20 of 1963
[453] Ibid

With its operationalization the Act[454] vested significant powers in the Chief Inspector, enabling active enforcement against trademark counterfeiting of trademark. The Act has since undergone a series of amendments, culminating notably in 2017, when importers and sellers of counterfeit goods were explicitly criminalized under the statute. It is further evident that prior to the operationalization of the Act, the Penal Code, Cap. 16 served as the primary legal tool for prosecuting acts of counterfeiting. However, with the enforcement of the Merchandise Marks (Regulations), 2008, and subsequent amendments in 2010, Tanzania adopted a more specialized and comprehensive legal framework to address the multifaceted challenges posed by counterfeit trade, particularly in the area of trademark infringement.

4.4 Trademark Institution Framework in Tanzania

Upon understanding trademark law in Tanzania together with the relevant law which confers upon the Registrar of trademarks administrative powers to administer trademarks in Tanzania to examine the administrative institution which administers trademarks in Tanzania. In Tanzania the main institution responsible for trademark registration in Tanzania is the Business Registration and Licensing Agency (BRELA).

4.4.1 The Business Registration and Licensing Agency (BRELA)

The Tanzania government has embraced market economy policies, as it is a catalyst to sustainable economy development, resulting in competition in the market for both

[454] 1963

goods and services. Competition in turn leads to product and systems innovation for better quality products and services in the market and also value for money, all for the benefit of consumer.[455] However, regulations and facilitation are necessary ingredients for a vibrant, sustainable and effective market economy, to ensure participants in the market economy can compete fairly.

In consideration thereof the Tanzania government, as part of its civil service reform, decided to establish Government Executive Agencies, among which is the Business Registrations and Licensing Agency (BRELA).[456]The Business Registration and Licensing Agency (BRELA) is a Government Executive Agency established under the Government Executive Agency Act.[457] It was established on the 28th October, 1999 by the Government Notice No. 294 and published on the 8th October, 1999. It was officially inaugurated on the 3rd December, 1999.[458]

The principal objective of the Agency is to ensure businesses operate in accordance with the laid down regulations and sound commercial principles, including the following;- (a) to administer companies and business names laws; (b) to regulate business by administering business and industrial licensing agency; (c) to administer intellectual property laws; (d) to encourage and facilitate local and foreign business investment; and (e) to stimulate scientific and technological inventiveness and

[455]Samuel Wangwe et al, Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement, accessed from www.iprcommission.org/papers/text/study_papers/sq9_Tanzania_case_study.txt accessed on 22/3/2018 at 2.36PM
[456]Ibid
[457]Act No. 30
[458]Samuel Wangwe et al, Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement, accessed from www.iprcommission.org on 22/3/2018 at 2.39PM

innovation and encourage technology transfer.[459]

The establishment of Business Registration and Licensing Agency (BRELA) has couple of development in the area of intellectual property (IP), in particular awareness creation and outreach programmes, linkages between Business Registration and Licensing Agency (BRELA) and research communities as well as the Small Business Enterprises (SME's). The country also established the Technology Information Service Centers and an Intellectual Property (IP) Department within the Tanzania Commission for Science and Technology.[460]

In its organizational structure, Business Registration and Licensing Agency (BRELA) have an intellectual property division, which is headed by the Deputy Registrar of trademarks.[461] The main activities of this division are to administer the current Trade and Service Mark Acts.[462] Business Registration and Licensing Agency (BRELA) collects industrial property information including patent documents processes it stores it and disseminates to users of that information.[463] This activity is not very active mainly to due to lack of information from the demand side.[464] Not many would be user of this information have the knowledge of its availability to Business Registration and Licensing Agency (BRELA) or

[459] Samuel Wangwe et al, Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement, accessed from www.iprcommission.org on 22/3/2018 at 2.39PM
[460] www.repository.uneca.org accessed on 22/3/2018 at 4.57PM
[461] WIPO Workshop on Intellectual Property for Business for Small and Medium-Sized Enterprises (SMES) organized by the World Intellectual Property Organization (WIPO) in cooperation with the Tanzania Chamber of Commerce Industry and Agriculture (TCCIA) Dar es Salaam, May, 10th and 11th 2005 quoted from www.wipo.int/edocs/mdocs/sme/en/wipo accessed on 20/10/2020 at 5.30PM
[462] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[463] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[464] Ibid

elsewhere.[465]

From the above analysis, it is important to underscore that the Business Registration and Licensing Agency (BRELA) operate as an Executive Agency under the Ministry of Industry and Trade, tasked with the administration and regulation of several business-related laws. These include the registration of companies, business names, trade and service marks, the granting of patents, and the issuance of industrial licenses. Within the context of intellectual property, BRELA is the principal institution responsible for the administrative functions surrounding trademark registration in Tanzania. However, it is crucial to note that BRELA's mandate is primarily administrative rather than enforcement-based. While it oversees the procedural aspects of trademark registration and maintenance, the enforcement of trademark rights particularly in cases of infringement or counterfeiting is handled by law enforcement agencies, courts, and specialized bodies such as the office of the Chief Inspector under the Merchandise Marks Act.

4.4.2 Fair Competition Commission

For many years Tanzania's economy was centrally planned, until mid1980's during which, the country embarked on a programme of trade liberalization, which was followed by the policy of privatizing state-owned enterprises from 1992.[466] Privatization policy supported private ownership and free markets.[467] In the late 1990's the Government began concerted efforts to create a viable regulatory framework in the country.

[465] Ibid
[466] www.competition.or.tz/history accessed on 5/11/2020 at 2.23PM
[467] Ibid

These efforts culminated into the enactment of the Fair Competition Act of 2003.[468] The Act[469] established a commission known as Fair Competition Commission.[470] The Commission shall be independent and shall perform its functions and exercise its powers independently and impartially without fear or favour.[471] Fair Competition Commission is a market support institution established by the Fair Competition Act No. 8 of 2003 to promote and protect effective competition in trade and commerce, protect consumers from unfair and misleading conduct and to provide for other related matters. Based on the latter, Fair Competition Commission is also entrusted with implementation of the Merchandise Marks Act, 1963 (MMA) as amended in 2004, 2007 and 2012.[472]

Fair Competition Commission deals with three thematic areas namely competition, consumer protection dealt with by the Fair Competition Act[473] and the fight against counterfeit goods in mainland Tanzania, which is dealt with by the Merchandise Marks Act.[474] Functions of Fair Competition Commission as stipulated in the Fair Competition Act[475] and the Merchandise Marks Act[476] (MMA) aim at setting a level playing field for players in all market within the jurisdiction of the Fair Competition Act.[477]

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[468] Act No. 8 of 2003
[469] Fair Competition Act No. 8 of 2003
[470] Section 62(1) of the Fair Competition Act No. 8 of 2003
[471] Section 62(2) of the Fair Competition Act No. 8 of 2003
[472] Online FCC Newsletter Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/fcc_newletter accessed on 13/11/2020 at 6.21PM
[473] Fair Competition Act No. 8 of 2003
[474] 1963 as amended in the year 2012
[475] Act No. 8 of 2003
[476] 1963 as amended in the year 2012
[477] Act No. 8 of 2003 and Online FCC Newsletter Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/fcc_newletter accessed on 13/11/2020 at 6.21PM

Fair Competition Commission became operational in May, 2007 following enactment of the Fair Competition Act[478] in April, 2003 and assenting of the same by the President of the United Republic of Tanzania in May, 2003. The President assigned a Minister responsible for implementation of Fair Competition Act[479] in March, 2004.[480] Following the milestone, the Minister for Industry and Trade appointed on the 12th day of May, 2004 as the date that Fair Competition Act[481] came into effect. The Director General was appointed in July, 2005; the Chairman and three Commissioners were appointed in November, 2005.

The Chairman, Director General and the three Commissioners constitute the Commission. The four Commissioners are appointed by the Minister responsible, and the Chairman is appointed by the President. Appointment of the commissioner are done competitively through the Nomination Committee, chaired by the Permanent Secretary of the Minister responsible for the Commission.[482] Structurally, Fair Competition Commission is an autonomous Government body, led by five Commissioners.[483]

Fair Competition Commission is in line with Merchandise Marks Act, 1963[484] to fight against counterfeits in the country.[485] Further, the Fair Competition

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[478] Act No. 8 of 2003
[479] Ibid
[480] Online FCC Newsletter Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020 at 6.21PM
[481] Act No. 8 of 2003
[482] Online FCC Newsletter, Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020
[483] Ibid
[484] Act No. 20 of 1963
[485] Online FCC Newsletter, Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020

Commission has successfully made procedural changes in challenging seizure.[486] The chief Inspector appointed under section 2 of the Merchandise Marks Act, 1963,[487] as amended and is charged under the said Act[488] with the duty to control and regulate the use if trademarks and trade description in relation to merchandise.[489] In the year 2005 the Minister for Industry, Trade and Marketing appointed the Director General of the Fair Competition Commission to be the Chief Inspector to oversee implementation of the Merchandise Marks Act, 1963,[490] as amended, which is a legal framework for combating counterfeit goods in Tanzania mainland market.[491]

Accordingly, by virtue of the Merchandise Marks Act, 1963[492] and Merchandise Marks Regulations of 2008, the Chief Inspector among other powers bestowed upon him, is empowered to detain or seize any goods which he reasonably suspects to be counterfeited goods. According to the Merchandise Marks Regulation,[493] importers or owners of seized or detained suspected counterfeit have been given one month after being served with the seizure notice to lodge a claim in writing for the restoration of goods. The Merchandise Marks (Amendments) Regulations, 2010 provides a clear procedure for initiating a claim in lieu of restoration of goods. A party claiming restoration of goods is required to fill his/her claim in a particular form, called "Form L" prescribed in the First Schedule and submit the same to the

[486] Ibid
[487] Act No. 20 of 1963
[488] Merchandise Marks Act, No. 20 of 1963
[489] Op cit Online FCC Newsletter, issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020 at 6.47PM
[490] Act No. 20 of 1963
[491] Online FCC Newsletter, issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020 at 6.47PM
[492] Act No. 20 of 1963
[493] 2008 as amended in the year 2010

Chief Inspector or his representative.

Upon receiving a claim, the Chief Inspector issues a notice of hearing in "Form M" prescribed in the First Schedule and specifies time, date and place where the hearing is to be conducted. The new regulation[494] stipulates that, a recipient on the said notice must acknowledge receipt of such a notice by endorsing it. Following that, the Chief Inspector proceeds to hear a claim in accordance to regulation 34B of the Merchandise Marks (Amendments) Regulations of 2010.[495]

The procedure further states that, the Chief Inspector may make an order to dismiss a claim whenever a person who endorsed a notice of hearing fails to appear before the Chief Inspector on the day and time fixed for hearing. Fair Competition Commission is working very closely with the genuine brand owners to ascertain, verify or attest whether the suspected seized goods are counterfeits or not. The Merchandise Marks Act, 1963 was amended in 2005 and 2007, and its regulation was amended in the year 2010 in order to improve effective implementation of the Act[496] and dispensation of justice to all parties; namely the consumer, brand owners and business community.[497]

From the above, it becomes evident how the administrative efficiency of the Registrar of Trademarks directly influences the enforcement of trademark rights in Tanzania. While enforcement mechanisms exist such as those exercised by the office

[494] Ibid
[495] Online FCC Newsletter, Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020
[496] Merchandise Marks Act, No. 20 of 1963
[497] Op cit Online FCC Newsletter, Issue No. 0001 of January-March, 2011 accessed from www.tanzania.go.tz/egov_uploads/documents/FCC_newsletter on 13/11/2020

of the Chief Inspector under the Merchandise Marks Act these mechanisms are contingent upon the existence of a duly registered trademark. Delays by the Registrar in executing core functions such as examining applications, publishing marks for opposition, or issuing certificates of registration can severely impair an applicant's ability to pursue counterfeiters or infringers. In cases where counterfeit goods appear before registration is finalized, enforcement agencies may find themselves legally constrained, unable to act in the absence of formal proof of registration. Thus, the timely discharge of administrative duties by the Registrar is not merely procedural but forms an essential safeguard for the substantive rights of trademark applicants.

4.5 Conclusion

This chapter has explored the legal and institutional framework of trademark regulation in Tanzania, with particular emphasis on the evolution, structure, and exercise of powers vested in the Registrar of Trademarks. Historically, Tanzania's trademark law derives from colonial legislation, notably the Merchandise Marks Act, 1963, which remained dormant until its activation in 2005. Crucially, the chapter examined the Trade and Service Marks Act No. 12 of 1986, which is the primary legislation conferring a wide range of administrative powers upon the Registrar of trademarks, including trademark examination, publication, issuance of registration and renewal certificates, imposition of disclaimers, and association of marks. These powers are essential to the procedural integrity of trademark registration but are also central to the substantive protection of trademark rights.

Institutional roles were also mapped, revealing that BRELA's function is purely administrative, while enforcement responsibilities lie with the Fair Competition

Commission, particularly under the Merchandise Marks Act, as amended. This separation raises further questions about inter-agency coordination and the sufficiency of existing accountability frameworks.

Thus, the chapter contributes to the central research question by laying the groundwork for assessing whether the powers of the Registrar are adequately structured and regulated, and whether the legal system provides sufficient checks and balances to prevent administrative overreach or inaction. This foundation sets the stage for subsequent chapters, which will examine how these powers are applied in practice, what judicial or regulatory controls exist, and whether the current legal framework ensures fair, timely, and enforceable trademark protection in Tanzania.

CHAPTER FIVE

LEGAL, INSTITUTIONAL AND PRACTICAL CHALLENGES IN REGISTRATION OF TRADEMARKS IN MAINLAND TANZANIA

5.1 Introduction

This chapter presents the discussion and analysis of findings derived from both doctrinal and empirical approaches. These methods were employed to evaluate whether the exercise of administrative powers by the Registrar of trademarks in Tanzania is consistent with the requirements of the Trade and Service Marks Act, 1986 and responsive to the expectations of trademark owners and the public at large.

In examining the law, the researcher adopted historical, analytical, and applied perspectives. Under the historical perspective, attention was given to the origins of the legislation governing the discharge of administrative powers by the Registrar of trademarks and the control mechanisms provided therein. The guiding questions included: What were the issues of the day when the legislation was enacted? What material conditions existed at that time? What mischief was the law intended to cure? The rationale was to determine whether those issues, conditions, and mischiefs remain relevant to the contemporary challenges of administering trademarks in Tanzania.

The chapter also explores challenges identified in core administrative processes, including the issuance of letters of acceptance, advertisement of marks, issuance of certificates, timeliness of procedures, and overall procedural clarity particularly from the perspective of service users who rely on the Registrar's office. The analysis is guided by three theoretical frameworks. Good Governance Theory provides a

normative benchmark for assessing whether the Registrar of trademark's powers are exercised with accountability, transparency, and fairness, in line with the principles of modern public administration. Consumer Decision-Making Theory situates the discussion within the perspective of trademark users, focusing on how procedural delays, clarity, and efficiency shape their expectations, choices, and confidence in the trademark system. Finally, the Economic Theory of Trademarks highlights the broader market and commercial implications of trademark administration, underscoring how the Registrar's actions affect economic value, fair competition, and investor confidence.

The Registrar of trademarks occupies a central position in the administration of intellectual property rights in Tanzania. Trademark law vests this office with extensive administrative powers, the proper exercise of which is critical for the protection of rights and the promotion of commercial certainty. Against this backdrop, the chapter examines these powers from both doctrinal (library-based) and empirical (field-based) perspectives, focusing on whether adequate legal and judicial mechanisms exist to regulate their exercise.

The discussion further considers the extent to which Tanzanian trademark law incorporates effective mechanisms to prevent misuse of intra vires powers acts performed within legal authority that are not void *per se*, yet may nonetheless undermine fairness, efficiency, and the rights of stakeholders. This distinction is critical, as the concern here is not actions outside the law (ultra vires), but those carried out within it that may still be exercised arbitrarily. Finally, the chapter begins with an assessment of one of the fundamental safeguards of administrative justice:

the right to be heard, which serves as a cornerstone of due process and ensures transparency, accountability, and fairness in the decision-making processes of the Registrar of Trademarks.

5.1.1 Granting an Opportunity to be Heard

Among the foundational pillars of natural justice is the right to be heard, a principle critical to ensuring fair and impartial administrative decision-making. This right is firmly rooted in the constitution of the United Republic of Tanzania and contains provisions recognizing this rights,[498] and is universally recognized under the maxim audi alteram partem "hear the other side." In plain English means "hear the other party." According to legal scholar C.K. Takwani[499] the essence of this principle lies in ensuring that no person is adversely affected by a decision unless they have first been given a fair opportunity to state their case.

A good illustration can be seen in the case of Mbeya Rukwa Autoparts and Transport Limited .v. Jestina Mwakyoma[500] in which the court observed that:-

> "*Natural Justice is not merely a principle of common law, it has become a fundamental constitutional rights which includes the right to be heard amongst the attributes of equality before the law"*

In another case of Deo Shirima and Two others .v. Scandinavian Express Services Limited[501] where the Court observed that:-

> "*The law that no person shall be condemned unheard is now legendary. It is trite law that any decision affecting the rights or*

[498] Article 13(6) of the United Republic of Tanzania Constitution, 1977 as amended from time to time and Article 50 of the Constitution of Kenya, 2010 of the Laws of Kenya

[499] Takwani, C.K., Lectures of Administrative Law, 1st Ed, Eastern Book Company, 1993, India at Pg 137

[500] (2003) T.L.R 253

[501] Civil Application No. 34 of 2008

> *interests of any person arrived at without hearing the affected party is a nullity, even if the same decision would have been arrived at had the affected party been heard. This principle of law of respectable antiquity needs no authority to prop it up. It is common knowledge."*

Yet in another case of John William Maeda .v. Yono Auction Mart & Co Ltd[502], where the Court held that:-

> "*The principle of the right to be heard is the Constitutional right of paramount importance and all courts are called upon to ensure that the same is effectively safeguarded*".

Procedurally, this right encompasses two core aspects: the issuance of prior notice and the provision of an adequate hearing, both of which are indispensable in safeguarding administrative justice.[503]

Section 8 of the Trade and Service Marks Act, 1986[504] of Tanzania mandates that the Registrar of trademarks must provide any party involved in proceedings the opportunity to be heard prior to taking any action that may adversely affect that individual. In essence, Tanzania trademark law[505] encapsulates the fundamental principle of natural justice. Nevertheless, the right to be heard alone is insufficient in the absence of a well-defined regulatory framework particularly with respect to time limits governing the Registrar of trademark's decision-making process in trademark administration.

The wording of Section 8 of the Trade and Service Marks Act, 1986[506] reveals a significant shortcoming in the control of administrative authority. While it upholds

[502] Civil Appeal No. 76 of 2022 TZHC 13485 (11th March, 2022)
[503] www.lawjustia.com accessed on 9/7/2025 at 7.50pm
[504] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[505] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[506] Ibid

the principle of *audi alteram partem* by requiring the Registrar of trademarks to afford an opportunity to be heard, it does not articulate how such administrative powers ought to be exercised. The absence of substantive criteria or procedural controls means the Registrar of trademarks may formally comply with the right to be heard, yet still exercise powers in a manner that lacks fairness or transparency. Accordingly, the section offers limited practical restraint on administrative powers.

To substantiate the argument that the mere provision of a right to be heard is insufficient, practical experience from the field provides compelling evidence. During an interview, a trademark attorney in Tanzania emphasized that while the right to be heard is indeed a fundamental legal entitlement, it falls short in practice. The attorney pointed out that this right is confined to allowing the applicant to present their case, without imposing any corresponding obligation on the Registrar of trademarks to discharge administrative duties in a timely or efficient manner. This illustrates a critical weakness in the current legal framework procedural fairness without corresponding administrative accountability.

The shortcomings of Tanzania's trademark law are further illustrated by a practical case shared by a local trademark attorney. The attorney cited the experience of their client, M/s Nanoomal Issardas Motiwala (U) Limited, who applied to register the trademark "Hanna" in Class 3, under Trademark No. TZ/T/2019/581. In 2019, the application faced opposition from M/s Yiwu (China) Kinko Company Ltd. While the Registrar of trademarks fulfilled the procedural requirement by inviting both parties to submit written arguments, the attorney highlighted that, despite repeated follow-ups, no decision had been issued as of 2022. The application remains unresolved,

leaving the client's trademark in limbo. This case underscores the broader argument: that the mere provision of the right to be heard, without time-bound obligations or judicial oversight, is insufficient for effective and accountable trademark administration. The attorney strongly advocated for legislative reform to introduce control mechanisms over the Registrar of trademarks's administrative powers and to provide judicial remedies against unjustified delays.

From a Good Governance Theory perspective, this example demonstrates a lack of transparency, accountability, and responsiveness in administrative action. The formal observance of the right to be heard does not amount to genuine fairness where decisions are indefinitely delayed. Through the lens of Consumer Decision-Making Theory, unresolved applications undermine trademark owners' confidence in the system. Applicants invest resources and make strategic business decisions based on trademark protection; prolonged uncertainty distorts their decision-making and diminishes trust in the Registrar of trademarks's office.

Finally, under the Economic Theory of Trademark, delays in concluding opposition proceedings impose broader costs on the market. Unresolved disputes restrict the ability of businesses to establish brand identity, deter potential investors, and create legal uncertainty that undermines fair competition. In this way, the economic value of trademarks is directly compromised by ineffective administrative processes. This case underscores the broader argument: the statutory right to be heard, when unaccompanied by time-bound obligations or judicial oversight, is insufficient for effective and accountable trademark administration. It highlights the urgent need for legislative reform to introduce clearer control mechanisms over the Registrar of

trademarks's administrative powers and to provide judicial remedies against unjustified delays.

5.1.2 Giving Grounds for a Decision

The right to be given reasons is a fundamental component of the principles of natural justice. According to Lord Denning in Breen v Amalgamated Unions,[507] "the giving of reasons is one of the fundamentals of good administration." A reasoned decision is not merely a statement of outcome, but one that sets out the rationale behind it. This ensures that affected individuals are not only informed of the decision itself, but also of the considerations that influenced it. Such transparency fosters trust, enables informed appeals, and guards against arbitrariness in administrative processes.[508]

Section 26(5) of the Trade and Service Mark, Act, 1986[509] imposes a dual obligation on the Registrar of Trademarks. It not only requires the Registrar of trademarks to provide reasons for refusing an application or accepting it subject to conditions, but also mandates the disclosure of the materials upon which the decision was based. This means the Registrar of trademarks must furnish the applicant with the facts, evidence, or other relevant documentation that informed the decision-making process. Such a requirement enhances transparency and enables applicants to effectively understand, and where necessary, challenge the basis of the decision. The provision of Section 26(5) of Trade and Service Mark Act,[510] effectively grants an applicant whose trademark application has been refused the right to understand the

[507](1971) 1 ALL E.R. 1148
[508]Takwani, C.K., Lectures of Administrative Law, 1st Ed, Eastern Book Company, 1993, India at Pg 150
[509]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[510]Ibid

specific grounds upon which the decision was made. In doing so, Tanzanian trademark law[511] acknowledges a dual legal relationship: it affirms the right of the aggrieved party to be given reasons and imposes a corresponding duty on the Registrar of trademarks, as the decision-maker, to provide such reasons. This framework upholds core principles of natural justice and enhances the transparency of administrative decisions.

It is important to recognize that the "reasons" referred to under Section 26(5) of the Trade and Service Marks Act, 1986[512] may encompass not only the factual evidence but also the legal provisions, administrative circulars, and established practices that guide the Registrar of trademarks decisions. In this sense, the law[513] imposes a dual obligation on the Registrar of trademarks: to disclose both the rationale for the decision and the materials legal and procedural on which that decision is based. However, a close examination of Section 26(5) of the Trade and Service Mark Act[514] reveals certain shortcomings that may hinder its practical effectiveness. These include the absence of clear enforcement mechanisms or standards specifying the scope and form of such disclosures, which could limit the section's ability to fulfill its intended objective of transparency and accountability.

A critical limitation of section 26(5) of the Trade and Service Mark Act, 1986[515] lies in the fact that the obligation imposed on the Registrar of trademarks to provide

[511] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[512] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[513] Op cit Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[514] Op cit Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[515] Ibid

reasons and the materials relied upon in making a decision arises only upon the request of the aggrieved applicant. This obligation is not automatic. As a result, the Registrar of trademarks is legally permitted to render decisions that materially affect parties without disclosing the rationale or evidentiary basis unless such disclosure is explicitly requested. Although such practice clearly contravenes the spirit of natural justice particularly the right to be informed of the grounds of an adverse decision it remains valid under the current statutory framework. This underscores a structural weakness in the Act,[516] which limits its ability to ensure consistent transparency and accountability in trademark administration.

Another notable consequence of the weakness inherent of the trademark law[517] is its disproportionate impact on individuals with limited legal knowledge. Because the obligation is to provide reasons and supporting materials arises only upon request, an aggrieved party who is unaware of this procedural right may remain silent, thereby forfeiting the opportunity to challenge an adverse decision. This undermines the protective purpose of the provision and perpetuates legal inequality. Furthermore, pursuing judicial recourse is often financially burdensome. Many applicants, particularly those without stable economic means, are unable to afford the legal fees required to engage an advocate and initiate proceedings in a court of competent jurisdiction. As a result, the combination of legal complexity and high costs creates a significant barrier to justice for many trademark applicants.

From a Good Governance Theory perspective, the absence of an automatic duty to provide reasons undermines transparency and accountability. The Registrar of

[516] Op cit Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[517] Ibid

trademarks's ability to issue decisions without justification erodes public trust and weakens checks on administrative discretion. Viewed through Consumer Decision-Making Theory, the lack of clear reasons leaves applicants uncertain about why applications fail and how to adjust their future strategies. This frustrates users' expectations, reduces predictability, and diminishes confidence in the trademark system as a reliable avenue for protecting business interests.

Finally, under the Economic Theory of Trademark, the failure to provide timely and reasoned decisions has market implications. Businesses depend on trademarks for brand identity, investment planning, and competitive positioning. When decisions are delivered without sufficient explanation, applicants cannot assess risks or make informed commercial choices, leading to inefficiencies that stifle innovation and deter investment.

In summary, while Section 26(5) of the Trade and Service Marks Act[518] incorporates the principle of giving reasons, its conditional application and lack of procedural clarity render it insufficient to guarantee transparency and accountability in trademark administration. Legislative reform is necessary to impose an automatic duty to provide reasons and to establish clearer standards for disclosure, thereby strengthening fairness and predictability in the system.

5.1.3 Failure by the Law to Control Powers of the Registrar of Trademarks

The administrative powers conferred upon the Registrar of trademarks under the trademark law[519] must be exercised *intra vires* that is, within the scope and limits

[518] Act No. 12 of 1986
[519] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of

prescribed by the law.[520] However, this is not always the case in practice. The trademark law,[521] as currently framed, often lacks effective mechanisms to regulate the exercise of these powers, particularly with respect to timeframes.

From the perspective of Good Governance Theory, the absence of statutory controls on the timing of administrative actions reflects a lack of accountability and responsiveness in public administration. Consumer Decision-Making Theory highlights how such delays frustrate the expectations of trademark applicants, who rely on timely registration to make informed business decisions. The Economic Theory of Trademark emphasizes that prolonged uncertainty reduces the commercial value of trademarks and discourages investment.

This weakness of the law will be discussed in greater detail in the subsections that follow, particularly in relation to timeliness of decisions, issuance of certificates, and procedural clarity. Together, these aspects demonstrate how the failure to control the Registrar's powers has created systemic challenges in Tanzania's trademark administration.

5.1.3.1 No Time Limit upon the Registrar of Trademarks to conduct Examination

Under Tanzanian trademark law, the Registrar of trademarks is vested with the administrative authority to examine applications for the registration of trade and service marks. In Tanzania, the Trade and Service Mark Act[522] provides that, upon

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Tanzania

[520] Ibid

[521] Ibid

[522] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 and Trade and Service Mark Act,

filling of an application for registration of a trade and service mark and the payment of the prescribed fees, the Registrar of trademarks shall cause an examination to be made.[523] Thus, the Registrar of trademarks will cause the application to be examined and communicate to the applicant any objection to the trademark which mainly relates to distinctive character and similarity with already registered trademarks. The applicant can put forward his case in writing to the Registrar of trademarks. If the application is accepted, it will be advertised in the trademark journal.[524]

From the foregoing, it can be reasonably concluded that the Trade and Service Marks Act[525] merely confers the power upon the Registrar of trademarks to conduct an examination prior to accepting, refusing, or imposing conditions on a trademark application. However, a close reading of the statute reveals a critical omission: there is no control mechanism, particularly with regard to timeframes, that governs how and when the Registrar of trademarks must exercise this power. Consequently, the examination process is subject entirely to the Registrar of trademarks discretion, which can result in protracted and unpredictable delays. Such procedural uncertainty significantly undermines the efficiency and reliability of the trademark administration system in Tanzania.

The concerns highlighted above are substantiated by practical experience, derived from interviews conducted with both trademark office officials and trademark attorneys, along with their clients in Tanzania. According to the attorneys and

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Regulation, 2000 of the Laws of Tanzania

[523] Section 26 of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

[524] P. Narayanan, Intellectual Property Law, 3rd Ed, Easter Law House, 2001, India at Pg 161

[525] Op cit Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

clients, the examination process conducted by the Registrar of trademarks typically takes no less than four weeks. In contrast, officials from the Registrar's office maintained that the examination period generally spans approximately two weeks. The divergence in these views reflects a disparity between the official procedural expectations and the realities experienced by applicants. It is therefore reasonable to conclude that the perspectives of the attorneys and clients more accurately reflect the actual timeframe of trademark examinations, whereas the views of the officials represent an ideal that is not consistently met in practice

The findings of this research further reveal that the Trade and Service Marks Act[526] does not prescribe a specific timeframe for the examination of trademark applications. As a result, the actual duration of the examination process varies considerably in practice. One trademark attorney noted that the speed of examination often depends on the applicant's persistence, including frequent follow-ups and even daily visits to the Registrar's office. In the absence of such efforts, examinations may take no less than two months, whereas, with consistent follow-up, a decision may be rendered within two weeks. This observation further illustrates the discretionary and inconsistent nature of the examination process, pointing to a lack of procedural uniformity and predictability in trademark administration.

The findings further demonstrates that although the Trade and Service Marks Act empower the Registrar of trademarks to examine applications, the absence of statutory timelines has created an unpredictable and discretionary process. From the perspective of Good Governance Theory, this omission undermines principles of

[526] Op cit Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

accountability, transparency, and predictability. Applicants cannot anticipate the timeframe for examination, which leaves room for inefficiency and unequal treatment. Likewise, Decision-Making Theory illustrates that discretion without clear procedural constraints leads to inconsistent outcomes, as confirmed by empirical evidence showing that persistent applicants may obtain results within two weeks, while others experience delays of up to two months. Such disparities reveal that decisions are not based on uniform, rational criteria but rather on extraneous factors such as persistence and proximity to the Registrar's office.

Moreover, the absence of control mechanisms has broader implications under Economic Theory, as delays in trademark examination increase the cost of doing business, deter investment, and weaken Tanzania's competitiveness as a jurisdiction for brand protection. Entrepreneurs and investors are forced to operate in uncertainty, unable to secure trademark rights within predictable timeframes, which discourages innovation and timely market entry. The incorporation of these three theoretical perspectives confirms that the lack of statutory timelines is not a mere procedural defect but a fundamental challenge that undermines good governance, weakens decision-making structures, and imposes unnecessary economic costs. This highlights the urgent need for legislative reform to establish binding timelines and accountability mechanisms.

5.1.3.2 No Time limit for Registrar of Trademarks to notify the Applicant on Refusal or accepted Trademark

The Registrar of trademarks is bestow on with power to notify the prospective applicant on refusal or accepted trademark. A good illustration on refusal can be

seen in the case of Fiat Application[527] where it offered a clear judicial endorsement of the Registrar's discretion. The Bombay High Court explicity recognized the Registrar's broad authority to reject trademark application that are likely to cause confusion, underscoring the preventive role of the registry in safeguarding consumer preception and market integrity. Yet in another case of Amritdhara Pharmacy .v. Satya Deo Gupta[528] demostrated how the courts evaluated the likelihood of confusion in the trademark disputes. The mark "Betaloe" and "Betalong" were found to be too similar in sound, appearances, and structure.

In another case of Bio-Chemical Pharmaceutical Industries .v. Astron Pharmaceuticals[529] the court compared "Biocillin" with "Bicillin" and concluded that phonetic similarities, especially in diverse linguistic settings, could lead to cosumer confusion. In both cases, the courts highlighted the legal requirement that a trademark must not be deceptive. The Registrar of trademarks also plays a proactive role in this process and can independently object to a trademark if it is likely to cause confusion or mislead concumers.

Another illustrative case concerning the likelihood of confusion is the case of Banwaridas Pugali .v. Colgate Palmolive Co[530] where the court emphasized that trademark law does not prescribe a specific criterion for determining what constitutes deception or confusion. Instead, the guiding principle is the likelihood of confusion. In this case, the court held that the trademark "Formi's" was not

[527] (1981) RPC 8
[528] (1963) AIR SC 449
[529] (2003) PTR 18
[530] (1979) AIR Cal 133

registrable, as its use of alphabetic and phonetic elements was likely to create confusion with the already registered trademark "Charmis."

In Megavite .v. Megavit,[531] the court held that:- "The court articulated a key principle regarding the burden of proof in trademark disputes: to establish a likelihood of confusion or deception, the opposing party must substantiate prior use of the contested mark." In the Tanzanian case of Sabuni Detergent Limited .v. Murzah Oil Mills Limited[532]where both litigants were corporate entities duly registered under the Company Ordance Cap 212. The Plaintiff held a registered trademark for "Foma Limao," featuring a visual design with lemon slices, effective from June 20, 2000. A significant decline in sales during 2001 prompted an investigation, revealing that the defendant had launched a competing product under the name "Takasa Limao," utilizing a similar visual presentation, including lemon slices and an identical color scheme. The Court concluded that the defendant's mark was deceptively similar to the plaintiff's particularly in visual and thematic content, and consequently awarded the plaintiff general damages of Tshs 30,000,000/=

In another instance where the Registrar of trademarks may reject a trademark registration where the mark falls under the ambit of geographical names. A good illustration can be seen in the case of Magnolia Metal Co[533] in which the word "Magnolia" was not deemed a geographical name, despite the existence of a place by that name in the United States. The Court observed as follows:-

> "*A geographical name is not the same thing like the name of any place. We have to see the popular meaning of the word, i.e. a*

[531] (1976) 1 PLR 9
[532] Commercial Case No. 256 of 2001 at the High Court Commercial Division
[533] (1897) 14 RPC 265

> *meaning which would occur to an Englishman of ordinary education and intelligence. The popular meaning does not imply the primary meaning which the word would bear ordinary and naturally to ordinary people and if we see so the word "Magnolia" refers to the name of a flower rather than a place."*

The principle that geographical names are inherently unregistered was reinforced in the case of Liverpool Cables's Application[534] where "Liverpool" was deemed too geographically descriptive to function as a trademark. This approach was mirrored in the case of India Electric Application[535] where the use of "India" as a brand for electric fans was rejected, notwithstanding claims of secondary meaning through acquired distinctiveness.

A similar position was adopted in the case of Imperial Tobacco .v. Registra[536] where the trademark "Shimla" was refused registration for tobacco products. This was despite evidence of substantial sales and publicity over a three-years period. The refusal was grounded in the fact that "Shimla" is a well-known geographical name in India. The case reaffirms the general principle that well-known geographical names cannot be registered as trademarks.

A notable exception to the general prohibition on geographical names is seen in the case of Fabric Application[537] where the court allowed the registration of "Italia" as a trademark for motor cars. This decision was based on the applicant's ability to demostrate that the term had acquired distinctiveness in the marketplace.

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[534] (1929) 46 RPC 99
[535] (1945) 49 CWH 425
[536] AIR 1968 Calcutta 582
[537] (1990) 27 RPC 493

In Tanzania, the Trade and Service Mark Act, 1986[538] provides that, if upon the examination the Registrar of trademarks objects to the application, he shall notify the aplicant in writing of the objections and shall allow his time, as prescribed,[539] to submit his representation or to request a hearing. If the applicant fails to pursue his application withtin the time allowed, he shall be deemed to have withdrawn his application.[540]

A close examination of the wordings of Section 26(3) of the Trademark Act, 1986[541] reveals a legislative gap: the provision does not prescribe any specific timeframe within which the Registrar of trademarks must notify an applicant of a refusal. This omission has practical implications. The absence of a statutory deadline may result in reluctance or inaction on the part of the Registrar of trademarks, contributing to procedural delays. Consequently, applicants bear the burden of these delays, including uncertainty, potential market losses, and disruption of business planning. This underscores the need for legislative reform to introduce enforceable timeframes and enhance accountability in trademark administration.

Apart from the Trademark Act[542] of Tanzania, the Regulation under Rule 28[543] provides that, if the Registrar of trademarks objects to the application, he shall inform the applicant of his objection in writing, and unless within one month the

[538]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[539]Rule 28 of the Trade and Service Mark Regulation which provides that "If the Registrar objects to the application, he shall inform the applicant of his objections in writing, and unless within one month the applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.
[540]Section 26(3) of the Trade and Service Mark Act No. 12 of 1987 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[541]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[542] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[543]Trade and Service Mark Act, Regulation, 2000

applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.

A textual analysis of Regulation 28 of the Trademark Regulation[544] of Tanzania reveals that while it mandates the Registrar of trademarks to communicate objections to an applicant in writing, it does not impose any specific timeframe for doing so. This absence of temporal constraint underscores a broader deficiency in the trademark legal framework, namely the lack of effective control mechanisms governing the exercise of administrative powers. As a result, the Registrar of trademarks may exercise discretion in determining when to issue such notifications, often leading to unwarranted and prolonged delays. This legislative lacuna compromises both administrative efficiency and the rights of applicants to timely decisions.

The regulatory gap identified above specifically, the absence of a timeframe for the Registrar of trademarks to communicate objections in writing is further illustrated through practical observation. The findings reveal a divergence of perspectives among key stakeholders. On one hand, officials from the Registrar's office stated that the objection process typically takes approximately 30 days. Trademark attorneys, by contrast, estimated the duration at around three weeks, suggesting satisfaction with the timeline. However, a different picture emerges from the clients' perspective. Clients reported that the issuance of letters of acceptance often takes several months, although they could not provide precise timelines. This discrepancy indicates that while legal practitioners and officials perceive the process as

[544] Ibid

reasonable, clients who are the end beneficiaries experience significant delays and are generally dissatisfied with the administrative responsiveness of the Registrar of trademarks's office.

The disparity in experience between clients and trademark attorneys or Registrar of trademark’s officials can be attributed, in part, to the mode of follow-up employed by applicants. Findings suggest that clients who utilize the services of trademark attorneys tend to receive letters of acceptance in a shorter period, often within two weeks. This efficiency is largely due to the attorneys’ capacity for persistent and professional follow-up with the Registrar’s office. Conversely, self-represented clients who manage their applications independently typically face longer delays and are more likely to express dissatisfaction with the process. This observation is supported by feedback from practicing trademark attorneys in Tanzania, who confirmed that while letters of acceptance may be issued promptly, such outcomes are contingent on continuous and proactive engagement with the Registrar of trademark’s office.

The findings above reveal a troubling pattern: the effectiveness of the Registrar of trademarks in issuing letters of acceptance appears to depend significantly on persistent follow-up by the applicant or their representative. In practice, the Registrar of trademark’s office tends to respond more promptly when consistent pressure is applied. Those applicants who can afford to engage legal counsel or make regular personal follow-ups are more likely to see their applications processed efficiently. Conversely, applicants who simply fulfill the formal requirements and rely on the system to function independently are often subjected to prolonged delays. This

suggests that the trademark registration process in Tanzania is not self-executing but instead functions reactively, compromising fairness and undermining the principle of equal treatment before the law.

From the foregoing analysis, it can be reasonably concluded that trademark applications submitted through trademark attorneys are generally processed more swiftly. This is largely due to the attorneys' active engagement and ability to consistently follow up with the Registrar of trademark's office. In contrast, self-represented applicants who lack both legal expertise and the time for persistent follow-ups often experience prolonged delays. This disparity indicates that the Office of the Registrar of trademarks does not treat all applicants equally. Instead, there appears to be a preferential responsiveness toward applications submitted by legal professionals, while those from unrepresented clients are neglected. Such a practice undermines the principles of equal access to administrative services and procedural fairness.

From the perspective of Good Governance Theory, this situation erodes transparency, accountability, and predictability in trademark administration, as applicants cannot reasonably anticipate when they will be notified of acceptance or refusal. Decision-Making Theory further shows that discretion exercised without procedural constraints leads to inconsistent and unequal outcomes, where persistent or legally represented applicants enjoy faster results compared to unrepresented ones. Finally, under Economic Theory, such delays and inequalities increase the cost of doing business, hinder timely market entry, and discourage investment, particularly for smaller enterprises lacking resources for continuous follow-up.

These theoretical insights confirm that the absence of statutory timelines is not merely a procedural defect but a structural weakness that undermines governance, rational decision-making, and economic efficiency in Tanzania's trademark system.

5.1.3.3 No Time Limit upon the Registrar of Trademarks to Advertise Trademark in the Journal

An application for registration of a trademark requires to be advertised in the trademark journal. A good illustration of the significance of trademark advertisement and opposition procedure can be found in the case of Banik Rubber Industries .v. Sree D.B. Rubber Industries[545] and R.T. Eng & Electronic Co[546] where the court emphasized that the proper procedure must be followed before making determinations on confusion or deception. The court stated:

> "*We would follow the procedure of advertising the trademark and deciding the question of confusion or deception only when it is opposed and evidence taken in regard to the same before it applies to the bar".*

Another instructive example is found in the case of Uniliver Ltd's (Stripped Toothpaste)[547] where the court highlighted the importance of accuracy and clarity in trademark advertisement. The court held:

> "*The published representation must clearly depict the essential features which are sought to be the subject of the rights granted by the registration. If it does not, then the advertisement is a "nullity."*

This ruling underscores that the publication of a trademark application is not merely procedural it serves a substantive legal function. The advertisement must faithfully

[545] (1990) AIR Cal 225, 230
[546] (1972) Bom 157, 159 and 163
[547] (1987) RPC 13 at Pg 20

and clearly represent the distinctive elements of the mark for which protection is sought. A failure to do so undermines the integrity of the registration process, as it deprives third parties of the opportunity to make informed objections or take legal action based on the true nature of the mark. This case illustrates how courts insist on a high standard of transparency and precision in the publication process, reinforcing the principle that legal rights must be claimed through properly disclosed information.

The power mandated upon the Registrar of trademarks to advertise the trademark in the journal leaves alot to desire in terms of timeframe and this can justified from the wording of trademark law[548] of Tanzania. In Tanzania, Section 26(1) of the Trade and Service Mark Act, 1986[549] provides that, upon filling of an application for registration of a trademark and the payment of the prescribed fees, the Registrar of trademarks shall cause an examination to be made as to conformity with the formalities required. If upon the examination it appears that the applicant is entitled to registration of his trademark, the Registrar of trademarks shall accept the application and cause the trade or service mark application to be advertised in the trademark journal for statutory opposition period of 60 days.[550]

In addition to the Act,[551] the Trademark Regulation[552] provides that, when the Registrar of trademarks has accepted an application for the registration of a

[548] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[549]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[550]Section 34 of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[551]Op cit Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[552] Rule 32 of the Trade and Service Mark Act, Regulation, 2000

trademark or of a series of trademarks absolutely or has accepted it subject to conditions or limitations to which the applicant does not object, he shall promptly, advertise it in the Trade and Service Mark Journal.

While the Tanzanian trademark law[553] mandates that accepted trademarks be advertised in the Trademark Journal for an opposition period of 60 days, it fails to prescribe a timeframe within which the Registrar of trademarks must initiate such advertisement following acceptance. This legislative silence creates a significant lacuna. In the absence of a statutory time limit, the Registrar of trademarks retains broad discretion to delay or expedite publication at will. If the Registrar of trademarks chooses to act slowly, there is no legal mechanism to compel timeliness. This administrative power, unchecked by procedural safeguards, contributes to inefficiency in the administration of trademarks and frustrates the legitimate expectations of applicants.

The findings from field research substantiate the claims regarding delays in trademark advertisement procedures. According to an official at the office of the Registrar of trademarks, the advertisement of a trademark is typically scheduled to occur within 30 days following the completion of its examination. However, trademark attorneys practicing in Tanzania contend that the process often extends to a minimum of two months or more, largely due to persistent administrative delays within the Registrar of trademark's office. A particularly illustrative example cited is the case of the trademark “JUMBO 480 EC,” filed by M/s Agri Speciality Limited

[553] Op cit Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

on 16 March 2005. Although a letter of acceptance was issued on 16 May 2005, the trademark had not been advertised by 30 December 2008. This case demonstrates that the advertisement stage can experience delays exceeding three years. Notably, this is not an isolated occurrence, as other trademarks have similarly faced prolonged advertisement timelines.

Another compelling instance was provided by the trademark attorney, involving M/s Serengeti Breweries Limited (SBL), which applied for registration of the trademark "KICK" on 21 February 2005. Although the Registrar of Trademarks issued a letter of acceptance on 1 September 2005, the trademark had not been advertised in the trademark journal for the statutory opposition period as of December 2008 indicating a delay exceeding three years.

The attorney further cited additional examples to illustrate the persistent delays in the advertisement process. For instance, the trademark "JOGOO BRAND," applied for by M/s Chenzou Enterprises Limited, was advertised only after a delay of five months following the issuance of the acceptance letter. Similarly, the trademark "PATITAB," filed by M/s Twiga Chemicals Industry Limited, experienced a six-month delay before being advertised. These examples collectively highlight systemic inefficiencies and inconsistencies in the administration of trademark advertisement in Tanzania.

Another example presented by the trademark attorney involved the trademark "E-Tel," filed by Finserv Africa Limited under Class 36 on 19 December 2013. The application was not advertised until 15 May 2015, indicating a delay of nearly two

years between the date of filing and its eventual publication in the trademark journal. This further exemplifies the considerable lags often encountered in the trademark registration process.

One of the trademark attorneys provided further evidence of delays in trademark advertisement, even following the introduction of the Online Registration System (ORS). These delays, he noted, persisted despite the system's intended efficiency improvements. For example, Ningguo Anning Textile Co. Limited filed a trademark application for “Aningtex Crown” under Class 24 on 9 September 2019. However, the trademark was not advertised in the Trade and Service Mark Journal until 15 March 2020 approximately six months after the application date. This instance highlights that administrative inefficiencies continue to affect the trademark registration process, even in the digital environment.

These instances underscore the continued delays encountered at the Office of the Registrar of trademarks, even when applications are filed and processed by trademark attorneys. The same attorney further reported that, on the same date 9 September 2019 another trademark application was submitted for the mark “Lapax” under Class 24. This application, like the one for “Aningtex Crown,” was not advertised until 15 March 2020, reflecting a delay of nearly six months from the date of filing. Such recurring delays highlight that procedural inefficiencies persist regardless of professional representation or the adoption of digital systems. From the foregoing analysis, it is evident that delays in the advertisement of trademarks in the Trademark Journal of Tanzania are a recurring issue. However, it is important to note that the statutory opposition period of 60 days is consistently observed. Since

this period begins from the date of advertisement, the public is not significantly prejudiced by the delays in publication, as their right to oppose remains intact once the advertisement is made.

This observation reveals a broader pattern: where the trademark law prescribes fixed time limits such as for the opposition period those limits are generally adhered to. In contrast, where the law is silent or vague, particularly regarding the timeframe within which the Registrar of trademarks must advertise accepted applications, delays are frequent. This administrative power, stemming from a lacuna in the law, appears to be susceptible to misuse.

Therefore, it is imperative to amend the trademark legislation in order to address the identified legal gap. In particular, the law should be revised to incorporate specific, clear, and enforceable timeframes for the advertisement of accepted trademark applications. Implementing such statutory deadlines would curtail administrative discretion, promote transparency, and enhance accountability within the Office of the Registrar of trademarks. Ultimately, this reform would contribute to a more efficient and predictable trademark registration system

From the standpoint of Good Governance Theory, the absence of a timeframe for advertisement undermines transparency, efficiency, and accountability, since applicants cannot reasonably anticipate when their accepted marks will be published. Decision-Making Theory further illustrates how unfettered discretion produces inconsistent results, with some marks delayed for months or even years despite having met all legal requirements, thereby reflecting decision-making that is neither

rational nor impartial. Finally, through the lens of Economic Theory, prolonged delays in advertisement impose real costs on businesses, as applicants remain in uncertainty regarding the protection of their marks, face difficulties in brand rollout, and in some cases suffer competitive disadvantages. These theoretical insights reinforce that the issue is not merely administrative inefficiency but a systemic flaw that weakens governance standards, distorts decision-making, and generates negative economic consequences.

5.1.3.4 No Time Limit for Registrar of Trademarks to Register accepted Trademarks

This represents yet another power vested in the Registrar of trademarks by the trademark law.[554] In Tanzania the trademark law[555] under section 28 of the Trade and Service Marks Act, 1986[556] provides that, when an application for trade or service mark has been accepted or an opposition has been decided in favour of the applicant the Registrar of trademarks shall register the trademark. However, if the acceptance has been made in error, the Registrar of trademarks is not bound to register the trademark.

The essence of section 28 of Trade and Service Mark Act, 1986[557] together with Rule 47 of the Trademark Regulation, 2000 above is that, The Registrar of Trademarks is legally compelled to register a trademark once the application has been accepted without objection. Similarly, where an opposition to registration has

[554] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[555] Rule 47 of the Trade and Service Mark Act, Regulation, 2000
[556] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[557] Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

been resolved in favor of the applicant, the Registrar of trademarks is obligated to proceed with registration. This provision is commendable as it guarantees the rights of the trademark applicant by ensuring that successful or uncontested applications culminate in registration. In doing so, the law affirms legal certainty and strengthens the proprietary interests of trademark owners.

However, a significant weakness of the aforementioned provision is its failure to establish a control mechanism, particularly regarding the timeframe within which the Registrar of trademarks must complete the registration process. As a result, discretion is left entirely to the Registrar of trademarks, who may delay the registration without legal consequence. The provision, while mandating registration, lacks any binding temporal obligation, thereby allowing the Registrar of trademarks to act at their own pace. Consequently, if the Registrar's office chooses to proceed slowly, there exists no legal recourse to compel timely action. This legislative gap contributes to inefficiency within the Registrar's office and undermines the effectiveness of the trademark registration system.

From the perspective of Good Governance Theory, the absence of a statutory timeframe for registration undermines accountability and predictability, since applicants cannot anticipate when their trademark rights will be formally secured. Decision-Making Theory further illustrates that discretion exercised without procedural limits leads to arbitrary and inconsistent outcomes, where some registrations are processed quickly while others are indefinitely delayed, depending solely on administrative will. Viewed through Economic Theory, prolonged delays in registration impose substantial costs on applicants, as they remain unable to fully

exploit their trademarks in the marketplace, secure investment, or protect themselves against infringers. These theoretical insights confirm that the legislative silence on timelines does not merely create inconvenience, but produces systemic weaknesses that erode good governance, impair rational decision-making, and generate negative economic effects for businesses and the broader economy.

5.1.3.5 No Time limit for Issuance of Certificate of Registration by Registrar of Trademarks

Issuance of a certificate of registration is a statutory right accorded to every applicant upon fulfillment of all legal requirements. Under the trademark law[558] the Registrar of trademarks is vested with the authority to issue such certificates. Under Section 28(2) which provides that, on the registration of a trade or service mark, the Registrar of trademarks shall cause to be sealed and shall issue to the applicant a certificate in the prescribed form of the registration thereof. Apart from the Trademark Act[559] of Tanzania the Trademark Regulation[560] provides that, upon the registration the Registrar of trademarks shall issue to the applicant a certificate in the Form 02, and shall affix thereto a copy of the trademark which may be representation thereof supplied by the applicant.

The above provision under trademark law[561] clearly mandates that the Registrar of trademarks shall issue a certificate of registration in the prescribed form.

[558] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[559] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[560] Rule 50 of the Trade and Service Mark Act, Regulation, 2000
[561] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

Nonetheless, the law[562] is silent on regulatory safeguards, particularly regarding the timeframe for issuing such certificates. This legislative gap effectively grants the Registrar of trademarks with wide discretion, which may result in either prompt or delayed issuance, depending on administrative practice.

In light of the identified legal shortcoming, field research revealed a range of complex responses. During interviews with officials at the Office of the Registrar of Trademarks in Tanzania, it was observed that these officials expressed satisfaction with their procedures, asserting that certificates of registration are generally issued within approximately 30 days. However, feedback from trademark attorneys and local clients revealed a more divided perspective. While 45% of respondents agreed that certificates are issued within a reasonable timeframe, 55% maintained that delays are frequent. According to the latter group, even in cases without opposition, the issuance process is often unreasonably prolonged, suggesting the need for procedural improvements within the Registrar's office.

Additionally, a number of extreme cases from Tanzania were documented to illustrate instances where the issuance of registration certificates took an unreasonably long time. These examples serve as concrete counterpoints to the positive assessments provided by some trademark attorneys, applicants, and officials from the Registrar's office. They highlight the inconsistency in service delivery and underscore the practical implications of the absence of a statutory timeframe. In Tanzania, the trademark "ZARIN" was filed by M/s Pharma Access Africa Limited on 17th March 2008. The Registrar of trademarks issued a letter of acceptance on

[562] Ibid

29th April 2008, and the trademark was subsequently advertised on 15th June 2008. Following the lapse of the 60-day opposition period without any objections, the applicant, through their trademark attorneys, formally requested issuance of the registration certificate on 10th October 2008. However, by the end of December 2008, the certificate had still not been issued, highlighting a significant delay in administrative processing despite procedural compliance.

The trademark “BIDDY’S” was applied for registration on 26th March 2007 by M/s Hemby Holdings Ltd. The Registrar of Trademarks issued a letter of acceptance on 23rd July 2008, followed by advertisement on 15th August 2008. In the absence of any opposition during the statutory period, the certificate of registration was expected to be issued by November 2008. However, as of December 2008, the Registrar had not yet issued the certificate, reflecting another instance of administrative delay despite procedural compliance.

Another illustrative case is that of the trademark “JOGOO BRAND”, applied for by M/s Chenzou Ester Enterprises Ltd. on 19th May 2006. A letter of acceptance was issued on 15th June 2006, and the trademark was advertised on 15th November 2006. As no opposition was filed, the certificate of registration became due in February 2007. Despite this, the Registrar of Trademarks did not issue the certificate until 26th June 2008 more than a year after it was dueindicating a substantial delay in administrative processing.

The above examples highlight serious delays in certificate issuance, rooted in a legislative gap. Without a defined timeframe in the trademark law, the Registrar

operates at personal discretion rather than under standardized, business-aligned procedures. This lack of regulatory accountability directly contributes to inefficiencies in the registration process.

From the perspective of Good Governance Theory, the absence of a statutory timeframe for issuing certificates undermines transparency, predictability, and accountability in trademark administration. Applicants who have complied with all requirements remain uncertain as to when their proprietary rights will be formally recognized, creating inefficiency and frustration. Decision-Making Theory further illustrates how unconstrained discretion produces inconsistent outcomes: while some applicants receive certificates within a month, others endure delays of more than a year, with no objective criteria guiding these differences. Finally, Economic Theory highlights that such delays impose real costs on businesses by preventing them from fully exploiting their trademarks in commerce, securing investment, or enforcing rights against infringers. Together, these theoretical perspectives confirm that the absence of timelines in certificate issuance is not a minor procedural defect but a systemic flaw that weakens good governance, distorts decision-making, and imposes economic burdens on entrepreneurs and investors.

5.1.3.6 No Time limits for Issuance of Renewal Certificate by Registrar of Trademarks

Every certificate of trademark registration issued to an applicant is subject to a time limit. Upon expiration, the registered proprietor may apply for renewal, and the Registrar of Trademarks is empowered by law to issue a renewal certificate

confirming the extension of rights. In Tanzania the trademark law[563] provides that, the registration of a trade and service mark shall be for a period of seven years from the date of registration but, may be renewed from time to time.[564]The trademark law[565] further provides that, the Registrar of trademarks shall on application made by the registered proprietor of a trademark in the prescribed manner and withtin the prescribed period, renew the registration of the trademark for a period of ten years from the date of expiration of original registration.[566] Separately from the Trademark Act,[567] the Trademark Regulation[568] provides that, the Registrar of trademarks shall notify the registered proprietor in writing of the approaching expiration of the term of registration and of the conditions as to payment of fees and other requirements necessary for obtaining the renewal.

Based on the provisions of trademark law[569] and the preceding analysis, it becomes evident that the powers conferred upon the Registrar of trademarks are limited to issuing a renewal certificate upon application by the registered proprietor and payment of the prescribed fees. However, the law[570] does not stipulate any specific timeframe within which the Registrar of trademark to issue the certificate of renewal once all statutory requirements have been met. This legislative omission represents a

[563] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[564]Section 29(1) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[565]Op cit Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[566]Section 29(2) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[567]Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[568]Rule 52 of the Trade and Service Marks Regulation, 2000
[569] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[570] Ibid

clear weakness in the control mechanisms of the trademark law.[571] It effectively allows the Registrar of trademarks to exercise administrative discretion without temporal constraint, leading to inefficiencies and undermining the effectiveness of the Registrar's office.

Field research further illustrates the consequences of the lack of a statutory timeframe for the issuance of trademark certificates. A trademark attorney interviewed in Tanzania stated that, even when all legal requirements are met, the law does not provide a definitive timeframe for the issuance of a renewal certificate. This uncertainty often requires applicants to engage in continuous follow-up. Similar concerns were echoed by trademark beneficiaries, who highlighted that delays whether for new registrations or renewals are frequent and largely unpredictable. In contrast, officials from the Registrar's office claimed that certificates are issued in a timely manner, often within seven working days. These contrasting views suggest a disconnect between administrative perception and user experience, reinforcing the argument that clearer legislative controls are necessary.

The absence of clearly defined timeframes in Tanzania's trademark legislation[572] has a direct impact on the functional efficiency of the Registrar of trademarks. This legislative gap permits discretionary delays, as neither the Registrar of trademarks nor the supporting officials are legally bound to act within a specific period. As a result, the system encourages administrative complacency, leaving trademark applicants and beneficiaries vulnerable to unpredictable and often prolonged delays

[571] Ibid
[572] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

in the processing of certificates. From the perspective of Good Governance Theory, the absence of a statutory timeframe for issuing renewal certificates undermines accountability and predictability, since registered proprietors cannot plan their business activities with certainty about when their rights will be formally extended.

Decision-Making Theory also shows that this discretionary space produces inconsistent outcomes, with some renewals processed quickly while others are delayed despite full compliance, revealing decision-making that lacks uniform standards and rational criteria. Finally, under Economic Theory, such delays carry significant costs for trademark owners, as uncertainty over renewal undermines brand continuity, discourages investment, and weakens the capacity to enforce rights against infringers. Together, these theoretical insights demonstrate that the omission of clear timeframes for renewal is not merely a technical oversight, but a structural flaw that weakens governance, distorts decision-making, and imposes economic burdens on entrepreneurs and businesses.

5.1.3.7 Other Functions and their Discharge

The preceding discussion has demonstrated that the failure of the trademark law to establish effective control mechanisms particularly concerning timeframes has significantly contributed to inefficiencies within the ofice of the Registrar of trademarks. Evidence drawn from both the legal framework and empirical data gathered from respondents, including officials at the Registrar's office, trademark beneficiaries, and attorneys, supports this conclusion. The legislative gap effectively grants the Registrar of trademarks and his personnel unchecked discretion to act at their convenience. As a result, trademark applicants are frequently subjected to

inordinate delays, undermining the reliability and efficiency of the trademark registration system.

Within this context, it is important to recognize that the office of the Registrar of trademarks is also responsible for a range of auxiliary functions beyond the core duties of registration and renewals. One such function includes the rectification of typographical errors in trademark certificates a task that plays a vital role in maintaining the accuracy and integrity of trademark records. This study seeks to assess the effectiveness of the Registrar's office in executing such supplementary responsibilities. Evaluating the efficiency, responsiveness, and procedural clarity with which these functions are carried out will provide a more comprehensive understanding of the overall performance of the Registrar of trademarks in administering trademark law[573] in Tanzania.

A recurring concern raised by trademark attorneys and clients during field interviews was the prevalence of typographical errors in trademark certificates issued by the Registrar's office. Respondents reported that such errors are not only common but, in some cases, significant enough to distort the proper representation of the trademark. Although typographical mistakes are remediable in theory, the process for rectification is widely viewed as inefficient and unnecessarily lengthy. Several stakeholders observed that the time required to correct these errors often mirrors the duration of a fresh application. In response, one attorney disclosed resorting to self-correction using correction fluid, highlighting a disturbing reliance on informal

[573] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

remedies. This practice underscores the institutional weaknesses of the Registrar's office and poses a threat to the credibility and legal certainty of issued certificates.

Officials from the Registrar of trademarks' office in Tanzania recognized the ongoing problem of typographical errors and admitted that the process of rectifying such errors can be delayed. They attributed these delays to several operational challenges. For instance, rectification requests may coincide with periods when the responsible officer is engaged with other tasks, leading to postponements. Additionally, they pointed out that some delays originate from the trademark holders themselves, particularly when certificates are not submitted for correction in a timely manner. While these factors offer partial justification, they do not fully address the systemic inefficiencies that burden applicants and create reliance on informal remedies.

Viewed through the lens of Good Governance Theory, the prevalence of typographical errors and the slow rectification process reflect shortcomings in transparency, efficiency, and accountability within the Registrar's office. Decision-Making Theory further shows how discretionary handling of correction requests, often dependent on officer availability rather than standardized procedure, produces inconsistent and irrational outcomes. From the perspective of Economic Theory, these inefficiencies impose additional costs on trademark owners, delaying business operations and in some cases forcing them into informal remedies that compromise legal certainty. Together, these theoretical perspectives confirm that weaknesses in the discharge of auxiliary functions such as rectification are not minor administrative lapses but systemic failures that undermine good governance, impair rational

decision-making, and impose economic burdens on stakeholders.

5.2. The Cause of Ineffectiveness in some Function of the Registrar of Trademarks

The analysis has demonstrated multiple instances in which the Office of the Registrar of trademarks in Tanzania has proven ineffective in fulfilling its administrative responsibilities. These inefficiencies manifest in various stages of the trademark process, including the issuance of letters of acceptance, advertisement of trademarks in the trademark journal, the timely determination of oppositions, and the issuance of registration and renewal certificates. The findings, drawn from diverse perspectives including clients, trademark attorneys, and officials within the Registrar's office highlight a widespread perception of administrative delays and procedural weaknesses.

Having established these shortcomings in the administration of trademark processes, the next critical question arises: What are the underlying causes of these inefficiencies? To address this, the researcher turned once again to field data collected during the study. Several key factors were identified as root causes contributing to the persistent weaknesses in the operations of the Registrar's office.

Having established these shortcomings in the administration of trademark processes, the next critical question arises: What are the underlying causes of these inefficiencies? To answer this, the study draws not only on field data but also on the three theoretical frameworks guiding the research. Good Governance Theory helps explain how the absence of accountability and transparency mechanisms fosters

administrative delay; Decision-Making Theory shows how unstructured discretion results in inconsistent and sometimes irrational outcomes; and Economic Theory reveals how such inefficiencies impose costs on businesses and undermine confidence in the system.These are outlined briefly below.

5.2.1 Lack of Computer/Online filling System

One of the key factors contributing to poor performance in the administration of trademarks in Tanzania is the historical lack of a fully-fledged computerized system at the office of the Registrar of trademarks. For many years, trademark applications were filed manually, and the entire registration process operated through paper based procedures. This manual system was not only time consuming but also prone to inefficiencies and administrative delays. Recently, however, the Registrar's office introduced an Online Registration System (ORS),[574] marking a significant step toward modernization. According to officials, the ORS is designed to allow clients to access services remotely, without the need to physically visit the Registrar's office, and at any time of the day. While this development is promising, the system's actual impact on service efficiency remains to be critically assessed.

During interviews, officials at the Office of the Registrar of trademarks explained that services under the Online Registration System (ORS) are delivered in modules, beginning with industrial property services such as trade and service marks, patents, and company registration. However, despite the introduction of this computerized

[574] On 1st February, 2018, BRELA introduced the ORS which is an online platform to enable electronic registration of companies in Tanzania. The ORS system was introduced to replace the paper-based registry with the aim of simplifying registration of companies and business in Tanzania. Accessed from www.taxnews.ey.com on 25th June, 2025 at 5:51PM

system, several trademark attorneys remain skeptical about its effectiveness. They argue that the ORS has not yielded comprehensive results, as delays persist in key administrative processes, including the issuance of examination reports, publication in the trademark journal, and delivery of registration certificates. These attorneys contend that, unless applicants conduct persistent personal follow-ups, applications tend to remain unattended by the Registrar's office. Consequently, the official assertion that the ORS allows users to fully access services without visiting the Registrar's office appears unsubstantiated in practice. The reality, as observed by many stakeholders, is that the system requires constant monitoring and physical intervention to ensure progress in application processing.

While criticisms of the Online Registration System (ORS) are common among trademark attorneys, there are also instances where the system has operated efficiently. One such example was provided by a Tanzanian trademark attorney representing M/s Ningguo Textile Co. Limited. The application for the trademark "Aningtex Crown", filed under Class 24 on 9th September 2019, proceeded smoothly through the ORS. It was advertised on 15th March 2020, and after the three-month opposition period the certificate of registration was issued on 15th June 2020. This case demonstrates that, under certain conditions, the ORS is capable of supporting timely and effective trademark registration.

In contrast to the earlier example of efficient service delivery, the same trademark attorney recounted another case that illustrates continued delays under the Online Registration System (ORS). The application for the trademark "BAT", on behalf of M/s British American Tobacco (Brands) Limited, was filed on 17th February 2020 in

Class 34. The mark was not advertised until 15th February 2021 approximately one year later and the certificate of registration was issued on 15th June 2021. The attorney remarked that despite the introduction of a computerized filing system, procedural delays remain prevalent. He attributed this to the static nature of the trademark legislation,[575] which has not been amended to introduce binding timeframes for the Registrar of trademark's administrative functions. In his view, true administrative efficiency will only be realized once the law[576] is reformed to limit discretionary delays and introduce enforceable service standards.

The examples presented by the Tanzanian trademark attorney clearly demonstrate that the introduction of a computerized trademark filing system, in the absence of legislative reform, has not resulted in meaningful improvements to the administration of trademarks. Despite the modernization of filing procedures through the Online Registration System (ORS), delays remain prevalent in key areas such as advertisement and certificate issuance. This highlights the limitation of technological solutions when not accompanied by legal frameworks that ensure accountability, predictability, and efficiency in administrative processes.

From the standpoint of Good Governance Theory, the continued delays despite the ORS highlight that technology alone cannot guarantee transparency, accountability, or predictability without statutory safeguards. Decision-Making Theory further explains that officials continue to exercise broad discretion even within a

[575] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[576] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

computerized system, resulting in inconsistent outcomes such as some applications being processed within months while others take over a year. Finally, under Economic Theory, the persistence of delays despite digitalization imposes unnecessary costs on businesses, as applicants must continue personal follow-ups and face uncertainty in market entry. These theoretical insights confirm that while the ORS represents a step toward modernization, its effectiveness remains limited in the absence of legislative reforms that constrain discretion and ensure uniform service delivery.

5.2.2. Poor Record Keeping

Although record-keeping is a core responsibility of the Registrar of trademark's office, data from field interviews suggests that it remains one of the most problematic aspects of trademark administration in Tanzania. Trademark attorneys and clients consistently described the process of file retrieval as burdensome and inefficient. Several respondents recounted experiences where locating a file, even after submission through the modernized system, took an excessive amount of time. In some cases, the Registrar of trademark's office reportedly requested that the client or attorney supply fresh copies of documents to recreate a temporary file, often without any official documentation of the request.

One attorney emphasized that despite the digital system, locating physical files remains a "nightmare." Due to fears of further delays, attorneys often comply without objection. These issues point to systemic shortcomings in the record management practices of the Registrar of trademark's office, which persist even after the adoption of technological upgrades.

The evidence presented above clearly indicates that a failure in file management particularly the inability to trace submitted applications has a direct impact on the effectiveness of the Registrar of trademarks. According to multiple respondents, even after the introduction of digital tools, the task of locating trademark files remains notably difficult. This persistent issue highlights a fundamental gap in administrative functionality and suggests that technological upgrades alone are insufficient without robust record-keeping protocols.

Viewed through the lens of Good Governance Theory, poor record-keeping undermines transparency, accountability, and efficiency, as applicants cannot reliably track their files and are forced into informal practices such as resubmitting documents. Decision-Making Theory highlights how weak record management fosters inconsistent outcomes, with some files traced promptly while others are effectively lost, leaving decisions dependent on arbitrary circumstances rather than standardized procedures. Finally, Economic Theory shows that the inefficiencies in file management impose significant costs on applicants, who must spend additional time and resources to ensure progress, thereby discouraging investment and undermining business confidence. Together, these perspectives reveal that the record-keeping failures within the Registrar's office are not merely operational lapses but systemic weaknesses that impair governance, distort decision-making, and create avoidable economic burdens.

5.3 Weakness in the Trade and Service Mark Act No. 12 of 1986

As discussed above, the lack of statutory timeframes regulating the actions of the

Registrar of trademarks represents a key weakness in Tanzania's trademark law.[577] In light of this, the study proceeds to assess additional structural deficiencies in the legislative framework. Tanzania's current trademark regime originally enacted over 22 years ago only underwent revision in 2021. Despite this recent amendment, trademark attorneys consulted during field interviews argue that the law[578] still fails to adequately protect the interests of trademark beneficiaries. Their primary concern lies in the continued absence of legal provisions that impose accountability or time-bound obligations on the Registrar of trademarks.

The amendments, they contend, have left intact the broad administrative powers of the Registrar of trademarks, perpetuating systemic delays that negatively impact applicants throughout the registration process. Another critical shortcoming of the trademark law[579] in Tanzania is its silence on the issue of unreasonable administrative delays. The law[580] permits appeals to the High Court, but only where a formal decision has been rendered by the Registrar of trademarks. This legal structure presumes the existence of a determinative action, which excludes scenarios where no decision has been made due to prolonged inaction.

As such, there is no statutory avenue for trademark applicants to challenge or remedy unwarranted delays in the administrative process. This omission leaves beneficiaries vulnerable to indefinite waiting periods without legal protection. To

[577] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[578] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[579] Ibid
[580] Ibid

conclude, the persistent inefficiencies in the Office of the Registrar of trademarks are unlikely to be resolved without legislative reform. Specifically, the law[581] must be amended to introduce enforceable timeframes for the Registrar of trademark's administrative functions. As shown through both field responses and textual analysis, Tanzania's trademark law[582] provides no statutory pathway for challenging administrative inaction or delay. In response to this legislative silence, the next section of this study will examine whether judicial oversight could offer a viable avenue for trademark beneficiaries to seek redress in the absence of express statutory remedies.

From the standpoint of Good Governance Theory, the failure of the Act to impose statutory timeframes or provide remedies against inaction undermines accountability, transparency, and predictability in the administration of trademark law. Decision-Making Theory further illustrates that leaving such wide discretion unchecked fosters arbitrary outcomes, where decisions are delayed indefinitely without rational justification or institutional safeguards. Finally, through the lens of Economic Theory, legislative silence on administrative delays generates uncertainty for businesses, raises the cost of protecting trademarks, and deters both local and foreign investment. These theoretical insights confirm that the deficiencies of the Act are not simply technical gaps but systemic flaws that weaken governance, distort decision-making, and impose unnecessary economic costs on trademark owners and the broader economy.

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[581] Ibid

[582] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

5.4 Judicial Remedy on Unnecessary Delays by the Registrar of Trademarks

The analysis has demonstrated that Tanzania's trademark legislation[583] is deficient in providing legal avenues to address unnecessary delays by the Registrar of trademarks and his office. This chapter seeks to determine whether judicial remedies may be available to service seekers in light of these shortcomings. The statutory framework governing trademarks vests significant administrative powers in the Registrar of trademarks, yet it provides no statutory provisions enabling applicants to challenge procedural inaction or excessive delays. As a result, the Registrar of trademarks is left to act with broad discretion, free from meaningful oversight. This legal gap denies service seekers the ability to pursue redress when faced with delays in receiving examination reports, trademark advertisements, or registration certificates. The study now turns to explore whether judicial oversight, such as judicial review, can offer an alternative mechanism to hold the Registrar of trademark accountable in such instances.

The same legislative[584] silence is evident in other areas of trademark administration, such as error correction and the issuance of renewal certificates. In these functions as well, the law[585] provides no avenue for holding the Registrar of Trademarks accountable for undue delays or inefficiencies. Notably, this study found no court cases in which affected parties have pursued legal action against the Registrar for such administrative failures. This absence of litigation is particularly surprising, given the volume of dissatisfaction voiced by trademark attorneys and applicants

[583] Ibid
[584] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[585] Ibid

regarding the Registrar's discretionary conduct. It underscores the systemic nature of the legal gap that shields the Registrar from judicial scrutiny.

It has been revealed, with concrete examples how the client's and trademark attorneys are discontented with the delays and laxity which characterize the performance of the Registrar of trademark's office in administration of trademarks. The only explanation, as to why these discontented person have not taken the Registrar of trademark's office to court, is silence of the trademark law.[586] How can one compel another to act in a certain way while there is no law[587] which provides for the same?

Having established the weakness in the trademark law[588] on how the Registrar of trademark ought to exercise his powers, this study went ahead to affirm that, the trademark law[589] is silent on how to challenge delays by the Registrar of trademarks either before the court of law or other avenues. It is vital to understand at this juncture that, because the powers of the Registrar of trademarks are vested upon him without any control mechanism, the Registrar of trademarks ought to use his discretionary powers as to when to examine the trademark, when to advertise the trademark in the trademark journal and when to issue the certificate of registration.

In view of the legislative silence on remedies for delay, trademark proprietors in Tanzania may resort to judicial mechanisms to compel the Registrar of trademarks to

[586]Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[587]Ibid
[588]Ibid
[589]Ibid

fulfill his statutory responsibilities. The use of prerogative orders such as the writ of mandamus offers a legal pathway for challenging prolonged administrative inaction. While the powers conferred upon the Registrar of trademarks are broadly defined and may appear insulated from challenge, they are nonetheless subject to judicial oversight. Discretionary authority, by its nature, allows decision-makers a range of choices, but that discretion must be exercised fairly, rationally, and within legal constraints. These discretionary powers are typically classified as judicial or administrative, with the Registrar of trademark's duties falling into the latter category. Where such discretion is exercised in a capricious or unjustified manner or withheld entirely judicial intervention may serve as a corrective measure to ensure administrative accountability.

Judicial discretion refers to the authority exercised by members of the judiciary in their official judicial capacity. It is bounded by principles of fairness, reasonableness, and the proper administration of justice. Where a lower judicial officer exercises such discretion improperly, a superior court has the authority to intervene and correct the error.

This principle was firmly established in the landmark case in Mbogo and Another .v. shah[590] the Court of Appeal for Eastern stated that:-

> *"This court will not interfear with the exercise of discretion by an inferior court unless it is satisfied that its decision is clearly wrong because it is misdirected itself or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion".*

[590](1968) E.A. 93

As such, when an inferior court improperly exercises its judicial discretion, a superior court has the authority to issue a writ of certiorari, effectively quashing both the decision and the proceedings. This principle underscores the need for all discretion judicial or otherwise to be subject to legal control. On the other hand, executive or administrative discretion refers to the powers exercised by public officials or administrative bodies in the performance of statutory functions. Most administrative decisions involve an element of discretion, particularly in areas like licensing, registration, or enforcement. While this discretion enables flexible and context specific decision-making, it must nonetheless adhere to principles of reasonableness, legality, and procedural fairness.[591]

Courts may legitimately intervene in the exercise of executive discretion to prevent both the exceeding and the abuse of statutory powers. This intervention is grounded in the principle that discretion must be exercised lawfully, reasonably, and in good faith. When administrative authorities act based on irrelevant considerations, ignore material factors, or pursue improper objectives, their actions are deemed unlawful. Judicial oversight in such instances ensures that discretion is not used arbitrarily and that public power remains subject to legal standards.[592]

Accordingly, where the Registrar of trademarks fails to exercise his administrative discretion properly, or does so in a manner that is arbitrary, unreasonable, or contrary to the purpose of the law, the courts may be called upon to intervene. Judicial oversight in such cases is essential to uphold the rule of law and ensure

[591]Lumumba, P., Judicial Review in Kenya, 2nd Ed, Law Africa Publishing (T) Ltd, Dar es Salaam, 2006 at Pg 57
[592]Ibid

accountability in the exercise of public power.

The trademark law assigns several express duties to the Registrar of trademarks, such as issuing letters of acceptance, advertising trademarks in the journal, and delivering both registration and renewal certificates. When the Registrar of trademarks fails to discharge these obligations without lawful justification, courts may intervene through the issuance of a writ of mandamus. Mandamus is a prerogative remedy available under administrative law whereby the High Court compels a public authority to perform a public or statutory duty. This writ becomes applicable when an administrative body, such as the Registrar of trademarks, refuses to act on a duty intended by Parliament to benefit individuals particularly in contexts where the rights of service seekers are at risk due to inaction.[593]

The writ of mandamus is limited to compelling the performance of a clearly defined public duty. It cannot be used to enforce general administrative obligations or to direct how a discretionary power should be exercised. However, where a discretionary power is tied to the performance of a legal duty, mandamus becomes applicable. In Tanzania, the Registrar of trademarks is legally obligated to issue examination reports, advertise trademarks in the journal, and issue certificates of registration and renewal. According to field research, these duties are eventually performed but are frequently delayed. It is this persistent delay rather than outright refusal that has led many respondents to characterize the Registrar of trademark's office as ineffective. In such scenarios, if delay amounts to constructive inaction or

[593]Lumumba, P, Judicial Review in Kenya, 2nd Ed, Law Africa Publishing (T) Ltd, Dar es Salaam, 2006 at Pg 88

amounts to an abuse of discretion, a writ of mandamus may be sought to compel timely compliance.

Whether the writ of mandamus can be used to compel the Registrar of trademarks to perform his duties timely or reasonably depends on the nature of those duties under law. Tanzanian case law outlines specific conditions for the issuance of this prerogative remedy. in the case of John Mwombeki Byombalirwa .v. The Regional Commissioner and Regional Police Commander, Bukoba[594] the Court held that for mandamus to be granted, the duty in question must be (i) public, (ii) legally imposed, and (iii) mandatory, not discretionary. This position was reinforced in case of Ngurangwa & Others .v. Registrar of Industrial Court of Tanzania and others[595] in which the Court held that:- " Mandamus is employed to enforce the performance of a public duty, which is imparative not optional or discretionary with authority concerned.

In light of the above, it is clear that the lack of statutory safeguards especially the absence of enforceable timeframes has left the Registrar of trademarks with wide discretion over the administration of trademark processes. This discretion has enabled the Registrar of trademarks to perform duties such as issuing reports and certificates according to his own schedule, without legal obligation to adhere to a defined timeline. As established, judicial remedies like mandamus cannot be applied to compel action on purely discretionary functions. The central requirement for the issuance of mandamus is that the duty must be imperative in nature, not left to

[594](1986) TLR 73 (HC)
[595](1999) 2 E.A. 245

administrative discretion. Given that the delays reported by service seekers stem from this discretionary space, they fall outside the jurisdiction of judicial control. As a result, trademark beneficiaries are left without recourse, either through statutory remedies or judicial review, when faced with such administrative delays.

From the standpoint of Good Governance Theory, the absence of enforceable judicial remedies against administrative delay undermines transparency, accountability, and the rule of law, leaving applicants dependent on the Registrar's unchecked discretion. Decision-Making Theory highlights that without judicial oversight, discretionary power is exercised inconsistently and without rational or uniform standards, resulting in uncertainty and unequal treatment of applicants. Finally, through Economic Theory, the lack of timely judicial recourse increases the cost of doing business, discourages investment, and weakens confidence in Tanzania's intellectual property regime. These theoretical insights confirm that the silence of trademark law on judicial remedies is not merely a technical omission but a systemic weakness that erodes governance standards, distorts decision-making, and generates adverse economic consequences for trademark owners and the broader economy.

5.5 Compatibility of Trademark Law with International and Regional Instruments

Understanding the weaknesses in the trademark law[596] for Tanzania, it is further in the interest of this study to examine the compatibility of the trademark law[597] with

[596]Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[597]Ibid

international and regional instrument. Under this theme, the study shall denote the international and regional instrument on trademark registration and its compatibility with local trademark laws[598] for Tanzania.

As discussed earlier under this study that, there are various international instruments such as Paris convention for the protection of industrial property,[599] Madrid Agreement and its protocol on international trademark registration,[600] Nice Agreement concerning the international classification of goods and services,[601] and Agreement on Trade-Related aspects of Intellectual Property Rights which governs global minimum standards for protecting and enforcing nearly all forms of Intellectual Property rights[602].

For the interest of this study the researcher had limited on Madrid Agreement and its protocol which deals specifically with international trademark registration and to ascertain the compatibility with local trademarks laws.[603] Under the Madrid

[598] Ibid

[599] The Paris Convention, adopted in 1883, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries. Accessed from www.wipo.int at 21/06/2023 at 2.33PM

[600] The Madrid System for the international registration of marks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties. Accessed from www.wipo.int on 21/06/2023 at 2.38PM

[601] The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks (the Nice Classification). The trademark offices of contracting states must indicate, in official documents and publications in connection with each registration, the number of the classes of the Classification to which the goods or services for which the mark is registered belong. Accessed from www.wipo.int on 21/06/2023 at 2.42PM

[602] The TRIPS Agreement, which came into effect on 1st January, 1995, is to date the most comprehensive multilateral agreement on intellectual property. The intellectual property that it covers are: Copyright and related rights, trademarks, geographical indications, industrial design, patent, layout-designs of integrated circuits and undisclosed information. Accessed from www.wto.org at 21/06/2023 at 2.49PM

[603] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

Agreement and its Protocol[604] international application may be filed only by a natural person or legal entity having a connection through establishment, domicile or nationality with a contracting party to the Agreement or Protocol.[605] It is a manadatory rule under the international instrument that, a trademark may be the subject of an international application only of it has already been registered with the trademark office of the contracting party with which the applicant has the necessary connections (office of origin). However, where all the designations are effected under the Protocol, the international application may be based simply on an application for registration filed with the office of origin.[606]

It follows from the above that the Madrid System for the International Registration of Marks requires a basic national application or registration as a precondition for filing an international application. Consequently, when a contracting party such as Tanzania experiences administrative delays in the registration process, applicants are unable to proceed with international filings under the Madrid Agreement or Protocol.[607] This delay undermines the effectiveness of the international system for trademark protection and creates procedural barriers for rightsholders seeking to expand their trademark coverage globally.

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[604]Agreement Concerning the International Registration of Marks (1891) and the Protocol Relating to that Agreement (1989)

[605]Article 2(1) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12th 2007)

[606]Article 1(1) of the Madrid Agreement Concerning the International Registration of Marks as amended on September, 28th 1979, Article 2(1) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November, 12, 2007 and Rule 9 of Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (as in force on February, 1st, 2019

[607]Madrid Agreement Concerning the International Registration of Marks as amended on September, 28th 1979 and Protocol Relating to that Agreement (as in force on February, 1st 2019

As outlined earlier, the delays encountered at the office of the Registrar of trademarks substantiated through both respondent feedback and case examples demonstrate that completing a national trademark registration in Tanzania within a reasonable time is often impractical. This directly impacts the ability of applicants to pursue international protection under frameworks such as the Madrid Protocol, which require a national application or registration as a basis. When the foundational national step is delayed, access to international systems is effectively blocked.

In addition, Tanzania's trademark law,[608] despite undergoing amendments in 2021,[609] still contains no provisions either under the principal Act or its regulations relating to the filing of international trademark applications. Compounding this issue is the fact that Tanzania is not a member of several major international instruments for international registration, which further isolates its trademark regime from global systems. Thus, trademark beneficiaries in Tanzania are restricted both by the procedural inaccessibility of international frameworks and the legal silence within the national trademark regime on cross-border filing procedures.

Tanzania's failure to join the Madrid Agreement and its Protocol leaves its trademark regime isolated from the global system of international registration. From a Good Governance Theory perspective, this reflects inefficiency and lack of accountability, as the state has not aligned its laws with international standards that would benefit rights holders. Under Decision-Making Theory, the choice not to ratify Madrid, coupled with delays in domestic procedures, represents irrational

[608] Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania
[609] Written Laws (Miscellaneous Amendments, No. 2 Act No. 2021

policy-making that undermines rational business planning. Viewed through Economic Theory, the impact is significant: businesses must bear the high costs of filing in multiple jurisdictions, SMEs are effectively excluded from foreign markets, export competitiveness is reduced, and foreign investors view Tanzania as a less attractive destination.

At the regional level, protection of Intellectual Property Rights (IPRs) are well governed by several instruments such as Banjul Protocol[610] which is mandated specifically for trademark registrations, Harare Protocol[611] which is responsible for Patents and Industrial Design and Swakopmund Protocol[612] for protection of Traditional Knowledge and Expression of Folklore. For the purpose of this study the researcher has focused on Banjul Protocol[613] which deals with regional trademark registration and comprehend whether the local trademarks laws are compatible with the regional instrument.

The regional instrument clearly stipulates that, all applications for the registration of a trademark shall be filed either directly with the office of the African Regional Property Organization (ARIPO) or with the industrial property office of the contracting state by the applicant or his duly authorized representative.[614]

[610]Banjul Protocol on marks within the framework of the African Regional Intellectual Property Organization (ARIPO) 1979 as amended in the year 2018

[611]Harare Protocol on Patents and Industrial Design within the framework of the African Regional Intellectual Property Organization (ARIPO), 1982 as amended in the year 2018

[612]Swakopmund Protocol on the protection of the Traditional Knowledge and Expression of Folklore within the framework of the African Regional Intellectual Property Organization (ARIPO), 2010 and amended on 2016

[613]On marks within the framework of the African Regional Intellectual Property Organization (ARIPO), 1979 as amended in the year 2018

[614]Section 2(1) of the Banjul Protocol of marks within the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018 and Rule 5 of the Regulations for implementing the Banjul Protocol which provides: - "The application for registration shall be made on Form No. M1; where an applicant is represented, a power of attorney on Form No. M2 shall be filed together with the application…."

Representation shall be by a patent or trademark agent or by a legal practitioner who has a right to represent applicant's before the industrial property office of any of the Contracting States.[615] Where an application is filed with the industrial property office of a contracting State, such office shall, withtin one month of receiving the application, transmit the application to the office of African Regional Intellectual Property Organization (ARIPO).[616]

Tanzania is a member of of the Banjul Protocol[617] since 1st September, 1999 but, the trademark legislation[618] is inaudible on the procedure of for filling trademark application under the regional instrument. It is evident from the above that the Banjul Protocol facilitates regional trademark registration, allowing applicants to file either directly with ARIPO or through the industrial property office of a member state. However, despite Tanzania's membership in ARIPO, its national trademark law fails to reflect or operationalize these regional provisions.

The current legislative framework is silent on the procedures for filing regional trademark applications, creating legal uncertainty for trademark beneficiaries in Tanzania who seek to access regional protection. This disconnect highlights a significant incompatibility between Tanzanian law and the regional instrument, limiting the practical utility of ARIPO membership. Although Tanzania acceded to the Banjul Protocol in 1999, its national law remains silent on regional filing

[615]Section 2(3) of the Banjul Protocol on Marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018

[616]Section 2(4) of the Banjul Protocol of marks withtin the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018

[617]Banjul Protocol of marks within the framework of the African Regional Industrial Property Organization (ARIPO), 1979 as amended in the year 2018

[618]Trade and Service Mark Act No. 12 of 1986 R.E. 2002 as amended in the year 2021 of the Laws of Tanzania

procedures, rendering membership largely symbolic. Good Governance Theory identifies this as a failure of accountability and responsiveness, since accession has not been translated into practical benefits for trademark users. Decision-Making Theory shows a disconnect between decision and implementation: the state's act of joining ARIPO without enabling legislation produces outcomes that are inconsistent with the objectives of regional integration. Under Economic Theory, the effect is clear Tanzanian firms lose the opportunity to access cost-effective regional protection, are forced into duplicative filings in individual states, and are placed at a competitive disadvantage in regional markets. This also weakens Tanzania's position in fostering regional trade and attracting cross-border investment.

5.6 Conclusion

Based on the discussion above, the study confirms that Tanzania's trademark law grants the Registrar of Trademarks significant administrative powers without embedding sufficient regulatory safeguards, particularly concerning time-sensitive obligations. This lack of control mechanisms has led to persistent delays in trademark registration, leaving beneficiaries without effective avenues to seek redress.

Moreover, judicial remedies are also unavailable in most cases. The writ of mandamus, for example, applies only to enforce imperative public duties, whereas the delays in trademark administration are viewed as falling within the realm of administrative discretion. As a result, trademark applicants are left without legal recourse neither within the statutory framework nor through judicial intervention. The study further evaluated the alignment of Tanzania's trademark law with

international and regional instruments. International systems like the Madrid Protocol require a functioning and timely national registration process, which Tanzania's current system fails to support.

More critically, Tanzania is not a signatory to the Madrid Agreement or Protocol, and its domestic law lacks provisions for international filings. Regionally, Tanzania is a party to the Banjul Protocol, yet its national legislation fails to implement or operationalize the provisions necessary for regional applications. Thus, despite formal membership, Tanzanian applicants are unable to benefit from ARIPO's regional registration mechanisms due to the absence of enabling legislation. Overall, Tanzania's trademark framework remains legally and procedurally misaligned with both international and regional systems, leaving its trademark holders at a disadvantage both domestically and globally.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

This research has addressed the legal deficiencies surrounding the exercise of administrative authority by the Registrar of Trademarks in Tanzania. Under the Trade and Service Marks Act No. 12 of 1986, the Registrar of trademarks is granted wide-ranging powers, yet the law is devoid of any regulatory timeframes or enforcement mechanisms to ensure timely execution of duties. As a result, these powers are often exercised at the Registrar of trademark's discretion, which has led to documented inefficiencies and delays.

The misuse of such unchecked authority not only undermines the interests of trademark proprietors but also impairs broader socio-economic development, as effective trademark protection is crucial to consumer confidence and commercial competitiveness. Trademarks play a pivotal role in both consumer protection and commercial integrity. They function to clearly identify the source of goods or services, enabling consumers to make informed choices while safeguarding them from deceptive or substandard imitations.

Simultaneously, trademarks protect businesses from unlawful appropriation of reputation, which may have been built through substantial financial and reputational investment. As such, an effective system of trademark administration is indispensable. This study, however, has identified significant administrative inefficiencies in the Tanzanian context, including delays in key processes such as issuing letters of acceptance, advertising trademarks, and providing registration or

renewal certificates. These inefficiencies compromise the core function and utility of trademarks.

This study was structured around four primary areas of inquiry. Firstly, it investigated the legal challenges related to the exercise of administrative authority by the Registrar of Trademarks. Secondly, it evaluated whether these powers are subject to any control mechanisms aimed at ensuring efficient trademark administration. Thirdly, it analyzed whether Tanzania's trademark legislation offers any legal or judicial remedies for applicants affected by undue delays. Lastly, the study considered the extent to which Tanzania's legal framework aligns with relevant international and regional treaties on trademark protection. These objectives were addressed through the following research questions:

i. Is there any control mechanism, particularly with regard to timeframes, provided under the trademark law of Tanzania to regulate the discharge of administrative powers by the Registrar of Trademarks, and are there any legal or judicial remedies available to applicants to challenge undue delays?
ii. Is the trademark law of Tanzania compatible with international and regional instruments governing trademark registration and administration, particularly with respect to timelines administrative control and accountability?
iii. Will the proposed legal reforms to the trademark legislation in Tanzania enhance the efficiency, accountability, and effectiveness of trademark administration?

The findings of this study indicate that Tanzania's trademark law grants the Registrar of trademarks wide-ranging discretionary authority, yet fails to impose

time-bound obligations or other accountability measures. This has resulted in a trademark administration system characterized by systemic inefficiencies, including delays in processing applications, issuing registration and renewal certificates, and advertising marks in the official journal. Compounding these delays are deficiencies in record management, which further slow the administrative process. The cumulative effect of these issues is a negative impact on economic performance, as inefficiencies in trademark administration hinder business growth, innovation, and consumer protection.

The Registrar of trademarks exercises quasi-judicial authority, functioning in many respects like a tribunal or court. In judicial practice, timelines are clearly defined by procedural rules to ensure that justice is administered efficiently. Similarly, the Registrar of trademarks should be legally guided by prescribed timelines for the performance of statutory duties such as reviewing applications and issuing decisions. In the absence of such time-bound provisions, service seekers face uncertainty and delays, which is increasingly unacceptable in a commercial context where timeliness is integral to business operations.

The role of the Registrar of trademarks is dual in nature serving both a quasi-judicial function and acting as a key player in the national business ecosystem. Effective trademark administration supports market integrity, innovation, and fair competition, all of which are foundational to economic progress. As such, the Registrar of trademark’s office must adopt business oriented principles such as timeliness, accountability, and consistency. The current lack of procedural discipline and unchecked discretion, however, represents a departure from these principles,

impeding the development of a robust and responsive trademark system.

The lack of effective control mechanisms within Tanzania's trademark law has resulted in administrative inefficiencies that contradict the core purpose of the Trade and Service Marks Act. The unchecked nature of the Registrar of trademark's powers deviates from fundamental principles of administrative law and is inconsistent with the rule of law, which demands accountability and predictability in the exercise of public authority. This has led to delays and procedural uncertainties that affect not only the applicants but also the economic integrity of the trademark system. The findings from both doctrinal and field research confirm that no binding control mechanisms exist within the current legal framework to regulate the Registrar of trademark's discretion.

Further with same research question as to whether the trademark law in Tanzania provides any legal or judicial recourse for service seekers facing delays in administrative processes. The findings reveal that the law does not provide any explicit mechanism for challenging such delays. Furthermore, recourse to judicial remedies, such as the writ of mandamus, is limited to non-discretionary, imperative duties. Since the Registrar's duties are exercised without any legally binding timelines, the resulting delays are classified as discretionary and thus fall outside the scope of judicial enforcement. Consequently, applicants and trademark beneficiaries lack both statutory and judicial protection against administrative delays. The First research question is thus answered in the affirmative, confirming that no control mechanism exist nor any adequate remedies exist in the trademark legislation.

This study's second research question examined whether Tanzania’s trademark law aligns with relevant international and regional intellectual property frameworks. Analysis focused on key instruments such as the Paris Convention, the Madrid Agreement and Protocol, the Nice Agreement, and the TRIPS Agreement, all of which set minimum standards for trademark protection and registration. The findings show that Tanzania is not a member of the Madrid System, which significantly limits its ability to facilitate international trademark registration.

Furthermore, the Trade and Service Marks Act is silent on procedures for filing international applications, lacking any provision that would harmonize domestic law with international obligations. These gaps demonstrate that Tanzania’s legal framework is incompatible with prevailing international trademark systems, and the third research question is answered accordingly. Regarding regional harmonization, the Banjul Protocol serves as the central legal instrument for trademark registration within the ARIPO framework. It enables applicants to file for trademark protection across member states through a single regional application.

Although Tanzania is a contracting party to the Protocol, domestic implementation remains absent. The current Tanzanian trademark law lacks provisions to operationalize regional applications, effectively disconnecting national practice from regional commitments. As such, the legal framework is incongruent with the Banjul Protocol, limiting the ability of trademark owners to benefit from regional registration mechanisms. Overall, this study finds that Tanzania’s trademark legislation fails to align with both international and regional trademark frameworks, including the Madrid System and the Banjul Protocol, despite the country's formal

membership in the latter. The lack of enabling provisions in domestic law prevents effective engagement with these systems. Thus, the third research question regarding the compatibility of Tanzania's trademark law with international and regional instruments is also answered in the affirmative, highlighting the need for substantive legal reform.

The final research question considered whether legislative reform could enhance trademark administration in Tanzania. This study finds that the implementation of targeted amendments particularly those establishing binding time limits for the Registrar's administrative functions would address the prevailing inefficiencies. Equally essential is the inclusion of legal or judicial recourse to enable service seekers to challenge administrative inaction or delay. Without such provisions, reform efforts would be incomplete. Thus, a combination of statutory control measures and judicial safeguards is imperative to ensure a responsive and efficient trademark registration system.

For reforms to be effective, both statutory timeframes and legal remedies must be implemented simultaneously. The current state of trademark administration in Tanzania is hindered by the Registrar of trademark's unchecked discretion, enabled by the absence of binding deadlines and enforceable legal provisions. This lack of accountability has fostered a culture of delay and inefficiency. However, if the legislature introduces specific amendments to the trademark law, the Registrar of trademark's office could serve as an exemplar of administrative efficiency, offering a valuable precedent for reforming other regulatory bodies within the country.

In addition, legislative reform must include specific provisions for the regional filing of trademarks. This would enable Tanzanian applicants to take full advantage of regional systems, such as those established under the Banjul Protocol, directly through the national trademark office. Aligning domestic law with regional instruments would not only streamline administrative processes but also enhance the international competitiveness of local businesses. Accordingly, the third research question is answered affirmatively, as the proposed legal amendments hold the potential to substantially improve trademark administration in Tanzania.

6.2 Recommendations

In light of the legal and administrative shortcomings identified in the course of this study, the following recommendations are proposed to enhance the efficiency, transparency, and accountability of trademark administration in Tanzania:

First an enactment of Statutory Timelines for Administrative Actions. It is imperative that the Trade and Service Marks Act be amended to incorporate binding statutory timelines for all core administrative processes undertaken by the Registrar of trademarks on a reasonable time frame not exceeding 7 to 14 (seven to fourteen) working days. These should include, but not be limited to: Issuance of letters of acceptance or refusal; Advertisement of trademarks in the official journal; Issuance of registration and renewal certificates; Determination of opposition proceedings and applications for rectification or cancellation.

Secondly, introducing time-bound including 7-14 (seven to fourteen) days obligations will ensure predictability, reduce administrative powers/discretionary

abuse, and promote a business-friendly regulatory environment.

Third, establishment of Legal and Judicial Remedies for Administrative Delays. In the absence of enforceable remedies, applicants remain vulnerable to bureaucratic inertia. It is therefore recommended that: The law should provide statutory right to redress, including internal review or complaint mechanisms against undue delay or inaction by the Registrar of trademarks; and the introduction of a provision permitting recourse to judicial remedies such as a writ of mandamus or judicial review in cases of unreasonable delay, thereby reinforcing accountability and access to justice.

Fourth, regulatory guidelines and practice manuals should be developed to standardize decision-making and reduce arbitrariness in the Registrar of trademark's office. Such instruments would provide uniform procedures, interpretive guidance, and objective criteria for examination, thereby enhancing transparency, accountability, and predictability in administrative outcomes.

Fifth, harmonization with International and Regional Frameworks. To align Tanzania's trademark regime with international obligations and facilitate cross-border trademark protection, the Government should take necessary steps to accede to the Madrid Protocol and implement its provisions through domestic legislation, thereby enabling Tanzanian applicants to benefit from international registration via WIPO;

Sixth, the Trade and Service Marks Act should be amended to domesticate the Banjul Protocol under ARIPO by including specific provisions for regional filing,

recognition, and enforcement of ARIPO-registered marks. Seventh, to Build and Institutional Strengthening and to ensure effective implementation of reforms, it is necessary to enhance the technical capacity of officers within the trademark office through continuous training in intellectual property law, international treaties, and administrative justice;

Eighth, to increase staffing and resource allocation to the Registrar of trademark's office to mitigate workload bottlenecks and expedite service delivery. Nineth, A mechanism should be established for periodic legislative review every yearly of the Trade and Service Marks Act to ensure its continued relevance, especially in light of technological advancement and evolving international standards;

BIBLIOGRAPHY

BOOKS

Alexander, D. and Jacob R., A Guide Book to Intellectual Property, Patents, Trademarks and Design, 4th Ed, Sweet & Maxwell, London, 1993

Alison C and Jeremy P., Introduction to Intellectual Property Law, 3rd Ed, Butterworths, London, 1995

Amanda A., A Practical Guide to Trademarks Sweet and Maxwell, London, 1993.

Acharya, N.K, Textbook on Intellectual Property Rights, 4th Ed, Asia Law House, India, 2007

Blanco White, T.A. Kerly's, Law of Trademarks and Trade Names, 9th Ed, Sweet & Maxwell, London, 1966

Babbie, E. The Practice of Social Research, 10th Ed, Wadsworth, Cande, 2004

Cornish, W.R., Intellectual Property, Universal Law Publishing Co PVT Ltd, New Delhi, 2001

Cornish, Llewelyn and Aplin, IntellectualProperty: Patents, Copyright, Trademarks and Allied Rights, 17th Ed, Sweet & Maxwell, London, 2010

Commercial's Intellectual Property Law, 1st Ed, Commercial Law Publishers (India) Pvt Ltd, India, 2005

CanestousJuma and J.b. Ojwang, Innovation and Sovereignty, Acts Place Press, Nairobi Kenya, 1989

Chudi.C. Nwabachili, Intellectual Property and Law in Nigeria, 1st Ed, Malthouse Press Limited, 2016, Nigeria

Cresswell, J.W., Qualitative Inquiry and Research Design: Choosing Among Five Traditions, London, Sage, 1998

Deborah, E. Bouchoux: The Law of Trademarks, Copyright, Patent and Trade Secrets, 4th Ed, Delmar Cengage Learning, USA, 2012.

Dutfield G & Suthersanen, 5th Ed, Global Intellectual Property Law, Edward Elgar Publishing Limited, Northampton USA, 2008

Eran Liss and Dan Adin, Intellectual Property Law and Practice in Israel, 1st Ed, Oxford University Press, 2012, USA

Howell C. & Farrand B, Intellectual Property Law, 5th Ed, Pearson Publishers Edinburg, 2014

Hensen W. Peter, Intellectual Property Law and Practice of United Arab Emirates, Oxford University Press, Inc New York, 2009

Jeremy Philips, Intellectual Property Law Handbook, Butterworth, London, 1990

Jalan P.K. Industries Sector Reforms in Globalization ERA, 1st Ed, Sarup & Sons, 2004, India

Kerly'sLaw of Trade names, 9th Ed, Sweet & Maxwell, London,1996

Kamal, DB., The achievement and Challenges of the new East African Community Cooperation, research memorandum, University of Hull, U.K, June, 2006.

Kombo, D.K., Tromp, D.L.A., Proposal and Thesis Writing: An Introduction, Nairobi, Paulines Publication Africa, 2006

Ladas, P. Stephen, Patent, Trademarks, and Related Rights National and International Protection, Vol I, Harward University Press, U.S.A, 1975

Lumumba, P., Judicial Review in Kenya, 2nd Ed, Law Africa Publishing (T) Ltd, Dar es Salaam, 2006

Moni-Wekesa and Den-Sihanya, Intellectual Property Rights in Kenya, Nairobi, Konrad adenauerstiftung, 2009

Narrayan, P., Law of Trademarks and Passing off, Eastern Law House, Calcutta, 2000

N.K. Acharya, Text book on Intellectual Property Rights, 4th Ed, Asia Law House, 2007, India.

Peter D.R., Patent Law Fundamental, Matthew Bender, New York, 1989

Peter J Groves, Source book on Intellectual Property Law, 1st Ed, Cavendish Publishing Limited, 1997, London

P.K, Jalan, Industrial Sector Reforms in Globalization ERA, 1st Ed, Sarup & Sons, 2004, India

Peter, W. Hensen, Intellectual Property Law and Practice of United Arab Emirates, Oxford University Press, Inc, Newyork 2009

R.K. Nagarajan, Intellectual Property Law, 3rd Ed, Allahabad Law Agency, Haryana, India, 2007

Rakesh Ainapur, Intellectual Property Rights, 1st Ed, Orange Book Publication, Bhilai Chhattisgarh, India, 2024

Sreenivasulu N.S., Law Relating to Intellectual Property, Penguin Random House, India 2013

Stephen.P. Ladas, Patent, Trademark and Related Rights National and International Protection, Vol I Harward University Press, U.S.A 1975

Schnopfhagen Richard, Heine Dieter and Vladankatanic, Intellectual Property Law in Australia, 1st Ed, Kluwer Law International, 2011, Neitherland

Satyajee Srivastava Subharun Pal and others, Fundamental of Intellectual Property Rights, 1st Ed, R.K. Publication, India, 2025

Takwani, C.K., Lectures of Administrative Law, 1st Ed, Eastern Book Company,

India, 1993

PAPERS/WORKSHOP

Kabudi, P.J., Intellectual Property Rights: Tanzania Experience with Reference to Indigenous Knowledge, a paper presented at the Workshop on the Role of Indigenous Knowledge in Social-Economic Development in Eastern and Southern Africa at Court Yard Hotel, DSM, 11th-13th March, 2003

Kamala, D.B, The Achievement and Challenges of the New East African Community-Operation "Research Memorandum" University of HULL UK, June, 2006.

Mwalimu, Ummy, The Implication of WTO and TRIPS in Tanzania: A Focus on Pharmaceuticals presented in seminar Titled Globalization and East Africa, working paper presented, at Dar es Salaam, July, 2003

Mbeva, M Joseph., Experience and Lesson Learned regarding the Use of Existing Intellectual Property Rights Instrument for Protection of Traditional Knowledge, a Paper presented in UNCTAD expert meeting on systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices, Geneva, 30th October to 1st November, 2000

Mbote, P.K., Intellectual Property Protection in Africa: An Assessment of the Status of Laws, Research and Policy Analysis on Intellectual Property Rights in Kenya, IELRC Working Paper 2005

Murunga, B., Trademarks and Industrial Designs: A legal Practioner's Perceptive, a Paper presented on the 5th day of May 2005 at Hotel Sirikwa, Eldonet to members of the Law Society of Kenya, under the Continuing of Legal

Education Program.

Nancy.S. Lugeye & Ferdinand.M. Temba, Position of the Law on Consumer Protection against Counterfeit Cosmetic in Tanzania, Ruaha Law Review (RLR) Vol 5-6 No. 1 (2017-2018)

Omeke Isaac, Intellectual Property and its Registration Procedure in Kenya, a lecture presented as part of imitative to teach students the technological framework and entrepreneurship skills to create their own start ups 14th July, 2010

WIPO Workshop on Intellectual Property for Business for Small and Medium-Sized Enterprises (SMES) organized by the World Intellectual Property Organization (WIPO) in cooperation with the Tanzania Chamber of Commerce Industry and Agriculture (TCCIA) Dar es Salaam, May 10th and 11th, 2005

Samuel Wangwe, Institutional issues for Developing Countries in IP Policy-Making Administration and Enforcement: A Case Study of Kenya Economic and Social Research Foundation, Dar es Salaam, Tanzania, a Report Commissioned by the IPR Commission as a Background Paper, 1998.

Workshop on Intellectual Property for business for small and medium-sized enterprises (SMES) organized by the World Intellectual Property Organization (WIPO) in cooperation with the Tanzania Chamber of Commerce Industry and Agriculture (TCCIA) Dar-es-Salaam, May 10 and 11, 2005

Intellectual Property Landscape in Tanzania: The Emerging Role of the business registration and licensing agency (BRELA) in assisting small medium enterprises use intellectual property prepared by Mr. EsterianoMahingila,

Chief Executive Officer, Tanzania Business Registrations and Licensing Agency (BRELA), Dar-Es- Salaam, Tanzania

DISSERTATION AND COURSE WORK

George M Sikoyo, PhD research conducted at University of Kenya on Statutes of Laws, Research and Policy Analysis in Ghana, Kenya, Nigeria, South Africa and Uganda, 2006

E. Njuguna, Intellectual Property Rights in Kenya; Towards a More Effective Dispute Resolution Framework (A thesis submitted in partial fulfillment of the requirements for the award of masters of laws (LLM) degree at the university of Nairobi, 2014

Kihwelo P.F, A Master of Laws Degree titled: "Implication of Trade Related Aspects of IP Rights (TRIP'S) Agreement in Law and Administration of Industrial Property in Tanzania" at UDSM, 2000

Kiunsi H, Transfer of Pricing in East Africa: Tanzania and Kenya in comparative perceptive, PhD thesis Open University of Tanzania, 2017

Peter.S. Menell, Trademark Case Management Judicial Guide, 2014 UC Berkeley Public Law Research Paper No. 2252872

Thuku K James, Overcoming Challenges Facing Enforcement of Trade Marks in Kenya, (A Thesis Submitted in Partial Fullfillment for the award of Degree in Master of Law) University of Nairobi, 2014

Tarimo, F.L., Patent Rights for Invention done by the Employees in the Course of Employment in Tanzania, LL.M dissertation, UDSM, 2007

Tarimo, F.L., Opposition to Registration of Trademarks and Registration of Marks of

Concurrent Use, LL.M course work paper submitted at UDSM, 2006

Wllington, O.J., Patent and other Forms related in Transferring Technology to Developed Countries with Emphasis to Tanzania, LL.M dissertation, UDSM, 1988.

REPORT

Formulation of an EAC Policy on Anti-Counterfeiting, Anti Piracy, and other intellectual Property Rights violation, Final Progress Report, a Consultancy Report Submitted to the East African Community, September, 2009.

JeroenLallemand, Special report on Trademark in India, November, 2010

Taler M. Raymond, Overseas Business Report (Formally World Trade Information Series) No. 58-42, US Department of Commerce, Nov, 1965

JOURNAL

Ali S and Others: Legal Research of Doctrinal and Non-Doctrinal in International Journal of trend in research and development, Vol (IV) ISSN 2394-9333 January-February, 2017

Emeh Ikechukwu and others, "Good Governance: The Concept and Contextual Perceptive," Acta Universitatis Danubius, Vol II No. 1 of 2019

Kihwello, P.F., Hiv/Aids and Intellectual Property, Lawyers Journal

Kihwello, P.F, Intellectual Property Rights in Tanzania: The Nightmare and the Noble Dream, Huria Journal of the Open University of Tanzania Volume V of 2003

K. Harlove Leen, "An Introduction to Administrative Law, 15th Ed, Punjab, Central Law Publication, 2011.

Saudin Mwakaje, Intellectual Property Rights in Tanzania: An Appraisal of the Law and Development Issue, Tanzania Journal Development Studies, Vol 20, No. 1, 2022, III-135

WIPO, Model Law for Developing Countries on Appellation of Origin and Indication of source, WIPO Publication No. 809 (E), 1975 Geneva.

A Journal Published by African Centre for Technology Studies, Nairobi, Ecopolicy Series No. 16, 2006

ELECTRONIC RESOURCES

Law Shelf, National Paralegal College, online article on what is Intellectual Property, accessed from lawshelf.com/coursewarecontentview/what-is-intellectual-property

Victor Nzomo, Constitution Protection of Intellectual Property in Kenya, 9th January, 2011 accessed from http://ipkenya.com

Opijah B David, "Geographical Indication- Much Expectation yet No Law in Sight for Kenya", accessed from www.jdsupra.com

Manual of Trademark Law and Practice in Malaysia, Kuala Lumpar, 2nd Ed, accessed from http://www.myipo.gov.my/wp-content

World Intellectual Property Organization: Introduction to trademark law and practice, A WIPO Training Manual, 2nd Ed, WIPO Publication No. 653(E), 1993, accessed from wipo.int/edocs

Himanshu Sharma, India: Associated Trademarks: Genre of Contemporary Business Structures, published on 30th April, 2014 accessed from www.mondaq.com

Rishi Ram Chapagai, Economic Perceptives of Trademarks, The Saptagandaki

Journal, Vol IX, February, 2018 accessed from www.nepjoi.info

Sope A, "Intellectual Property Rights in Sub-Sahara Africa", (2011), CMC Senior Thesis, accessed from http://scholarship.claremont.edu/cmc_theses/289/

Watson & Band Law Office, "Distinctiveness of Trademarks," published on 13th June, 2017 accessed from mondaq.com

ICC in collaboration with BASCP, Promoting and Protecting Intellectual Property in Kenya accessed from www.iccwbo.org

Shruti Yadav, Dispute between Nike and Mschf, published on 1st October, 2021, accessed from www.blog.ipleaders.in/nike-v-mschf-the-trademark-infringement-case/

The United States Patent & Trademark Office, "How to Satisfy a disclaimer requirements" accessed from uspto.gov/trademarks/laws/how-satisfy-disclaimer-requirement

Dr. Patricia Kameri Mbote, Intellectual Property Protection in Africa, An assessment of the status of Laws, Research and Policy Analysis on Intellectual Property Rights in Kenya, 2005-2 accessed from http://www.lelrc.org/content/w0502.pdf

East African Community www.eac.int

Andrew Bloomenthal, Property, published and updated on 24th January, 2022 accessed from investopedia.com/terms/p/property.asp

Samuel Wangwe et al, Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement, accessed from www.iprcommission.org/papers/text/study-papers/sq9-Tanzania-case-study.txt

Definition of SMEs from www.ukessay.com

Legal Dictionary accessed from http://definitions.uslegal.com

Legal Dictionary accessed from http://freedictionary.com

World Intellectual Property Organization, "International Classification," accessed from www.wipo.int

WIPO treaties accessed from http://www.wipo.int/treaties/en/convention

African Regional Industrial Property Office accessed from www.aripo.org/about-aripo/legal-framework

World Trade Organization (WTO) accessed from http://www.wto.org