

REGULATORY UPDATES

TRADEMARKS REGISTRY

Inaugural meeting of the Trademarks Practice Directions Drafting Committee

It is understood within the Registry that one of the factors accounting for some inadequacies experienced at the Registry is the inherent lacuna in the Trademarks Act and Regulation. Stakeholders have therefore raised concerns about the need to promulgate a Practice Direction to augment the inefficiencies of the extant laws. Following this, the Registrar of Trade marks, Dr. Shafiu Yauri has recently constituted a five-man Trademarks Practice Directions Drafting committee headed by our Managing Partner, Christian Aniwaku. The inaugural meeting of the committee held in February 2023 and the committee is expected to present its first draft within 3 months. Accordingly, the committee sent out a Call for Memoranda to stakeholders on their inputs toward the draft Practice Direction.



Picture: Trademark registration

Establishment of a designated building for the Trademarks Tribunal

Prior to this time, the Nigerian Trademarks Tribunal was located at the Oppositions Unit of the Registry.

However, a designated building within the Old Federal Secretariat Abuja is now in use for the Tribunal.

The said building is well equipped with offices, a library, computer room and the tribunal itself. Although the structures are now available, the material resources such as books for the library, computers for the research room, etc are still underway.

NIGERIAN COPYRIGHT COMMISSION

President Muhammadu Buhari has re-appointed Dr. John Asein as the Director General for another four years tenure.

On the 12th of January 2023, the President of Nigeria renewed the appointment of the DG of the Copyright Commission for his final four years tenure. This is in accordance with the provisions of section 36 of the old copyright law and sections 83 and 80 of the Copyright Act 2022.

NCC partners with NBA Abuja branch on Capacity Building for Young Lawyers

The NCC on the 29th of March 2023 held a capacity-building workshop for young lawyers on

NCC partners with NBA Abuja branch on Capacity Building for Young Lawyers – Cont'd

the rights within the digital environment. This training which was held in Abuja was organized in collaboration with the Nigerian Bar Association (NBA) Abuja branch and the World Intellectual Property Organization (WIPO).

This training aligns with the mandate of the NCC towards building institutional capacity and focused on enhancing the knowledge of young lawyers on IP rights in Nigeria, particularly on copyright.



FEDERAL COMPETITION & CONSUMER PROTECTION COMMISSION

Egyptian Competition Authority (ECA) and Federal Competition and Consumer Protection Commission (FCCPC) Execute Memorandum of Understanding:

On Tuesday, January 31, 2023 at the Egyptian Competition Authority's Headquarters in Cairo, Egypt, the ECA and FCCPC executed a memorandum of understanding

with respect to enhancing competition law and policy on the continent. In 2019, the FCCPC began discussions with the ECA in furtherance of its mandate under the Federal Competition and Consumer Protection Act (FCCPA).

The MoU seeks to strengthen the economies of both countries and promote shared prosperity through joint investigation, capacity development, sharing of information and experiences to ensure consumers and businesses derive the protection and benefits that are inherent in the economic expansion this engagement enhances.

Restrictive Agreement and Trade Practices Regulations,

2022: In exercise of the powers conferred upon it by sections 17, 18 and 163 of the Federal Competition and Consumer Protection Act, 2018 and all other powers enabling it in that behalf, the FCCPC enacted the Restrictive Agreements and Trade Practices Regulations, 2022. The regulations are made to provide a regulatory framework for the implementation of Part VIII (Which deals with restrictive agreements) and some aspects of Part XIV (Specific offences against competition) of the Federal Competition and Consumer Protection Act, 2018 relating to restrictive agreements and all matters related thereto.

The Abuse of Dominance Regulations, 2022:

By virtue of Part IX of the Federal Competition and Consumer Protection Act, any abuse by one or more undertaking of a dominant position in a market is highly prohibited.

The regulations therefore seek to provide a regulatory framework for the implementation of Part IX (abuse of a dominant position) of the Federal Competition and Consumer Protection Act, 2018 relating to abuse of dominance and all matters related thereto.

This includes the provision of guidance on the regulatory review process for assessing whether an undertaking is dominant and has abused its dominant position or whether two or more undertakings are collectively dominant and have abused their dominant position.



LEGISLATION AND CASE LAW UPDATES



President Muhammadu Buhari Signs Copyright Bill 2022 into law: The Copyright Act Cap C28 LFN 2004, after 35 years, has now been repealed by the Copyright Act 2022 which was signed into law by the President of the Federal Republic of Nigeria on the 17th of March 2023. This comes after the Bill was passed by the Senate on Wednesday, April 6, 2022, and by the House of Representatives on Wednesday, July 27, 2022.

For a nation with an alarming record of online infringement of copyright, this new Act is significant for its recognition and protection of copyright within the digital/online space in Nigeria. This brings the Nigerian IP terrain a step forward towards global practices. Furthermore, the new law codifies the enforcement of Takedown Notices in Nigeria as the responsibility of ISPs and the NCC. It also redefines the liability of infringers to include those who aid and procure others.

The new law establishes a Dispute Resolution Panel within the NCC to handle some of the administrative interventions by the NCC.

It is believed that this new law is a milestone within the Nigerian IP space and we now look forward to its implementation, which will finally bring the desired change for which the new law has been sought.

The Business Facilitation (Miscellaneous Provisions) Act, 2023:

His Excellency, President Buhari has signed Nigeria's first Business Facilitation (Miscellaneous Provision) Bill 2022 (also known as the Omnibus Bill) into law. The Business Facilitation Act, 2023 consolidates the last seven years of Presidential Enabling Business Environment Council (PEBEC)-led reforms and demonstrates the Administration's sustained commitment towards making Nigeria a progressively easier place to start and grow a business. The Omnibus bill is an intervention of PEBEC to consolidate and amend legislative provisions towards deepening PEBEC reforms and removing bottlenecks for Micro, Small, and Medium-sized Enterprises (MSMEs) in Nigeria. As it pertains to Intellectual Property rights in Nigeria, the Act makes provisions amending the following relevant legislation:

- Trade Marks Act, Cap T13, Laws of the Federation on Nigeria, 2004 - by virtue of the provisions of Schedule 68 and 69 of Part XXI of the Schedule to Section 9 of the Act, the provisions of the Trade Marks Act is amended thus:

- a) The definition of goods within the Trademarks Act now includes services

- b) The definition of trade marks is also revised to include service marks. The new definition also includes the shape of goods, their packaging, and the combination of colours as falling within the ambits of trade marks in Nigeria. This definition is reproduced below:

- A mark used or proposed to be used in relation to goods or services for the purpose of indicating a connection between the goods or services and a person having the right, either as a proprietor or as a registered user, to use the mark, whether with or without any indication of the identity of that person, and may include shape of goods, their packaging and combination of colours.

- The key development this amendment has facilitated in Nigeria is the statutory recognition of service marks as valid and registrable in Nigeria, contrary to the various legal debates disputing and accepting the argument of its validity in Nigeria. Thus, the decision of the court in *Ramhead Industrial & Commercial Co. Ltd v Ekulo International Ltd & 2 ors* (Suit No. FHC/L/CS/256/2012 - unreported) wherein Justice M. B Idris held that the definition of trade mark under the Act does not include service marks, is now overruled by the amended definition of trade under the Business Facilitation Act 2023.
- Patents and Designs Act, Cap P2 Laws of the Federation of Nigeria, 2004 - Section 61 and 62 of the Bill amends Part I of the First Schedule of the Patents and Designs Act by introducing a new provision, section 13A as follows: The Minister shall by regulation prescribe the procedure for the application, grant, use, and withdrawal of compulsory licenses under this paragraph. This provision is particularly important as it seeks to bridge the procedural gap created by section 13 of the Act.

Franchising Establishment Bill:

On Tuesday, 24th January, 2023, the Franchising (Establishment) Bill, 2023 (SB. 969) which was sponsored by Senator Mukhail Adetokunbo Abiru, FCA was passed by the senate.

The Bill “for an Act to provide for the regulation of franchising in Nigeria; and for related matters” seeks to create a framework for the operation of franchising and to guide the relationship between franchisors and franchisees and for matters connected therewith in order to enhance the economic development of Nigeria.

In addition, it seeks to promote the growth of franchising through the adoption of international best practices that balance the interests of franchisors and franchisees, enhance the capacity of the National Office of Technology Acquisition and Promotion for effective administration, and enforcement of the provisions of Franchising in the Bill.



Nigerian court Orders full restitution for unlawful actions taken during the execution of an Anton Pillar Order: In a Landmark case, Stren & Blan Partners has successfully obtained payment of full restitution for unlawful actions taken during the execution of an Anton Pillar Order.

In a Ruling delivered by a Federal High Court in Nigeria on 2nd February 2023, the Court ordered the transfer of payment of full restitution to the accounts of Messers Andreas Stihl AG & Co. KG, the famous German manufacturers of STIHL products (the world's best-selling brand of chain saws), and its Nigerian trading Partner, C. Woermann Nigeria Limited, a distributor of leading international brands in Nigeria.

The Ruling of the Court confirms an earlier Landmark Ruling of the Federal High Court (of which the appeal went up to the Supreme Court of Nigeria) in which the Court had agreed with the submissions of our Stren & Blan Partners team consisting of our Partner Amala Umeike, leading our Associates Clara Eze and Kayode Akindele (forming the consortium that successfully argued the various parts of this matter up to the Supreme Court of Nigeria and working in close collaboration with the International IP Law Firm, IPvocate Africa) and held that both STIHL and C. Woermann were entitled to full restitution for the unlawful actions of the 2nd Plaintiff in the Suit who, upon obtaining an Anton Pillar Order (using false facts) against both STIHL and C. C. Woermann, proceeded to divert the said seized



products from the custody of the Federal High Court. This case is significant being one of the few cases where a Nigerian Court has not just ordered full restitution for unlawful actions that arose during the course of proceedings in Court, but also firmly enforced payment of the restitution against the party by way of committal to prison for contempt of Court and the contemnor spent over 2 years in a Nigerian prison as punishment for his unlawful conducts.

UPDATES FROM OTHER JURISDICTIONS

Mauritius accedes to the Madrid Protocol (International Trade Mark System): On 6th February, 2023, the Government of Mauritius deposited its instrument of accession to the Madrid Protocol. As a result of this new development, trade mark owners can now file a single trade mark application through 114 member states (IP Offices) that covers up to 130 countries of the Madrid System, instead of filing national applications in each territory of interest.

In addition to individual countries, it will be possible to designate the three regions, namely Benelux, the European Union, and the African Intellectual Property Organization, in an International Registration under the Protocol.

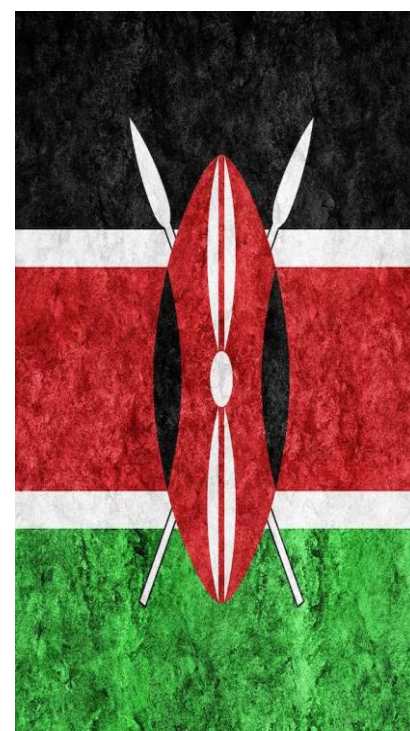
However, to use the Madrid System, a trade mark applicant should be a Mauritius national or have a real and effective business in Mauritius. A national, home application would have to be filed in Mauritius first, which would then form the basis of the international trade mark registration. Trade mark owners who are not based in Mauritius will also benefit from this development because they will now be able to designate Mauritius when filing their new international applications. Additionally, existing international registrations can be amended to include Mauritius under prior designated territories of protection.

KENYA: Artiste Nonini has won a Copyright infringement claim against Synix and Influencer Brian Mutinda: A US-based rapper, Hubert Mbuku Nakitare, known as 'Nonini' in 2022, filed a copyright infringement claim against Synix Electronics, a TV manufacturing company and Brian Mutinda, a content creator and influencer over an advert for Synix wherein Mutinda used Nonini's song,

Wee Kamu in creating the content of the advert, without the consent or acknowledgment of the singer.

The court in March 2023, having found a case of infringement, awarded Nonini the sum of Ksh. 1 million in damages and the cost for the suit (including interest at the court rate) and further ordered Mutinda to take down the unauthorized content/advert from all social media platforms.

This judgment of the court is considered a landmark, especially with the rise of online content, some of which are distributed and communicated to the public in a manner that violates the rights of copyright holders and even proprietors of trade marks.



NEWS ABOUT THE FIRM - STREN & BLAN PARTNERS

Stren & Blan Partners was ranked in the World Trademark Review (WTR) 1000 in February 2023: Described as a "Capable and efficient innovative full-service offering that provides exemplary IP services to players across the world", Stren & Blan Partners was ranked as a Leading Law Firm in Nigeria in the 2023 edition of the WTR 1000. We are grateful to our clients and colleagues for the recommendations.

WTR 1000 Ranking of Our Partner, Amala Umeike: Our Partner, Amala Umeike has been ranked as a Recommended Individual in the 2023 edition of World Trademark Review (WTR) 1000. Amala who had been previously ranked as "undoubtedly one of the best IP Lawyers in Nigeria" received accolades in the review for providing expert legal advice and being excellent at explaining the intricacies of the Nigerian market to foreign entities.

IPR Gorilla Conference: Our Managing Partner, Christian Aniukwu, was a speaker at the Conference Gorilla of the 24th Edition of The IPR Gorilla IP Conference, 2023. The theme of the Conference was "Enforcement and Anti-counterfeiting - How to Approach Anti-Counterfeiting in 2023 and beyond?". Speakers and attendees from different jurisdictions shared their experiences and best practices on fighting counterfeit products.

The African Tech Summit, Nairobi: Our Managing Partner, Christian Aniukwu, and Associate, Chizitereihe Oti attended the Africa Tech Summit at the Sarit Expo Center, Nairobi, Kenya, which was held on the 15th & 16th of February 2023.

The summit amongst other activities featured multiple stakeholders across the Tech space engaging on the developments, difficulties, funding, and future of the Tech EcoSystem holistically and as it peculiarly relates to different sectors in Tech including: Transportation, Fintech, Cryptocurrency, Web3, Gig economy, etc.

Our Managing Partner Nominated to Head the TMR Practice Directions Drafting Committee: Our managing partner, Christian Aniukwu, was recently constituted by the Honourable Registrar of Trademarks of Nigeria as a coordinator to head a selected Committee of distinguished IP practitioners in Nigeria to draft a Practice Directions for the Trademarks Tribunal. By the terms of reference, the Committee is expected to draft the Practice Directions which when finalized and approved by the Minister will be a subsidiary legislation to the Trademarks Act and Regulations to cater for the identified lacuna in procedure in the Trademarks Act and Regulations.

The Committee is expected to submit their draft by the end of April 2023.

Discussions on the Business Facilitation (Miscellaneous Provisions) Act, 2022: Our Founding Partner, Amala Umeike was a guest on Channels Television, Business Morning show on Thursday, 16th of February, 2023, where he spoke on the topic "X-raying the key provisions of the newly enacted Business Facilitation Act."

Our Partner was a key member of the Technical Committee that provided support to the Presidential Enabling Business Environment Council (PEBEC) chaired by the Vice President of Nigeria, (through the Enabling Business Environment Secretariat) which drove the enactment of the Act. Also, At the March monthly meeting of the Nigerian Bar Association, Lagos Branch, our partner was a speaker invited to discuss the provisions of the new law - Business Facilitation Act.

International Women's Day (2023): In celebration of the 2023 International Women's Day, our Firm hosted a Webinar with the theme: DigitALL: Innovation and technology for gender equality.

NEWS ABOUT THE FIRM – CONT'D

Leading African law firms publish African Arbitration Case Review: Our Firm in conjunction with AB & David from Ghana; Al Tamimi & Co from Egypt; ENSafrica from Mauritius and Bowmans representing Kenya, Tanzania and Uganda have published a comprehensive review of some of the most significant arbitration-related cases that have been heard in African Courts in the year 2022.

The case review features an analysis of over 30 arbitration cases from across Africa and covers a wide range of industry and legal issues.

Election of our Associate as the Financial Secretary of the Intellectual Property Lawyers Association of Nigeria (IPLAN):

We are pleased to announce that on the 15th day of March, 2023, our Associate, Chizitereihe Oti was elected to serve as the Financial Secretary of the Intellectual Property Lawyers Association of Nigeria (IPLAN).

We wish her and other members of the Executive body a hitch-free and successful tenure.



ABOUT STREN AND BLAN PARTNERS

Stren & Blan Partners is an innovative and dynamic Law Firm with a compelling blend of experienced lawyers and energetic talents.

We are focused on providing solutions to our clients' business problems and adding value to their businesses and commercial endeavours. This underpins our ethos, and everything we do flows from these underlying principles.

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our clients' business needs and surpassing their expectations, and we do this with

an uncompromising commitment to Client service and legal excellence.

MARKET RECOGNITION

Our confidence and pride are in our clients' satisfaction, and we consistently reassess our objectives in alignment with our Client's business needs.

Accordingly, our Firm has been recognised as follows:

- *Finalist - Dispute Resolution Team of the Year - ESQ Nigerian Legal Awards 2021;*
- *Finalist - Intellectual Property Team of the Year - ESQ Nigerian Legal Awards 2021;*

- *Finalist - Corporate & Commercial Team of the Year - ESQ Nigerian Legal Awards 2022;*

- *Finalist - Dispute Resolution Team of the Year - ESQ Nigerian Legal Awards 2022.*

Note: some of these recognitions may appear in the name of Bridgeforte Attorneys, the predecessor Firm of Stren & Blan Partners. For more information about the firm and its practice areas, please visit www.strenandblan.com You can also contact us via contact@strenandblan.com or call +234(0) 7025580053.