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Regulatory Update: Nigeria Introduces Comprehensive Trademarks (Repeal & Enactment) Bill, 2025

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Introduction

On 11 November 2025, the Senate completed the first reading of the Trademarks (Repeal & Enactment) Bill, 2025 (the Bill). Sponsored by Sen. Asuquo Ekpenyong (Cross River South), the Bill represents the most significant overhaul of Nigeria's trademark regime since the 1965 Act (now Cap. T13 LFN 2004).

The proposed legislation modernises Nigeria's trademark system to align with international best practices, the Paris Convention, and the TRIPS Agreement, while introducing new administrative, enforcement, technological, and procedural mechanisms.

Key Innovations in the Bill

1 Modernised Definitions & Broader Scope of Protection

Section 2 of the Bill expands the definition of "sign" to include modern brand identifiers such as colour, shape, position, motion, sound, holograms, and packaging. New concepts such as "well-known marks', "domain names", "electronic register", "bad faith", and "controller" are statutorily defined for the first time.

2 Electronic Register & Digitised Processes

Sections 82 and 83 of the Bill introduces a new Electronic Register for trademarks, representing a significant modernization of Nigeria's trademark administration. Key features include:

I. Electronic Record-Keeping: Section 82(3) expressly allows the Register to be maintained, wholly or partly, in electronic form. Section 82(4) confirms that any record made electronically is legally recognized as an entry in the Register, giving electronic filings full legal effect.

II. E-Filing & Digitised Transactions: Section 82(2)(b) allows registrable transactions affecting trademarks (e.g., assignments, licenses, security interests) to be entered electronically, enabling fully digital processing of such transactions.

III. Inspection & Public Access: Section 83 provides that the Register must be available for inspection by any person. For electronic portions of the Register, access can be provided via computer terminals, with the ability to read, print, or obtain certified/un certified copies of entries, facilitating online transparency and public scrutiny.

IV. Certified Copies & Extracts: Section 83(5) defines "certified copy" or "certified extract" as an official record certified and sealed by the Controller, ensuring legal reliability for official or transactional purposes.

The Bill's provisions mark a structural shift towards a technology-driven IP office, enabling E-filing of trademark applications, renewals, and registrable transactions, electronic service of notices and communications, online public access to the Register, streamlined, digitized registry operations, reducing reliance on paper-based processes.

By formalizing an electronic Register, the Bill aligns Nigeria with international best practices, enhances efficiency, increases transparency, and supports the use of technology in IP management and enforcement.

3 Substantive Grounds for Refusal (Absolute & Relative)

The Bill significantly broadens the grounds for refusing trademark registration, expanding both absolute and relative grounds. This represents a key innovation in Nigeria's trademark regime, ensuring alignment with international standards.

3.1 Absolute Grounds for Refusal

Section 7 of the Bill maintains the requirement for distinctiveness but introduces new absolute grounds for refusal, including:

a. Non-compliant signs: Any sign that does not meet the definition of a registered trademark.

b. Descriptive or generic signs: Marks consisting exclusively of indications that describe the kind, quality, quantity, purpose, value, geographical origin, time of production, or other characteristics of goods or services.

c. Customary signs: Marks consisting solely of signs that have become customary in language or trade practices.

The Bill also retains existing prohibitions, requiring that a mark must not be contrary to public policy or morality, mislead the public regarding the nature, quality, or geographical origin of goods/services; or be prohibited from use under Nigerian law.

3.2 Relative Grounds for Refusal

Under the current Act (Section 13), prior rights were only considered where a mark was identical to an existing mark for the same goods or closely resembled it in a way likely to deceive. The Bill expands this under Section 8, introducing relative grounds for refusal, including:

I. Similarity for identical or similar goods/services: Marks confusingly similar to earlier marks may be refused, extending protection beyond identical marks.

II. Protection of well-known marks: Well-known marks enjoy cross-sector protection, even for dissimilar goods/services, if registration would cause confusion, create a misleading connection, dilute, or unfairly exploit the mark.

III. Conflict with earlier rights: Registration can be refused if it infringes prior rights, such as passing-off, copyright, design rights, or domain name rights.

IV. Bad faith considerations: The Bill sets clear rules on assessing bad faith, including consent of the earlier mark owner and treatment of marks that have expired within one year.

By expanding both absolute and relative grounds, the Bill provides stronger protection against descriptive, functional, or misleading marks, safeguards well-known trademarks, and harmonizes Nigerian law with international best practices, particularly under the TRIPS Agreement and Paris Convention.

4 Stronger Protection for Well-Known & Foreign Marks

The Bill introduces strong protection for well-known trademarks in Nigeria, including unregistered marks and those owned by foreign nationals or companies with no business presence in the country, aligning domestic law with the Paris Convention and TRIPS Agreement. Section 2 defines a well-known mark as either a registered mark or an unregistered mark well-known in Nigeria, owned by a national of, or an entity established in, a Convention country, regardless of whether they carry on business or possess goodwill in Nigeria. Recognition of well-known status considers public awareness, the duration, extent, and geographic reach of use and promotion, international registrations, successful enforcement abroad, and the commercial value of the mark. If any relevant sector of the Nigerian public recognises the mark, it is deemed well-known nationwide, with relevant sectors including consumers, distributors, and businesses dealing in the goods or services.

The Bill further protects well-known marks against misuse, dilution, or unfair advantage, even across unrelated goods or services, and provides statutory safeguards for state emblems and armorial bearings under the Paris Convention. These measures strengthen enforcement for both domestic and foreign brand owners, reduce the risk of infringement in commercial and online contexts, and ensure Nigeria's trademark regime aligns with international best practices.

5 Enhanced Registration Formalities

The Bill increases the term of trademark registration from 7 to 10 years, with renewals available for further 10-year periods. Renewal requests must be filed on or before the expiration date, or within a six-month grace period subject to a late fee, with the renewal taking effect from the expiration of the previous registration. Renewal applications for goods previously classified under the National Classification must include reclassification to the International Classification. Marks registered with disclaimers or limitations continue to be subject to those restrictions.

Existing trademarks under the former Act are automatically recognized under the new Bill, including certification marks and series marks, while associations between marks and conditions entered under the former Act cease to have effect. Any disclaimers or limitations already in the Register are transferred to the new Register, and ongoing proceedings under the former Act are completed under the old law, with any necessary updates made to the Register. These changes streamline administration, update classifications, and ensure continuity for existing trademark rights.

6 Use Requirements & Acquiescence Rules

The proprietor bears the burden of proving use when challenged. The Bill introduces acquiescence, whereby a proprietor who knowingly allows a later mark to be used for five years loses the right to oppose it, except in cases of bad faith.

7 Expanded Rights & Detailed Non-Infringement Exceptions

Section 28 of the Bill explicitly enumerates actions that do not constitute trademark infringement, providing clarity and broader legal certainty. Non-infringement covers honest use of personal or business names, including predecessors' names, as well as descriptive use to indicate the kind, quality, quantity, purpose, value, geographical origin, or timing of goods or services. It also includes nominative use for accessories or spare parts, use of unregistered marks continuously used prior to registration of a registered mark, and use of another registered mark for its registered goods or services.

Additionally, the Bill recognizes fair use exceptions, such as comparative advertising, non-commercial purposes, and news reporting or commentary, ensuring that legitimate uses in commerce and communication are protected. These provisions strengthen user rights, reduce litigation risk, and promote clarity in enforcing registered trademarks while safeguarding prior users and the public interest.

8 New Definitions & Remedies for Counterfeiting

Section 34 of the Bill introduces clear definitions for infringing goods, infringing materials, infringing articles, counterfeit goods, and counterfeit trademarks, establishing precise legal criteria for enforcement. Infringing goods include items or packaging bearing a sign identical or similar to a registered trademark in a way that constitutes infringement, including proposed imports. Infringing materials cover labels, packaging, business papers, or advertising used, or intended to be used, in infringement. Infringing articles are items specifically designed to produce infringing goods or materials, held by someone aware or likely to be aware of their use. Counterfeit goods carry a sign identical or nearly identical to a registered mark, applied without consent to falsely represent the goods or services as genuine.

The Bill empowers courts by the provisions of section 35 to order destruction, forfeiture, or disposal of infringing and counterfeit goods and directs the delivery up of infringing articles, with procedures to protect the interests of all parties. Courts consider the adequacy of other remedies and ensure disposal does not harm the claimant, while counterfeit goods must generally be destroyed unless exceptional circumstances exist. Interested parties are entitled to notice, to appear, and to appeal, and where multiple interests exist, the court may order sale and equitable division of proceeds. These provisions create clarity and strengthen enforcement for courts, customs, and regulatory authorities.

9 Remedies for Groundless Trademark Infringement Threats

The Bill now codifies remedies for groundless threats of trademark infringement proceedings. Previously, an aggrieved person had to rely on common law principles, such as seeking a declaration of non-passing off or a declaration of non-infringement, to challenge unjustified threats. Under the new provisions, any person threatened with proceedings unrelated to the application, importation, or supply of goods/services under a registered mark may directly seek relief from the court, including a declaration that the threats are unjustifiable, an injunction to prevent continuation of the threats, and damages for losses suffered. Relief is available unless the defendant proves the threatened acts would constitute infringement, or if the claimant can demonstrate that the registration is invalid or liable to be revoked. Importantly, merely notifying another party of a trademark registration or application does not constitute a threat.

10 TRIPS-Style Border Measures

A modern border-control mechanism is introduced, allowing proprietors to:

I. Request detention of suspected infringing imports,

II. Obtain temporary suspension of release, and

III. Pursue court actions while goods are detained.

Importers are protected through release procedures, compensation, and safeguards against wrongful seizure.

11 Registrable Transactions & IP Financing

The Bill modernises dealings in trademarks by recognising assignments (full or partial), licences, security interests (including floating charges), and court-ordered transfers.

By allowing trademarks to be used as security for loans or other financial arrangements (through fixed or floating charges), the Bill effectively creates a legal framework for trademark-based financing. This makes trademarks financial assets that can be pledged to raise capital.

12 Collective & Certification Marks Regime

The Bill introduces **collective marks**, providing a framework for signs used by members of an association to distinguish their goods or services from those of non-members. Unlike standard or certification marks, a collective mark may include a geographical indicator, but the proprietor cannot prevent others from using the geographical name in accordance with honest practices. The Bill requires that rules governing the use of a collective mark be filed with and accepted by the Controller, made publicly available, and clearly outline authorized users, membership conditions, and sanctions for misuse. It also codifies the rights of authorized users in infringement proceedings and sets out specific grounds for revocation and invalidity, creating a transparent and administratively controlled system for collective marks.

The Bill also introduces significant reforms to the regulation of **certification marks**, emphasizing clarity, transparency, and stronger administrative oversight. It requires that the rules governing the use of a certification mark be filed with and approved by the Controller, made available for public inspection, and clearly define authorized users, certification standards, testing, supervision, fees, and dispute resolution. The Bill also establishes explicit grounds for revocation and invalidity, protects authorized users in infringement proceedings, and transfers oversight from Ministerial discretion to the Controller, creating a more modern, transparent, and efficient framework than under the 2004 law.

13 Internet Use & Extraterritorial Commercial Effect

The Bill clarifies that use of a trademark on the Internet constitutes use in Nigeria only if it has a commercial effect in the country. In assessing commercial effect, the Controller considers factors such as whether the user has conducted or planned significant business in Nigeria, the extent and nature of commercial activity related to Nigeria, the connection between the Internet offer and Nigeria, the manner of use of the mark online, and its relation to any existing rights in Nigeria. This aligns Nigerian trademark law with modern e-commerce realities and ensures that extraterritorial online use is recognized only when it has tangible commercial impact in Nigeria.

14 Strengthened Criminal Offences & Penalties

The Bill introduces new offences and increases penalties for:

I. counterfeiting a registered mark,

II. false application of a mark,

III. possession of tools for counterfeiting,

IV. manipulation of the Trademarks Register, and

V. falsely representing that a mark is registered.

Penalties include fines up to ₦250,000 (Two Hundred and Fifty Thousand Naira) and imprisonment of up to 10 years. Offences committed by companies or partnerships attract liability for directors, officers, or partners who consented or were negligent.

15 Institutional Reform & Powers of the Controller

The office of the Registrar is replaced by the Controller, who now has enhanced powers:

I. Discretion to extend deadlines even after expiry,

II. Power to summon witnesses and admit evidence,

III. Authority to issue Practice Directions,

IV. No personal liability for examination decisions.

16 Comprehensive Transitional Provisions

The Bill preserves pending applications, oppositions, and proceedings under the old Act, while transitioning the Register to the new system. Obsolete concepts (such as associated marks) are abolished, but previously registered rights are protected.

Conclusion

The Bill represents a complete restructuring of Nigeria's trademark regime. It modernises definitions, strengthens rights, enhances enforcement, digitises procedures, and aligns Nigeria with international IP standards.

For brand owners, investors, and businesses operating in Nigeria, the Bill signals a more predictable, transparent, and enforceable trademark system, significantly improving the country's intellectual property landscape.

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