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INTELLECTUAL PROPERTY

Kenya introduces Anti-Counterfeiting (Recordation) Regulations, 2021

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Kenya's Anti-Counterfeit (Recordation) Regulations 2021

Kenya's Anti-Counterfeit (Recordation) Regulations 2021 requires Intellectual Property rights ("IPR") owners who import goods into Kenya to record their IPR with the Anti-Counterfeit Authority ("ACA").

Recordation is not yet implemented, however, following the official publication of these Regulations, the ACA is expected to roll out the online Recordation system to facilitate this Recordation process soon. With the exception of the importation of raw material or "*items used as ingredients in the manufacture of goods*", Recordation will likely be mandatory, as provided for in Section 34B of the Anti-Counterfeit Act, no. 13 of 2008.

Recordation will assist the ACA to intercept goods believed to be counterfeit, either at points of entry or in the market. The Regulations also make provision for the filing of a complaint with the ACA, which would result in criminal prosecution of any party dealing in counterfeit goods.

The term "Intellectual Property Right" defined under the Anti-Counterfeit Act, 2008 includes:

1. Any right protected under the Kenyan Copyright Act, 2001;
2. Any plant breeders' right granted under the Kenyan Seeds and Plant Varieties Act;
3. Any right protected under the Kenyan Trade Marks Act; and
4. Any right protected under the Kenyan Industrial Property Act, 2001.

Furthermore, the Anti-Counterfeit Act recognises IPR's registered outside Kenya.

Requirements and obligations

Either the IPR owner, authorised agent or licensee may apply for the Recordation to include:

- An original signed Power of Attorney, name and address of IPR owner and/or authorised importers;
- A description of the IPR and goods;
- Samples or photographs of the protected goods;
- Details of the place of manufacture;
- Certified copies of certificates of registration of the IP;
- The requisite fee.
- Within thirty days of applying, the ACA will either issue a notice of acceptance or denial;
- The ACA will maintain a register of all recorded IPR's, particulars of which will be available to any interested person on request;

- Importers, other than the Registrant importing goods into Kenya are required to notify the ACA and provide details of the importation to include inter alia the country of origin, port of entry, ACA recordation reference number. This will assist the ACA in determining when goods are unauthorised;
- Annual renewals of Recordations will be required and any changes to the Registrant are on application to the ACA.

Brand owners will know that the Recordal of IPR is possible in many countries and that such recordals can be effective in intercepting goods believed to be counterfeit. In addition to trade mark infringement by virtue of trade mark registration, anti-counterfeiting interventions can be quick and efficient, also proving to be effective in tackling online availability of goods across borders.

It remains imperative that brand owners obtain and maintain the intellectual property in all relevant territories for optimal protection. Our Intellectual Property Team at Werksmans deals extensively with these matters and can assist in ensuring that brand owners navigate this process efficiently.

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