

7. ECTA Articles



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INTRODUCTION

THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) BILL 2022, ALSO REFERRED TO AS THE OMNIBUS BILL, WAS SIGNED INTO LAW (THE 'ACT') AS PART OF THE COMMITMENT OF THE FEDERAL GOVERNMENT OF NIGERIA TO EASE THE REGULATORY ENVIRONMENT FOR DOING BUSINESS IN NIGERIA.¹ THE ACT CAME INTO EFFECT ON 13 FEBRUARY 2023 AND AMENDS SEVERAL LAWS WHICH INCLUDES CONSEQUENTIAL AMENDMENTS TO THE TRADE MARKS ACT (1965), COMPANIES AND ALLIED MATTERS ACT (CAMA, 2020), THE FOREIGN EXCHANGE (MONITORING AND

MISCELLANEOUS PROVISIONS) ACT (FOREX, 2004), AND NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT (NOTAP, 2004) AMONGST OTHERS. THE ACT WAS PASSED IN AN EFFORT TO MAKE CONDUCTING BUSINESS EASIER AND STREAMLINE BUREAUCRACY IN ORDER TO ENHANCE THE BUSINESS CLIMATE AND ENCOURAGE ECONOMIC GROWTH. IT ALSO AIMS TO PROMOTE INVESTMENT, AID EXPANSION IN DIFFERENT SECTORS OF THE ECONOMY, CREATE A SUPPORTIVE REGULATORY ENVIRONMENT AND ENCOURAGE ECONOMIC GROWTH.

AMENDMENTS TO THE TRADE MARKS ACT

Before the Act came into effect, section 4 of the Trade Marks Act 1965 required that a trade mark must be registered in respect of particular goods or classes of goods. Under the Trade Marks Act, the term 'goods' was not defined. The changes to the Trade Marks Act include an amendment to section 67 which introduces the definition of 'goods'. 'Goods' has now been defined as '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 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 and (b) in relation to certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act.'

Consequently, the amendment has enlarged the scope of the term 'goods' to include 'services'. This amendment provides a clear definition of what a good is and also introduced service marks into the Trade Marks Act. Service marks were registrable prior to the amendment further to a direction by the Minister of Commerce and Industry in 2007.²



Aso Rock as seen from the IBB golf course in Abuja, Nigeria

The amendment also covers that a mark may include 'the shape of goods, packaging and combination of colours.' Prior to the amendment, section 67 (1) of the Trade Mark Act defined a mark to include 'a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof'. The definition of goods as been expanded to now include shape marks, packaging and colour marks.

AMENDMENTS TO THE NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT (NOTAP ACT)

The NOTAP Act primarily provided that every agreement registrable with the National Office for Technology Acquisition and Promotion (NOTAP) entered into by any person in Nigeria with a person outside Nigeria must be registered within sixty (60) days from the effective date of the agreement with NOTAP (NOTAP Act 5(2)). The agreements, all renewable are thus required to be registered or presented for registration within sixty (60) days after the effective dates expressed on the face of each of the agreements. The agreements registrable with NOTAP relate to agreements on transfer of foreign technology in Nigeria, use of trade marks, rights to use patented inventions amongst

others (NOTAP Act 4 (d) (i), (ii)). Thus, agreements such as licence agreements for trade marks, patents and designs as well as franchise agreements were registrable with NOTAP.

The NOTAP Guidelines 2020, however, imposed a thirty-day registration window. It mandates that every agreement registerable with NOTAP must be registered within thirty (30) days of its effective date (Guidelines 5.9.1). It is not clear, why the timeline for registration in the Guidelines was different from that stipulated in the NOTAP Act. By law, the timeline stipulated in the NOTAP Act supersedes that set out in the Guidelines. The Guidelines are subsidiary legislation made pursuant to the NOTAP Act, and as such, cannot have provisions that are inconsistent with their enabling statute.³ Late submission of an agreement for registration attracts a penalty of N100,000.00 (one-hundred-thousand naira, approx. USD217). Non-registration within the timeframe stipulated in the NOTAP Act does not, however, invalidate or render the agreements illegal.⁴ NOTAP Act 5 (2) has now been amended to read that 'companies in their first two years of business operation shall not be liable to late registration penalties where such contracts are registered before the end of the second year of their business operation'. Thus, a company will not be liable for the

forementioned penalties if the company, not being more than two years in business operation, registers the agreements before the end of the second year of the company's registration.

AMENDMENTS TO THE STANDARD ORGANISATION ACT (SON ACT)

The Standards Organisation of Nigeria (SON) is one of the organisations enabled by the SON Act to fight against counterfeiting in Nigeria. SON is usually engaged in the seizure of substandard and counterfeit goods in Nigeria.

Section 29 of the SON Act has been amended by the Act. By the amendment, SON is now empowered to file an 'ex parte application' to the court for an order to not only seize any product which SON deems detrimental or hazardous to life, property and the national economy but can also prohibit any person or organisation from selling the product. The premises where the hazardous product is being manufactured or stored can also be sealed and the seized products forfeited.

CONCLUSION

The Act and the amendments are a great step in support of the protection of intellectual property rights for business owners and proprietors in Nigeria.«

New Legislation Update Nigeria Business Facilitation (Miscellaneous Provisions) Act 2023

¹ NNPC vs. Famfa Oil Limited (2012) 17 NWLR (Pt 1328) 148 at 195D.

² The Minister of Trade and Investment in 2007 extended the trade marks registration classes from 35 to 45 to accommodate the classification to cover both goods and services. This extension was made pursuant to Section 42 and 45 of the Trade Marks Act which empowers the Minister to make regulations to adapt the Trade Marks Register to revised classification of goods. Despite the extension, the courts have held that service marks are not recognised under the Trade Marks Act. See *Ramhead Industrial & Commercial Co. Ltd vs. Ekulo International Ltd & 2 Ors* Suit No: FHC/L/CS/252176/2012 unreported, delivered 7/6/2017.

³ NNPC vs. Famfa Oil Limited (2012) 17 NWLR (Pt 1328) 148 at 195D.

⁴ *Stanbic IBTC Holding Plc vs. Financial Reporting Council of Nigeria, et al.* (2018) LPELR - 64507 (CA).