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PROTECTION OF TRADEMARK RIGHTS IN AFRICA: BEST ADVISED STRATEGIES



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INTRODUCTION

Overview of Africa's Business landscape



- ❖ Africa is comprised of 54 countries, with a majority of the countries in the Northern divide and a substantial number in the southern part.
- ❖ Africa accounts for about 16% of the World's human population with about 30.3 million square kilometres and over 1.2 billion people (as of 2016), Africa is the world's second largest and second most-populous continent.

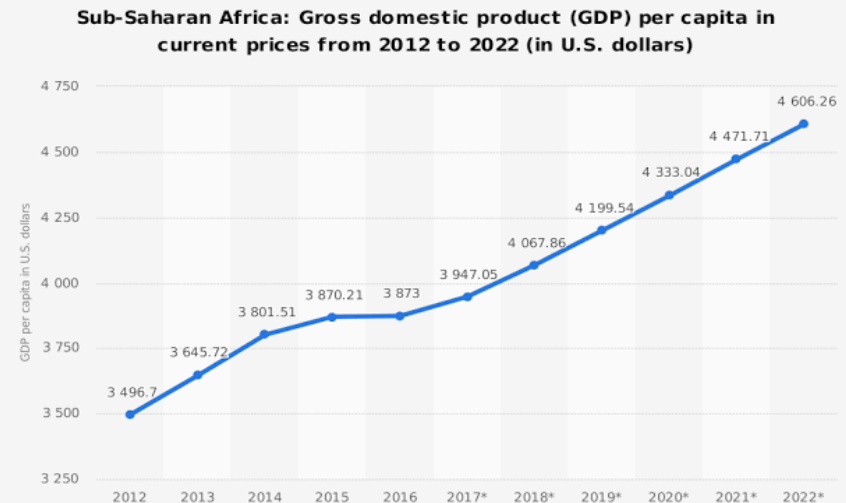
INTRODUCTION

Overview of Africa's Business landscape



Considering the fast-rising Foreign Direct Investments, there is no doubt that Africa is an attractive zone for long-term investors and hence the need for businesses to take strategic steps in protecting their brands/trademarks in Africa in order to maximize utility and appropriate returns on their investments.

As at 2018, the continent boasts of a nominal GDP of \$2.33 trillion with a GDP per capita of \$1,890, with Sub-Saharan Africa projected to hit a GDP of \$29 trillion by 2050.



Source:
IMF
© Statista 2018

Additional Information:
Africa; IMF

PROTECTION OF BRANDS/TRADEMARKS



IN AFRICA

- ❖ Trademark rights generally are territorial in scope
- ❖ It is possible for a trademark to be registered in different countries by different owners.
- ❖ Investors/businesses seeking to enter Africa should ensure that strategic steps are taken to protect their brands/trademarks for optimal utility and returns from their IP assets.



ITALIAN TRADEMARK



IT HAS VALIDITY IN ITALY



EUROPEAN TRADEMARK



IT HAS VALIDITY IN EUROPE



INTERNATIONAL TRADEMARK



IT HAS VALIDITY IN MORE COUNTRIES



FOREIGN TRADEMARK



IT HAS VALIDITY IN A SINGLE FOREIGN COUNTRY (FOR EXAMPLE: UNITED KINGDOM)

IP Regulatory Landscape in Africa

Quite a lot of African countries are signatories to a myriad of international treaties on Intellectual Property. However, it must be pointed out that most of these countries are common law countries, which require the domestication of these laws before they can take full effect.

Most of Africa's 54 independent countries have national laws governing IP. In addition, there are two regional Intellectual Property organizations which cover only 36 out the 54 African Countries thus:

- ❖ OAPI [African Intellectual Property Organization] whose members comprise of 17 member countries - all French speaking African countries; and
- ❖ ARIPO [African Regional Intellectual Property Organization] whose members comprise of 19 English speaking African countries.
- ❖ The remaining 18 countries could be termed neutral as they do not belong to neither of



THE ARIPO

Botswana
The Gambia
Ghana
Kenya
Lesotho
Malawi
Mozambique
Namibia
Sierra Leone
Liberia
Rwanda
Sao Tome and Principe
Somalia
Sudan
Swaziland
Tanzania
Uganda
Zambia
Zimbabwe

THE OAPI

Benin
Burkina Faso
Cameroon
The Central African Republic
Chad
Comoros Islands
Congo
Equatorial Guinea
Gabon
Guinea
Guinea-Bissau
Ivory Coast
Mali
Mauritania
Niger
Senegal
Togo

THE NEUTRALS

Algeria
Angola
Burundi
Cape Verde
Djibouti
Egypt
Eritrea
Ethiopia
Libya
Madagascar
Mauritius
Morocco
Nigeria
Seychelles
South Africa
South Sudan
Tunisia
Uganda

FEATURES OF AND KEYPOINTS ABOUT THE DIFFERENT FILING SYSTEMS

THE ARIPO	THE OAPI	THE NEUTRALS
This organisation is a product of the 1976 Lusaka Agreement	This organisation is a product of the 1977 Bangui Agreement	These countries do not belong to either the OAPI or the ARIPO
Consists of 19 English Speaking African Countries	Consists of 17 former French African colonies	These countries belong to other International Treaties or Agreements on IP related matters
By the 1993 Banjul Protocol, the organisation developed its own regional registration system	They have established a common intellectual property law	These Countries have their independent National IP Offices

FEATURES OF AND KEYPOINTS ABOUT THE DIFFERENT FILING SYSTEMS

THE ARIPO	THE OAPI	THE NEUTRALS
Registration under this organisation offers a DESIGNATION SYSTEM, whereby the applicant designates the member countries where it intends the IP right to be registered.	They have a central IP office in Yaounde, Cameroon	These countries offer only National Registration of IP Rights.
The applicant decides the number of member states where it wants the Right to be registered.	A registration in the Central IP office automatically covers all the member states (There is no need for designation of applicable countries)	

FEATURES OF AND KEYPOINTS ABOUT THE DIFFERENT FILING SYSTEMS

THE ARIPO	THE OAPI	THE NEUTRALS
The number of member-countries designated determines the cost of filing	The member countries do not offer an option of National Registration. This is because the registration system is a centralised one.	
Although there are 19-member countries in the ARIPO, an applicant can only designate 10 countries	The organisation is a member of the Paris Union and the Madrid Protocol (The validity of its membership of the Madrid Protocol is still in doubt)	

FEATURES OF AND KEYPOINTS ABOUT THE DIFFERENT FILING SYSTEMS

THE ARIPO	THE OAPI	THE NEUTRALS
<p>The countries are Botswana, Lesotho, Liberia, Malawi, Namibia, Swaziland, Tanzania, Uganda, Zimbabwe and São Tomé and Príncipe</p>		
<p>This is because these are the only countries that are signatories to the Banjul Protocol, which regulates the regional registration system</p>		

FEATURES OF AND KEYPOINTS ABOUT THE DIFFERENT FILING SYSTEMS

THE ARIPO	THE OAPI	THE NEUTRALS
<p>All the 10 countries (except São Tomé and Príncipe) that are signatories to the Banjul Protocol are Common Law countries which require a domestication of International Agreements for same to have legal effect</p>		
<p>Of these 9 countries, only Botswana, Malawi, Namibia and Zimbabwe have domesticated the Banjul Protocol</p>		

FEATURES OF AND KEYPOINTS ABOUT THE DIFFERENT FILING SYSTEMS

THE ARIPO	THE OAPI	THE NEUTRALS
<p>Although, the National IP offices of the remaining countries observe the protocol, the Validity of the IP rights therein appears doubtful</p>		
<p>Each of the member countries of the Organisation offers an option of National Registration</p>		

CONCLUSION

Best Advised Protection Strategy

The best advised strategies for the protection of Trademarks in Africa would depend largely on the Intellectual property system to which a country belongs.

It is generally advised that a trademark owner who intends to acquire trademark rights and protection in an African country should pursue a national registration to avoid the complexity, uncertainty, and the barrage of challenges that attack cross-border registration of trademark rights in Africa. The exception to this are the OAPI countries, which has a settled and centralized filing system covering all the member states.



