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**INTELLECTUAL  
PROPERTY  
TRADEMARKS  
AFRICA**



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identity, we'll  
safeguard it.

*Lawyers who see the bigger picture, and the details.*



Our foreign trade mark department is able to assist clients with the filing of applications for registration of trade marks in any of the countries on the African continent, including the surrounding islands in the Indian and Atlantic oceans.

#### *Regional trade mark registration systems in Africa*

When considering filing an application for registration of a trade mark in Africa, it should be borne in mind that there are two regional trade mark filing systems operative on the continent, as opposed to merely filing a national application in a country. Each of these regional systems has its own advantages and disadvantages, as discussed below:

#### **OAPI**

The African Intellectual Property Organisation (O.A.P.I.) is a union of 16 predominantly former French Protectorates who, by the Accords of Libreville and Bangui, established common Intellectual Property Laws and a single Intellectual Property Office, situated at Yaounde, Cameroun.

The member countries are: Cameroun, Central African Republic, Chad, The Republic of the Congo, Benin (formerly Dahomey), Gabon, Ivory Coast, Mauritania, Mali, Guinea (Conakry), Niger, Senegal, Togo, Burkina Faso (formerly Upper Volta), Guinea-Bissau and Equatorial Guinea.

A single application filed at the OAPI affords protection in all the above countries. The International Classification of Goods and Services is followed. Further, a single application may cover more than one class, but separate applications have to be filed in respect of goods and services. Also, a separate application has to be filed for each trade mark in respect of which protection is required.

Use of a trade mark in any one of the member countries, will be deemed to be use of the trade mark in all the member countries.

It is not possible to file a national application in any one of the member countries, or to convert an OAPI application to a national application.

#### **ARIPO**

The African Regional Industrial Property Organisation (ARIPO) was founded in 1976 by Botswana, Lesotho, Sudan, Zambia, Gambia, Malawi, Swaziland, Zimbabwe, Ghana, Sierra Leone, Tanzania, Kenya, Somalia and Uganda. In November 1993 the Administrative Council of ARIPO adopted the Banjul Protocol on Trade Marks which provides for the filing of a single trade mark application at the ARIPO Office which will cover any member state designated by the applicant.

However, at this stage, only Botswana, Lesotho, Liberia, Malawi, Namibia, Swaziland, Tanzania, Uganda and Zimbabwe have ratified the Protocol which, in so far as trade marks are concerned, is effective in these countries only.

The ARIPO system provides for the designation of specific contracting states and there are also provisions for national registrations in the member states. The applicant can, therefore, decide which countries to designate in its application. An ARIPO application may be filed in any contracting state specifying the goods or services to be covered.

The International Classification of Goods and Services is used. One application can cover more than one class and that is certainly one of the main advantages of filing an ARIPO application, instead of national applications.

Once granted an ARIPO registration provides protection in each designated state as if the mark had been filed and registered in that state. Thus the court of each state will have jurisdiction and the infringement remedies in each state will apply.

Please note, however, that we do not generally recommend ARIPO registrations, inter alia, because many of the member countries have not amended their national laws to recognise ARIPO registrations for purposes of enforcing those rights. A registrant may, accordingly, end up having a right without a remedy. Currently, only Botswana, Namibia and Zimbabwe have properly enacted the Banjul Protocol to give effect to ARIPO applications and registrations. It is therefore recommended to still proceed with national applications in the other ARIPO member states, where trade mark protection is a requirement.

## **SADC**

The Southern African Development Community is a regional organisation aiming to promote economic cooperation and integration among the 14 member states without depriving a member state of its economic independence. The member states are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia, Tanzania and Zimbabwe.

The economies of the member states are becoming increasingly interdependent, with an attendant free flow of goods and services across borders. This fact should be kept in mind when launching a new product in the region and when embarking on a trade mark registration program.

No regional system exists for filing a trade mark application in respect of all the SADC member countries. Botswana, Lesotho, Malawi, Namibia, Swaziland, Tanzania and Zimbabwe are, however, member countries of ARIPO.

Should trade mark protection be required in the member countries of the SADC, an ARIPO application can be filed in respect of the member countries of ARIPO and additional national applications in the remainder of the SADC countries (Angola, Mauritius, Mozambique, South Africa, Democratic Republic of Congo, Seychelles and Zambia).

## **NATIONAL APPLICATIONS**

National applications can be filed in all the countries on the continent, except those countries which are members of OAPI.

## **INTERNATIONAL REGISTRATIONS**

The following countries in Africa have acceded to the *Madrid Agreement Concerning the International Registration of Marks* and/or the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*:

Algeria, Egypt, Kenya, Lesotho, Liberia, Morocco, Mozambique, Namibia, Sierra Leone, Sudan, Swaziland and Zambia.

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