

DEVELOPMENT OF INTELLECTUAL PROPERTY PRINCIPLE IN TANZANIA: A LESSON IN JC DECAUX SA CASE.

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1.0 Introduction

As the time goes on due to development and technology it has brought more changes and challenges in Intellectual property arena worldwide. Intellectual property in Tanzania like any other country in the world it is not a matter of universal jurisdiction but a matter of territorial jurisdiction. Tanzania is a union of two countries Tanganyika and Zanzibar. However, every part of the union enjoys territorial jurisdiction as far as intellectual property affairs is concern, it must be noted that IPRs is not a union matter.

Every country has its legal regime that governing the rules of procedure in handling intellectual property affairs,

Most of the principles are normally established by the superior courts of law in every jurisdiction. In Tanzania (Tanganyika), once a Trade mark has been registered the proprietor acquires an exclusive right to the use of his trade or service marks, by virtue of **Section 31 of the Trade and Service Marks Act.**

Exclusive right given to the Proprietor goes hand in hand with non- enjoyment to the third parties without an approval or consent from the Proprietor and the same shall amount to infringement of the Exclusive right against the Proprietor of the Service or trade mark, by virtue of **section 32 of the Trade and Service Marks Act.**

2.1 Principle Established

Recently the High court of Tanzania has developed a new principle to cure the gaps under section 31 and 32 of the Trade and Service Marks Act. The decision aims to extend the scope of the two sections of which should be interpreted to substantiate the justice between the parties and not to embark miscarriage of justice. A proprietor cannot claim exclusive right of the mark prior registered if the mark registered is confusing similar to the mark widely used and known trade mark while aware about the existence of the same.

Her lordship, **B.K PHILLIP, J.**, in the case of **JC DECAUX SA and JC DECAUX TANZANIA LIMITED v JP DECAUX TANZANIA LIMITED**, Commercial case No. 155 of 2018, HCCD, Dar es salaam, delivered on 4th day of February 2021, had the following to say:

“ ... in my considered opinion, legally, it is not correct for a person to register a Trade mark or a business/ company name confusingly similar to a widely used and known Trade mark, with well-

established goodwill in its business/ trade while aware of the existence of the same, simply because that Trademark is not registered in his /her country. It has to be noted that Trademark goes together with Investment in terms of goodwill in a particular business. “

3.0 Facts of the Case

The facts premised to this case were as follows; it is a Plaintiffs case that the Defendant has infringed the Plaintiffs' well known trade mark “**JC Decaux**” by using its name “**JP Decaux Tanzania Limited**” on the ground that the Defendant Company name, that is letter “**JP Decaux Tanzania Limited**” is similar to the Plaintiff Trade mark “**JC Decaux**” because there is only a difference of one letter in the Defendant's Company name, that is letter “**C**” in the Plaintiffs' names (**JC Decaux**), the Defendant has put letter “**P**” (**JP Decaux Tanzania Limited**). The Plaintiffs alleged that the two names (**JC Decaux** and **JP Decaux**) are confusingly similar. Moreover, the Plaintiff alleged that the 1st Plaintiff has been globally using the name (**JC Decaux**) since 1964 and registered it as its Trademark in 135 countries. Whereas the

court after considering the evidence of the parties held its decision as cited above.

4.0 Considered View.

By this decision, the court has increased the scope of section 31 and 32 of the Trademark and service marks Act to the extent that, the Proprietor cannot enjoy exclusive right of his trade or service mark if the mark confusing similar to a wide and known trademark with well-established good will in the business while the proprietor is aware in the existence of the same.

Only first registration does not guarantee exclusive right. The applicant need to make sure that when applying for registration the intended mark does not conflict or confuse with a widely well-known registered mark/ business or company name.

5.1 Conclusion

It normally and obvious in legal practice that the courts of law comes with new experiences in order to suit the current or the present circumstances.

It should be noted that the High Court of Tanzania is a superior court of records at the judicial level in Tanzania. Its powers

founded on the Constitution of the United Republic of Tanzania in Article 108 (2) and section 2 of The Judicature and Application of Laws Act, Cap. 358. where the subordinate courts to the High court are bound to follow the decision

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