

THE CONCEPT OF WELL-KNOWN MARK IN TANZANIA&ZANZIBAR

It is good to know at the outset that, there is no agreeable meaning of what is **Well Known Marks** in the world. According to WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, in determining whether a mark is a well-known mark, the competent authority shall take into account any circumstances from which it may be inferred that the mark is well known. Such conditions includes:-

1. the degree of knowledge or recognition of the mark in the relevant sector of the public;
2. the duration, extent and geographical area of any use of the mark;
3. the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
4. the duration and geographical area of any registrations, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;
5. the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by competent authorities; and
6. the value associated with the mark

In Zanzibar, well known marks is defined by the Zanzibar Industrial Property Act to mean marks that are considered to be well known by the competent authority of the country where protection of the mark is sought while in Tanzania Mainland, the Trade and Service Marks Act does not define what is well known marks.

Per the Zanzibar Industrial Property Act, the authority to determine if marks are well known marks when applying in Zanzibar is the Minister responsible for the time being responsible for matters related to Industrial Property in Zanzibar. In determining whether a mark is well known, the authority shall consider the knowledge of the mark in the relevant sector of the public in Zanzibar, including knowledge which has been obtained as a result of the promotion of the mark.

Well known marks are generally benefits from stronger protection and the main purpose of this strong protection is to prevent companies from free riding on the reputation of the well-known mark or causing damages to its reputation and good will.

Can a well-known mark be registered/protected in Tanzania (Tanganyika) or Tanzania (Zanzibar)?

Principally, the exclusive right to a mark are acquired by registration. However, Well known marks is an exception. This means that, well known marks need not to be registered to acquire the exclusive right. According to the Tanzanian Trade and Service Marks Act, a mark cannot be lawful registered in Tanzania if it constitutes reproductions in whole or in part, imitations, translations or transcriptions and it is liable to create confusion of trade or service marks and business or company names which are well-known in the country, that is to say such marks are prohibited for registration in the country.

The position remains the same in Zanzibar, that a mark cannot be valid registered if it is identical, similar or constitutes a translation of a mark or trade name which is well known in Zanzibar for identical or similar goods or services of another enterprise.

In circumstances where a well-known mark is registered in Zanzibar for goods or services which are not identical or similar to those in respect of which registration is applied for, and the use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use, such mark cannot be registered.

Generally, Well-known marks are usually protected, regardless of whether they are registered or not, in respect of goods and services which are identical with, or similar to, those for which they have gained their reputation.

Can a well-known mark in other Jurisdictions maintain its status in both Tanzania and Zanzibar?

It is possible since in both Tanzania and Zanzibar, its laws prohibit registration of a trademark or trade name which creates a reproduction, an imitation, or a translation, which is likely to create confusion, of a mark considered by the competent authority of the country of registration to be a well-known mark and used for identical or similar goods.

For more information about certification mark and other matter relating with in Tanzania, please do not hesitate to contact us.