

Protecting Your Unique Brand or Idea Within The Legal Framework Of Intellectual Property In Ghana

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Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, our Practice has introduced the publication of newsletters on legal and economic issues that would be of interest to its clients and equally affect their transactions. This is our twelfth edition.

A key part of protecting and promoting a business or brand is in the prevention of unauthorized use of one's idea, brand or trade name by third parties particularly in the same line of trade. This can be done by registration of your intellectual property

(IP) rights. This Newsletter gives a general overview of how IP rights can be used to protect a unique brand or idea in Ghana while emphasizing the importance of same.

In this issue, we have highlighted some general principles for effective management of IP rights in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

Be safe!

Esohe Olajide
Editor

Olusola Ogundimu
Editor-In-Chief



This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. You need to contact a lawyer licensed in your jurisdiction for advice on specific legal issues and problems.

Protecting Your Unique Brand or Idea Within The Legal Framework Of Intellectual Property In Ghana

Many young Entrepreneurs have coined unique names with which their goods and services are associated. These names could evolve into trademarks which are associated with their brands. Some of these names may be used as early as their Secondary School days and are unique in nature. This brand or mark identifies the person and what the person stands for.

Being unique among others can only happen within the legal framework especially when the end objective is financial or fame. Against this background, one has to know the applicable laws that protect Intellectual Property in Ghana so as to register one's invention, trademark or literary and artistic works amongst others.

In Ghana, Intellectual Property (IP) Rights are protected by a number of laws which include the Copyright Act, 2005 (Act 690), the Patents Act, 2003 (Act 657), the Trademarks Act, 2004 (Act 664) as amended, the Industrial Designs Act, 2003 (Act 660) and the Protection Unfair Competition Act, 2000 (Act 589).

A National Intellectual Property (IP) Rights Policy and Strategy was launched in Ghana in 2016 with the aim of creating an enabling environment for innovation and investment in the country. In furtherance of this, officials in the regulatory agencies occasionally conduct raids on physical markets to seize and destroy counterfeit and pirated works products in the bid to protect the rights of brand owners.

However, concerns remain that Intellectual Property enforcement activities remain weak, and unreasonable delays in infringement proceedings and associated costs discourage right holders from filing new claims in the Courts. In addition, prolonged delays in the registration process as well as the official fees payable for registration discourage people from taking steps to register and protect their IP rights in Ghana.

The above backdrop has caused the few people who are aware of IP Rights in Ghana to abandon their efforts to legalize and protect their Intellectual Property Rights. However, it is important for such persons to note that several general principles are important for effective management of IP rights in Ghana. These are:

- Firstly, it is important to have an overall strategy to protect your IP Rights.
- Secondly, IP Rights may be protected differently in Ghana as compared to other countries.
- Thirdly, rights must be registered locally in Ghana to get protection and to allow for those rights to be enforced in Ghana under local laws. This is because protection of most IP rights is territorial. For example, patent registrations in other countries will not automatically protect you in Ghana unless steps are taken to extend the protection of your rights in Ghana. This also applies in the case of Copyright and Trademarks with exception to Well- Known Marks which applies to members states who have signed on to the Paris Convention, 1883 for the Protection of Industrial Property. In addition, Section 5(f) of the Trademarks Act 2004 (Act 664) as amended also recognizes well- known marks and defines

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them in section 52 as “ *the trademark of a person who is*

(a) a national of a country that is a party to the Paris Convention; or

(b) domiciled in or has a real and effective commercial establishment in a country that is a party to the Paris Convention, and the trade mark is recognized or known in the relevant public sector as belonging to that person”

Protection against unauthorized use in a particular country depends basically on its national laws.

- Resolutions of infringement cases must be dealt with and disposed of quickly.

It is very important to note that, once you acquire a certain unique name or brand that is distinct from others, you may want to protect that name by registering it as a trademark so that such unique name will only be associated with you and your brand. One will wonder why top Personalities and Celebrities in the Music, Movie, Dancing, Literary and Artistic Industries have not taken IP Rights serious in Ghana. This may be due to the fact that there is insufficient awareness of these rights amongst Ghanaians coupled with the frustrations occasioned by administrative delays in registering IP rights. Also, it may be due to the financial burden associated with protection of IP Rights. Despite the financial burden and length of time the registration of some IP rights in Ghana, young entrepreneurs and celebrities are better off registering their rights to enable them to enjoy the protection these registrations confer on rights holders.

Here are some tips anyone who wishes to register their Intellectual Property Rights in Ghana should note.

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In Ghana, granting patent registrations are generally based on a first-to file or first-to-invent basis. Similarly, registering trademarks is based on a first-to-file and one should consider obtaining protection for trademarks, and other IP rights before introducing products or services bearing same to the Ghanaian market. Again, it is prudent for companies to understand that intellectual property is primarily a private right and that is aimed at protecting the individual right holders in Ghana.

It is also worthy to note that, if rights holders do not register, secure and enforce their rights in a prompt manner, nothing can be done to maintain or secure that right as there have been instances where rights to a work or brand have been lost to someone else where adequate steps were not taken timeously to protect the IP rights in the work. The Industrial Property Office and The Copyright Commission are two major entities set up in Ghana for the registration and administration of IP rights and receive applications for registration or renewal of rights on a daily basis.

In conclusion, note that it is the sole responsibility of rights’ holders to register, protect and enforce their rights where necessary, and seek good counsel from the IP Industry players. Companies, Celebrities, Personalities among others should seek advice from Lawyers or IP Consultants who are experts in respect of IP protection under Ghanaian law some of whom have been recognized by international awards.

Rights owners must remember that to stand out and reap the benefits of their hard work, they must be unique, be registered and be protected!

By Doreen Beryl Afenya

Intern, ILC

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If you require any legal assistance in Ghana kindly send an email to ilc@integratedlegalconsultants.com

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