

KENYA: THE ANTI-COUNTERFEIT(RECORDATION)REGULATIONS, 2021

In 2019, the Statute Law (Miscellaneous Amendment) Act of 2018 introduced a recordation system under the Anti-Counterfeit Act, 2008. The Anti-Counterfeit Authority (the Authority) was given the mandate to register Trademarks relating to goods to be imported into Kenya, the place of registration notwithstanding. The move asserted Kenya's efforts to combat counterfeiting and piracy especially at the ports of entry.

Two years later, the July 30th edition of the Kenya Gazette, Notice No. 118 of 2021, published the Anti-Counterfeit (Recordation) Regulations, 2021 bringing the recordation system closer to realization. See the regulations¹

The Recordation of Trade Marks may be conducted by the Trade Mark holder or a locally appointed agent pursuant to Regulation 12. The recordation system is summarized as below:

a. Recordation/ notification

Regulation 3 provides mandatory recordation of Intellectual Property Rights (IPRs) related to goods to be imported into Kenya. On the other hand, Regulation 4 requires non-right holders seeking to import goods into Kenya to notify the Authority by following the laid down procedure;

b. Annual renewal of recordation

Regulation 7 provides for annual renewal of recordation.

c. Search system

Regulation 9 requires the Authority to maintain a register of all recorded IPRs. Any person may conduct an Official Search on the Register of recorded trademarks.

The recordation system comes with a cost. The Official fees will apply as follows:

NO.	FORMS	PURPOSE	AMOUNT IN USD
1.	1B	Application to record intellectual property rights	For the first Class 90 For each subsequent Class 10
2.	2B	Submission of Particulars of Imported Goods	20
3.	3B	Change of Ownership	20
4.	5B	Change of Name	20
5.	6B	Renewal of Recordation	50
6.	7B	Application for Search	5
7.	8B	Application for Copies	0.5 per page

The Recordal system has been successful in countries such as the UAE and it is expected that once the system is fully operational, the Authority will be able to not only improve their work at the points of entry but also easily contact owners of IP or their local Agents.

The implementation of the system is underway as the Authority continues to give directions on the same. With the enactment of the Regulations, Trade Marks owners can commence recordation of their Trade Marks with the Authority as an extra measure of protection.

Further questions concerning this update can be directed to Ms Perpetua Mwangi at perpetua@simba-advocates.com or Ms Mary Mwangi at mary@simba-advocates.com

¹ http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2021/LN117_2021.pdf