

# National BILL

## FOR

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE INDUSTRIAL PROPERTY COMMISSION OF NIGERIA, REPEAL OF TRADEMARKS ACT CAP 436, LFN 1990 AND PATENTS AND DESIGNS ACT, CAP 344, LFN 1990 AND MAKE COMPREHENSIVE PROVISIONS FOR THE REGISTRATION AND PROTECTION OF TRADEMARKS, PATENTS AND DESIGNS, PLANT VARIETIES, ANIMAL BREEDERS AND FARMERS RIGHTS AND FOR RELATED MATTERS

*Sponsored by Hon. Chime Oji*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

### PART A

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1.-(1) There is established, a body to be known as the Industrial Property Commission of Nigeria (in this Act referred to as "the Commission") which shall be situated in the Federal Capital Territory, Abuja.

Establishment of Industrial Property Commission of Nigeria

(2) The Commission:

(a) shall be a body corporate with perpetual succession and a common seal;

(b) may sue and be sued in its corporate name; and

(c) may acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out its functions under this Act.

2. There shall be appointed for the Commission a Governing Council (in this Act referred to as "the Council"), which shall be responsible for the formulation of policy for the Commission and for the discharge of other functions conferred on the Commission by this Act.

Establishment of the Governing Council

3.-(1) The Council shall comprise of:

(a) a Chairman,

Membership of the Governing Council

under the Act:

1 (b) one representative each of the following Ministries or Agencies,  
2 who shall not be below the rank of Director or its equivalent:

3 (i) Federal Ministry of Commerce and Industry;  
4 (ii) Federal Ministry of Agriculture and Water Resources;  
5 (iii) Federal Ministry of Health;  
6 (iv) Federal Ministry of Environment;  
7 (v) Federal Ministry of Science and Technology;  
8 (vi) Economic and Financial Commission (EFCC); Crimes  
9 (vii) Nigerian Customs Service; and  
10 (viii) Nigerian Police Service;

11 (c) two legal practitioners in private practice with considerable  
12 experience in intellectual property law;  
13 (d) one representative from the Standards Organization of Nigeria  
14 (SON);  
15 (e) two representatives of the Manufacturers Association of Nigeria;  
16 and  
17 (f) Registrar-General of the Commission; who shall all be appointed  
18 by the President.

19 (2) The Chairman of the Council who shall be a person with not less  
20 than (20) years post qualification experience in Intellectual property shall be  
21 appointed by the President.

Functions of the  
Commission

22 4. The Commission shall:  
23 (a) supervise the administration of the law relating to intellectual  
24 property and ensure rapid and coordinated development of intellectual  
25 property in Nigeria;  
26 (b) liaise with organs of the Government and other agencies for  
27 proper enforcement of intellectual property rights;  
28 (c) monitor and supervise Nigeria's position in relation to  
29 international conventions relating to intellectual property matters and advise  
30 Government;

(a) in pursuance of execution of his duties under this Act or any other enactment or law or

(d) advise the Government on matters relating to intellectual property laws; its development, reforms and execution;

(e) advise on terms and conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country or organization, with respect to intellectual property law or administration;

(f) enlighten and inform the public on matters relating to intellectual property;

(g) maintain an effective intellectual property documentation and information centre;

(h) carry out such other duties as relate to intellectual property as the Minister may direct;

(i) do all such things as are necessary to carry out the provisions of all laws relating to intellectual property matters.

5.-(1) A person appointed as a member of the Council (not being an ex-officio member) shall, hold office for a term of four years and shall be eligible for re-appointment for a further term of four years and no more.

(2) The members of the Council other than the Registrar-General shall be part-time members.

(3) The Chairman or any other member of the Council other than an ex-officio member may be removed from the Council by the President on the recommendation of the Minister if the person:

(a) becomes of unsound mind or is incapable of carrying out his duties for any other reason; or

(b) becomes bankrupt or has made arrangement with his creditors;

(c) is convicted of a felony or any offence involving dishonesty;

(d) is guilty of serious misconduct relating to his duty;

(e) in the case of a person possessing professional qualifications, is disqualified from practicing his profession; or

(f) resigns his office by notice in writing addressed to the Minister.

6. The members of the Council shall be paid such remuneration

(h) one representative each of the following and allowances as Government may determine.

Proceedings of the Council, etc. 7.-(1) Subject to section 27 of the Interpretation Act, the Council may

3 make standing orders regulating its proceedings.

4. (2) The Chairman shall preside at every meeting of the Council and in

5 his absence; the members present shall elect one of their number, other than the

6 Registrar-General, to preside at the meeting.

7. (3) The quorum for meetings of the Council shall be nine members.

8. (4) The Council may call any person who is not a member of the

9 Commission to attend a meeting of the Council and advise the Council on any

10 matter referred to it by the Commission, but the person shall not count towards

11 the quorum of the meeting and shall not be entitled to vote at any meeting of the

12 Council.

Disclosure of Interest

13 8.-(1) Any member of the Council who has interest in any matter

14 before the Council, whether pecuniary or otherwise, shall disclose the interest.

15 (2) A disclosure under subsection (1) of this section shall be recorded

16 in the minutes of the Council, and the member shall not take part after the

17 disclosure, in any deliberation or decision of the Council with regard to the

18 subject matter in respect of which his interest is thus disclosed.

19 (3) Non-disclosure in accordance with this section shall be deemed to

20 be a serious misconduct for the purposes of this Act.

Appointment of the Registrar-General and other staff, etc

21 9.-(1) There shall be appointed by the President on the

22 recommendation of the Minister, a Registrar-General for the Commission who

23 shall be a legal practitioner of not less than fifteen years post-call and

24 experience in intellectual property law and administration.

25 (2) The Registrar-General shall:

26 (a) be the Chief Executive and Accounting Officer of the

27 Commission;

28 (b) be responsible for the day-to-day operation of the Commission,

29 and subject to the general directives of the Council;

30 (c) hold office on contract appointment for a period of four years and

advise the Government on matters relating to its development, reforms and execution on such terms and conditions as may be determined by the Council with the approval of the Minister of Commerce and Industry or appropriate ministry.

(3) The Commission has the power to appoint such officers as it may regard necessary for the discharge of its functions under this Act including the Registrars of Trademarks, Patents and Designs, and Plant Varieties and Animal Breeds.

(4) There shall be appointed one or more Deputy Registrars of Trademarks, Patents and Designs, and Plant Varieties and Animal Breeds and one or more Assistant Registrars, who shall, subject to the control of the Registrar-General, have all the powers conferred by this Act on the Registrar-General, and the most senior in rank shall whenever the Registrar is for any reason unable to fulfill his duties, act in his stead.

(5) The Commission shall have the power to make rules and regulations governing appointments, promotion and discipline in the Commission, and may, subject to such conditions as it may think fit and to any enactment, delegate any of its power relating to appointments and the exercise of disciplinary control including dismissal, over its officers to the Registrar-General.

10. Service in the Commission shall be approved service for the purpose of the Pensions Act and accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission be entitled to pension, gratuity and other retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation, to the extent that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.

Service in the Commission

11.-(1) The Commission, headed by the Registrar-General shall consist of five departments, namely:

Structure of the Commission

(a) the Patents and Designs Registry which shall administer the

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1 Patents and Designs part of this Act and shall be under the headship of the  
2 Registrar of Patents and Designs who shall be a legal Practitioner and scientist  
3 or an engineer of not less than 10 years post call and experience in science,  
4 intellectual property law and administration;

5 (b) the Trademarks registry, which shall administer the Trademarks  
6 part of this Act and shall be under the headship of the Registrar of Trademarks  
7 who shall be a legal practitioner of not less than 10 years post call and  
8 experience in intellectual property law and administration;

9 (c) the Plant Varieties and Animal Breeds Rights Registry which shall  
10 administer the Plant Variety and Animal Breeds part of this Act and shall be  
11 under the headship of the Registrar of Plant Varieties and Animal Breeds who  
12 shall be an agricultural or biological scientist or its equivalent of not less than  
13 10 years post qualification and experience in intellectual property law and  
14 administration;

15 (d) the Administration and Finance Department which shall be under  
16 the headship of the Director of Administration and Finance who shall be a  
17 person with not less than 10 years post qualification experience; and

18 (e) the Planning, Research and Statistics Department which shall be  
19 under the headship of a Director of Planning, Research and Statistics who shall  
20 be a person with not less than 10 years post qualification experience.

21 (2) Nothing in this subsection shall prevent the Commission, with the  
22 consent of the Minister from establishing any additional Registry or  
23 Department as the Commission may deem necessary for the proper and  
24 effective administration of the provisions of this Act.

25 (3) In this Act, a Registrar and a Director have the same status. All  
26 Registrars or Directors shall report to the Registrar-General.

Fund of the  
Commission

27 **12.-(1)** The Commission shall establish and maintain a fund from  
28 which all expenditure of the Commission shall be defrayed.

29 (2) There shall be paid and credited to the fund established in  
30 pursuance of subsection (1) of this section:

General under this section may apply to the Commission.

36.-(1) Any sign or a combination of signs shall be registered as a trademark only if it is distinctive and capable of distinguishing the goods or services of one undertaking from those of other undertakings.

(a) all such sums as may, from time to time be granted to the Commission by the Federal Government;  
(b) all monies raised for the purposes of the Commission by way of grants, loans, subsidies and donations, provided that, the Commission shall not be obliged to accept a donation for a particular purpose unless, it approves of the terms and conditions attached to such donation, if any;

(c) all statutory payments, fees and or charges for services rendered by the Commission or any of its departments; and

(d) all other assets as may, from time to time, accrue to the Commission.

(3) Every applicant for the registration of a Trademark, Patent and Design, Plant Variety and Animal Breeds shall pay a prescribed amount for processing and publication which shall be retained and maintained in a separate account by the Commission for the publication of the Trademarks and Patents and Designs, and Plant Varieties and Animal Breeds Journals and the amount for publication shall be as determined by the Commission.

13.-(1) The Commission shall keep proper accounts and records and shall prepare in respect of each financial year, a statement of accounts in such form as may be directed by the Auditor-General for the Federation.

Accounts and Audits

(2) The accounts of the Commission shall be audited not later than six months after the end of each financial year by auditors appointed by the Commission.

14. The Commission shall, not later than 1st July in each year, submit to the Minister, a report of the activities of the Commission during the immediately preceding year.

Annual Report

15. The Commission may make regulations generally, for the purposes of the proper administration of intellectual property law and matters relating to it, subject to the approval of the Minister.

Power to make Regulations

16.-(1) Despite anything in any other enactment, no suit against the Commission, a member or any staff of the Commission, for an act done:

Time for commencement of action

and Designs part of this Act and shall be under the (a) in pursuance or execution of his duties under this Act or any other  
of Patents and Designs, who shall be a legal practitioner or a scientist

3 (b) in respect of any alleged neglect or default in the execution of this  
4 Act or any other enactment, shall lie or be instituted in any Court unless, the suit  
5 is commenced within twelve months next after the act, neglect or default  
6 complained of or where the damage or injury continues, within twelve months  
7 after the damage or injury ceases.

8 (2) No suit shall be commenced, against the Commission or any  
9 member of staff of the Commission, before the expiration of a period of three  
10 months after a written notice of intention to commence the suit is served upon  
11 the Commission by the intending plaintiff or his agent.

12 (3) The notice referred to in subsection (2) of this section shall, clearly  
13 state the cause of action, the particulars of claim, the name and place of abode  
14 of the intending plaintiff and the relief which the persons claims.

Service of Notice

15 17. A notice, summons or other documents required or authorized to  
16 be served upon the Commission under the provisions of this Act or any other  
17 enactment or law may, be served by delivering the same to the Registrar-  
18 General of the Commission or by sending it by registered post addressed to the  
19 Registrar-General at the office of the Commission.

Issuance of  
Process of  
Execution, etc.

20 18:-(1) In any action or suit against the Commission, no execution or  
21 attachment or process shall be issued against the Commission without the  
22 consent of the Attorney-General of the Federation.

23 (2) Any sum of money which is by judgment of a Court awarded  
24 against the Commission shall, subject to any direction given by the Court  
25 where notice of the appeal has been given by the Commission in respect of the  
26 judgment, be paid by the Commission from its general fund.

Power of the  
Minister to give  
directives

27 19. The Minister may, give to the Commission, directives of a general  
28 or special character with respect to any of the functions of the Commission  
29 under this Act and it shall be the duty of the Commission to comply with such  
30 directives.

such sums as may from time to time be granted to the Federal Government for the maintenance of the Commission for the purposes of the Commission shall be in force at the commencement of this Act, continue in force, so far as it may have been made, issued, given or done under the corresponding provisions of this Act or Regulations under this Act.

Savings Provisions

(2) Any proceedings begun under the Patents and Designs Act and Trademarks Act may be continued under those Acts.

21. A person who is refused the grant of a compulsory license by the Competent Authority shall have the right of appeal to the Appeal Board.

Right of Appeal

22.-(1) There shall be established the Industrial Property Appeal Board (in this Act referred to as 'the Appeal Board') which shall be charged with the duty of considering and determining any case referred to it by a party aggrieved as a result of the Competent Authority's refusal to grant it a compulsory license and any other case it has cognizance under this Act.

Establishment and constitution of the Appeal Board

(2) The Appeal Board shall consist of a Chairperson and not less than three or more than six other members appointed by the President on a full time basis.

23.-(1) To be eligible for appointment as a Chairperson of the Appeal Board, such a person shall have a minimum of fifteen (15) years knowledge and experience in Intellectual Property Law and administration.

Eligibility for appointment

(2) To be eligible for appointment as a member of the Appeal Board, such a person shall have a minimum of ten (10) years knowledge and experience in intellectual property law and administration, law or economics.

24.-(1) The Chairman and members of the Appeal Board shall be appointed by the President for a period of 5 years in the first instance and may subject to performance be re-appointed for another term of 5 years and no more.

Tenure and removal of a chairperson or member

appointment for a further period of four years and no more than two such periods. (2) The Chairperson may:

conditions as may be determined by the Council with the consent of the Minister of Commerce and Industry or appropriate ministry: (a) resign from the Tribunal;

(b) resign as Chairperson but remain as a member of the Tribunal, by giving a one month notice to the President.

(3) A member of the Appeal Board may resign by giving a month notice to the President.

(4) The President on the recommendation of the Federal Minister of Commerce and Industry:

(a) shall remove the Chairperson or a member, if it is not in the public interest or interest of the Appeal Board for him to continue;

(b) may remove the Chairperson or a member of the Appeal Board from office for:

(i) Serious misconduct;

(ii) Permanent incapacity; and

(iii) Engaging in any activity that may undermine the integrity of the Appeal Board.

Emoluments, etc.

25.-(1) The Chairperson and members of the Appeal Board shall be paid such remunerations and allowances as are determined by the Governing Council.

(2) During the term of office of a member of the Appeal Board, the member's salary, allowances or benefits may not be reduced.

PART B

The Registrar of Trademarks

26.-(1) There shall be an officer known as the Registrar of Trademark: (in this Act also referred to as "the Trademarks Registrar") who shall be appointed by the Industrial Property Commission of Nigeria and whose office shall be situated in the Federal Capital Territory, Abuja.

(2) The Trademarks Registrar shall, in the exercise of his functions other than the taking of any decision which under this Act is subject to appeal to the Court, act under the general direction of the Registrar-General

(3) Any act or thing directed to be done by or to the Trademarks

35.-(1) Subject to subsections (2) and (3) of this section, the provisions of this Act shall apply to collective marks.

(4) There may be appointed one or more Deputy Registrars of Trademarks, and one or more Assistant Registrars of Trademarks who shall, subject to the control of the Registrar-General have all the powers conferred by this Act on the Trademarks Registrar, and the most senior of whom shall whenever the Trademarks Registrar is for any reason unable to fulfill his duties, act temporary in his stead.

(5) The Trademarks Registrar shall have an official seal which shall be officially and judicially noticed.

27.-(1) There shall be kept the record called the register of trademarks, in which shall be entered all registered trademarks with the names and addresses of their proprietors, the date on which applications were made for their registration, notifications of assignments and transmissions, the names and addresses of all registered users and such other matters relating to registered trademarks as may be prescribed.

The Register

(2) The register shall be kept under the control and management of the Registrar-General at the Trademarks Registrar's office.

(3) The register shall, at all convenient times, be open to the inspection of the public, subject to such rules as may be prescribed.

28. Subject to the provisions of Section 33 of this Act, no person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trademark; but nothing in this Act shall be taken to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Effects of non-registration

29.-(1) A trademark shall be registered in respect of particular goods and services or classes of goods and services, and any question arising as to the class within which any goods or services fall shall be determined by the Registrar-General.

Registration to be in respect of particular goods or services

(2) A person who is aggrieved by the decision of the Registrar'

(2) The Chairperson may:

1 General under this section may, apply to the Court for a review of the decision.

(3) Registration of a sign or a combination of signs.

2 30.-(1) Any sign or a combination of signs capable of distinguishing  
3 the goods or services of one undertaking from those of other undertakings shall  
4 be capable of constituting a trademark under this Act.

5 (2) Where the signs are not inherently capable of distinguishing the  
6 relevant goods or services, registration shall be dependent on the  
7 distinctiveness of the goods or services acquired through use.

8 (3) The Registrar-General may require that signs be visually  
9 perceptible as a condition for registration under this Act.

10 (4) A mark shall not be validly registered if it is:

11 (a) incapable of distinguishing the goods or services of one enterprise  
12 from those of other enterprises;

13 (b) contrary to public order or morality;

14 (c) likely to mislead the public or trade circles, in particular as regards  
15 the geographical origin of the goods or services concerned or their nature and  
16 characteristics;

17 (d) identical with, or is an imitation of or contains as an element, an  
18 armorial bearing, flag or other emblem, a name or abbreviation or initials of the  
19 name of, or official sign or hallmark adopted by any country inter-  
20 governmental organization or organization created by an international  
21 convention, unless authorized by the competent authority of that country or  
22 organization;

23 (e) identical with or in a confusing way similar to, or constitutes a  
24 translation of a mark or trade name which is well known in Nigeria for identical  
25 or similar goods or services or another enterprise, or if it is well known and  
26 registered in Nigeria for goods or services which are not identical or similar to  
27 those in respect of which registration is applied for, provided in the latter case,  
28 that use of the mark in relation to those goods or services shall indicate a  
29 connection between those goods or services and the owner of the well known  
30 mark and that the interests of the owner of the well known mark are likely to be

done by or to any other officer in the office of the Registrar damaged by such use.

in the direction of the Registrar General.

(5) For the purposes of this section:

"sign" includes personal names, letters, numerals, figurative elements and a combination of colours and a combination of such sign.

31.-(1) Subject to the provisions of this section and of sections 32 and 33 of this part of this Act, the registration (whether before or after the commencement of this Act) of a person as proprietor of a trademark (other than a certification trademark) in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of that trademark in relation to those goods.

Rights given by registration

(2) Without prejudice to the generality of the right to the use of a trademark given by such registration as stated in sub-section (1), that right shall be deemed to be infringed by any person who, not being the proprietor of the trademark or a registered user thereof using it by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken:

(a) as being used as a trademark;

(b) in a case in which the use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trademark or to goods with which such a person as stated above is connected in the course of trade; or

(c) in the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(3) The right to the use of a trademark given by such registration as stated in subsection (2) above shall be subject to any conditions or limitations entered on the Register, and the use of any such mark in any circumstances to which, having regard to any such limitations, the

subject to the provisions of this Act, any appointment, registration does not extend, shall not constitute an infringement of that right.

1 or application made, certificate issued or notified. (4) The conditions or limitations shall not cause the use of a trademark  
2 to be unjustifiably encumbered by special requirements, such as use with  
3 another trademark, use in a special form or use in a manner detrimental to its  
4 capability to distinguish the goods or services of one undertaken from those of  
5 other undertakings and this shall not preclude a requirement prescribing the use  
6 of the trademark that identifies the undertaking producing the goods or services  
7 along with, but without linking it to, the trademark distinguishing the specific  
8 goods or services in question with that undertaking.

9  
10 (5) The use of a registered trademark, being one of two or more  
11 registered trademarks that are identical or nearly resemble each other, in the  
12 exercise of the right to the use of that trademark given by such registration as  
13 stated above, shall not constitute an infringement of the right to the use of any  
14 other of those trademarks given by such registration.

15 (6) The owner of a registered trademark has the exclusive right to  
16 preclude any other person not having his consent, from using the trademark in  
17 the course of trade for identical or similar signs, for goods or services which are  
18 identical or similar to those in respect of which the trademark is registered,  
19 where such use shall result in a likelihood of confusion.

20 (7) In the case of the use of identical sign for identical goods or  
21 services, the likelihood of confusion shall be presumed.

22 (8) The right conferred by registration of a mark shall not extend to  
23 acts in respect of articles which have been put on the market in any country by  
24 the registered owner or with his consent.

Savings for  
vested rights

25 32.-(1) The owner of a well known mark has the exclusive right to  
26 prevent all third parties not having the owner's consent from using in the course  
27 of trade, a mark which is identical with or in a confusing way similar to or  
28 constitutes a translation of, a mark or trade name which is well known in  
29 Nigeria, for goods or services which are identical or similar to those in respect  
30 of which the mark is well known, where the use would result in a likelihood of

43.-(1) A trademark may be used in the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(2) The rights of an owner of a registered well known mark under subsection (1) of this section shall, extend to goods and services which are not identical with or similar to those in respect of which the well known mark has been registered, provided that, the use of the sign in relation to those goods or services indicate, a connection between those goods or services and rights of the owner of the well known mark are likely to be damaged by such use.

33. As from the date of coming into operation of this Act, civil proceedings may be instituted under this Act in respect of an infringement of a registered trademark before the Appeal Board.

Action for infringement

34.-(1) In an action for infringement of a registered mark, the plaintiff may make an ex parte application supported by affidavit to the Court for an order for the inspection of any house or premises where he knows or suspects are kept, goods with his infringed marks on them, or his infringed marks intended to be used on goods or in respect of services; and for the seizure of such goods or marks.

Power of Court to make order of inspection and seizure

(2) Where there is reasonable cause for suspecting that goods with the infringed marks on them or the infringed marks intended to be used on goods or in respect of services are in the house or premises, the Court may issue an order on such terms as it deems fit authorizing the applicant to:

(a) enter the house at any reasonable time by day or night accompanied by a police officer not below the rank of Assistant Superintendent of Police;

(b) seize, detain and preserve the goods bearing the infringing mark;

(c) inspect all or any documents in the custody or under the control of the defendant relating to the action.

tion does not extend shall not constitute an infringement. 35. (1) Subject to subsections (2) and (3) of this section, the

(4) The conditions or limitations shall not apply to collective marks.

3 (2) An application for registration of a collective mark shall designate  
4 by a copy of the regulations governing the use of the collective mark and where  
5 any change is made in respect of the regulation, the registered owner of the  
6 collective mark shall notify the Registrar-General of such change.

7 (3) In addition to the grounds provided in sections 63 and 64 of this  
8 Act, the Registrar-General shall invalidate the registration of a collective mark  
9 if the person requesting the invalidation proves that only the registered owner  
10 uses the mark, or that the registered owner uses or permits its use in  
11 contravention of the regulation referred to in subsection (2) of this section or  
12 that the uses or permits the use in a manner liable to deceive trade circles or the  
13 public as to the origin or other common characteristics of the goods or services  
14 concerned.

15 (4) The registration of a collective mark or an application for a  
16 collective mark may not be the subject of a license contract.

Protection of  
Trade name

17 36.-(1) A name or designation may not be used as a trade name if, by  
18 its nature or the use to which it may be put, it is contrary to public order or  
19 morality and if, in particular, it is liable to deceive trade circles or the public as  
20 to the nature of the enterprise identified by the name.

21 (2) Notwithstanding any laws or regulations providing for any  
22 obligation to register trade names, the names shall be protected prior to or  
23 without registration against any unlawful act committed by third parties and  
24 any subsequent use of the trade name by a third party, whether by a trade name  
25 or a mark or collective mark, or any such use of a similar trade name or mark,  
26 likely to mislead the public, shall be deemed unlawful.

27 37. Nothing in this Act shall entitle the proprietor or a registered user  
28 of a registered trademark, to interfere with or restrain the use by any person of a  
29 trademark identical with or nearly resembling it in relation to goods in relation  
30 to which that person or a predecessor in title of his has continuously used that

in the case of the use of an identical sign mark from a date previous to:

ground of confusion shall be presumed:

3 (a) the use of the first-mentioned trademark in relation to those goods by the proprietor or a predecessor in title of his; or

4 (b) the registration of the first-mentioned trademark in respect of those goods in the name of the proprietor or a predecessor in title of his,

5 whichever first occurred, or (where such use is proved) to object to that

6 person being put on the register for that identical or nearly resembling  
7 trademark in respect of those goods.

8  
9 38. The registration of a trademark shall not interfere with:

10 (a) any bona fide use by a person of his own name or the name of his  
11 place of business, or the name, or the name of the place of business, of any of  
12 his predecessors in business; or

13 (b) the use by any person of any bona fide description of the  
14 character or quality of his goods, not being a description that would be likely  
15 to be taken as importing any such reference.

16 39.-(1) In order for a mark to be registrable under this Part, it shall  
17 be distinctive.

18 (2) A mark is distinctive if, it is capable, in relation to the goods or  
19 services in respect of which it is registered or proposed to be registered, of  
20 distinguishing goods or services with which its proprietor is or may be  
21 connected in the course of trade or business, from goods or services in the  
22 case of which no such connection subsists, either generally or, where the  
23 mark is registered subject to limitations, in relation to use within the extent  
24 of the registration.

25 (3) In determining whether a mark is capable of distinguishing in  
26 accordance with subsection (2) of this section, regard shall be had to the  
27 extent to which:

28 (a) the mark is inherently capable of distinguishing as required by  
29 that subsection; and

30 (b) by reason of the use of the mark or of any other circumstances, it

Saving for use of name, address or description of goods

Distinctiveness needed for registration

purposes of this section:

1 is, in fact, capable of so distinguishing.

2 (4) Subject to the provisions of this Act, the following in particular,  
3 may be regarded as prima facie distinctive for purposes of registrability as a  
4 mark:

5 (a) the name of a company, an individual or a firm represented in a  
6 special or particular manner;

7 (b) the signature of the applicant for registration or a predecessor of  
8 his in business;

9 (c) an invented word or invented words; or

10 (d) any word or words having no direct reference to the character or  
11 quality of the goods or services and not being according to its ordinary  
12 signification, a geographical name or surname.

Identical and  
resembling  
trademarks not  
to be registered

13 40.-(1) Subject to the provisions of subsection (2) of this section, no  
14 trademark shall be registered in respect of any goods or description of goods  
15 that is identical with a trademark belonging to a different proprietor or with an  
16 earlier filing or priority date and already on the register in respect of the same  
17 goods or description of goods, or that so nearly resembles such a trademark as  
18 to be likely to deceive or cause confusion.

19 (2) In case of honest concurrent use, or other special circumstances  
20 which in the opinion of the Court or the Registrar-General make it proper so to  
21 do, the Court or the Registrar-General may permit the registration of  
22 trademarks that are identical or nearly resemble each other in respect of the  
23 same goods or description of goods by more than one proprietor, subject to  
24 such conditions and limitations, if any, as the Court or the Registrar-General, as  
25 the case may be, may think it right to impose.

26 (3) Where separate applications are made by different persons to be  
27 registered in respect of the same goods or description of goods as proprietors  
28 respectively of trademarks that are identical or nearly resemble each other, the  
29 Registrar-General may refuse to register any of them until, their rights have

in the Registrar-General, other than those determined by the Court or have been settled by agreement in a manner approved in writing by the Registrar-General or the Court, and if any

3 (a) by the Registrar-General; or

4 (b) by the Court on an appeal from the Registrar-General.

5 (4) Nothing in this section, prevents the registration of a trademark

6 where the proprietor of the earlier trademark or other earlier rights consent

7 to the registration.

8 41. In all legal proceedings relating to a trademark registered under

9 this Act (including applications under section 64 of this Act) the original

10 registration of the trademark shall, after the expiration of seven years from

11 the date of that registration, be taken to be valid in all respects, unless:

12 (a) that registration was obtained by fraud; or

13 (b) the trademark offends against the provisions of section 30 of

14 this Act.

15 42. If a trademark:

16 (a) contains any part not separately registered by the proprietor as a  
17 trademark; or

18 (b) contains matter common to the trade or otherwise of a non-  
19 distinctive character, the Registrar-General or the Court, in deciding  
20 whether the trademark shall be entered or shall remain on the register, may  
21 require, as a condition of its being on the register:

22 (i) that the proprietor shall disclaim any right to the exclusive use of  
23 any part of the trademark, or to the exclusive use of all or any portion of any  
24 such matter as aforesaid, to the exclusive use of which the Tribunal holds  
25 him not to be entitled, or

26 (a) that the proprietor shall make such other disclaimer as the  
27 Tribunal may consider necessary for the purpose of defining his rights under  
28 registration, provided that no disclaimer on the register shall, affect any  
29 rights of the proprietor of a trademark, except such arise out of the  
30 registration of the trademark in respect of which the disclaimer is made.

Registration conclusively valid after seven years

Disclaimer for the purposes of registration.

act. capable of so distinguishing with  
Registration with  
or without  
(4) Subject to the limitation as to  
colour

1 43.-(1) A trademark may be limited in whole or in part to one or  
2 more specified colours, and in any such case, the fact that it is so limited shall,  
3 be taken into consideration by any tribunal that decides on the distinctive  
4 character of the trademark.

5 (2) If and so far as a trademark is registered without limitation of  
6 colour, it shall be taken to be registered for all colours.

Geographical  
indications

7 44.-(1) For the purposes of this section, "geographical indications"  
8 are indications which identify a good as originating from any country or region  
9 or locality in that country where a given quality, reputation or other  
10 characteristics of the good is attributable to its geographical origin.

11 (2) No person shall, in Nigeria, use any means in the designation or  
12 presentation of a good that indicates or suggests that the good originates from a  
13 geographical area other than the true place of origin and in a manner intended to  
14 mislead as to the geographical origin of the good.

15 (3) The Registrar-General, shall on the request of the registered  
16 proprietor of the trademark, refuse or invalidate the registration of a trademark  
17 which contains or consists, in his opinion, a geographical indication with  
18 respect to any good not originating in the territory indicated and is intended to  
19 mislead as to the true place of origin.

Preliminary  
Advice on  
distinctiveness

20 45.-(1) Any person proposing to apply for the registration of a  
21 trademark may, if he so desires, apply to the Registrar-General in the  
22 prescribed manner for advice as to whether the trademark appears to the  
23 Registrar-General prima facie to be capable of distinguishing; and the  
24 Registrar-General shall have power to give the advice asked for in the  
25 application.

26 (2) In an application for the registration of a trademark as to which the  
27 Registrar-General has given advice under this section in the affirmative is  
28 made within three months after the giving of the advice, and the Registrar-  
29 General, after further investigation or consideration, gives to the applicant  
30 under section 45 of this Act, notice of his objection to the acceptance of the

by the Court or have been settled by application on the ground that the trademark is not capable of distinguishing, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

46.-(1) Any person claiming to be the proprietor of a trademark used or proposed to be used by him who is desirous of registering it shall, apply in writing to the Registrar-General in the prescribed manner for registration.

Application for registration

(2) Subject to the provisions of this Act, the Registrar-General may refuse the application, or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think right.

(3) The conditions or limitations under subsection (2) of this section shall not cause the use of a trademark to be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings, but this shall not preclude a requirement prescribing the use of the trademark identifying the undertaking which produces the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

(4) In the case of refusal or conditional acceptance, the Registrar-General shall, if required by the applicant, state in writing, the grounds of his decision and the materials used by him in arriving thereat, and the decision shall be subject to appeal to the Court.

(5) An appeal under this section shall, be made in the prescribed manner, and on the appeal, the Court shall, if required, hear the applicant and the Registrar-General, shall make an order determining whether, and subject to what amendments, modifications, conditions or limitations, if any, the application is accepted.

1 (6) Appeals under this section shall, be heard on the materials stated  
 2 of the first-mentioned trademark in relation by the Registrar-General in pursuance of subsection (4) of this section, and no  
 3 further grounds of objection to the acceptance of the application shall be  
 4 allowed to be taken by the Registrar-General, other than those stated by him,  
 5 except by leave of Court; and if any further grounds of objection are taken, the  
 6 applicant shall be entitled to withdraw his application without payment of costs  
 7 on giving such notice as may be prescribed.

8 (7) The Registrar-General or Court may at any time, whether before  
 9 or after acceptance, correct any error in or in connection with the application, or  
 10 may permit the applicant to amend his application upon such terms as the  
 11 Registrar-General or the Court, as the case may be, thinks fit.

Publication of  
notice of  
application

12 47.-(1) Subject to the provisions of this section, when an application  
 13 for registration of a trademark has been accepted, whether absolutely or subject  
 14 to conditions or limitations, the Registrar-General shall, as soon as may be after  
 15 acceptance, cause notice of the application as accepted to be published in the  
 16 Journal; and the notice shall set out all conditions and limitations subject to  
 17 which the application has been accepted.

18 (2) In the case of an application made under section 38 of this Act, or  
 19 in any other case where it appears to him that it is expedient by reason of any  
 20 expedient by reason of any exceptional circumstances to do so, the Registrar-  
 21 General may, cause notice of an application for registration of a trademark to be  
 22 published in the Journal before acceptance.

23 (3) Where under subsection (2) of this section, notice of such an  
 24 application has been published in the Journal before acceptance, the Registrar-  
 25 General may, if he thinks fit, cause notice of the application to be published in  
 26 the Journal again when it has been accepted, but shall not be bound to do so.

Opposition to  
registration

27 48.-(1) Any person may within three months from the date of  
 28 publication under section 45 of this Act of notice of an application, give notice  
 29 to the Registrar-General of opposition to registration.

30 (2) The notice shall be given in writing in the prescribed manner and

(4) of this section, for the case shall include a statement of the grounds of opposition.

also cause notice of the assignment to be published. (3) The Registrar-General shall, send a copy of every such notice to

3 the applicant; and within two months after the date on which copy is received

4 by the applicant, the applicant shall send to the Registrar-General in the

5 prescribed manner, a counter statement of the ground on which he relies for

6 his application and, if he does not do so, shall be treated as having abandoned

7 his application.

8 (4) If the applicant sends such a counter-statement as stated above,

9 the Registrar-General shall furnish a copy thereof to the persons giving

10 notice of opposition, and shall, after hearing the parties, if so required, and

11 considering the evidence, decide whether, and subject to what conditions or

12 limitations, if any, registration is to be permitted.

13 (5) The Registrar-General may request a person giving notice of

14 opposition or an applicant sending a counter-statement after receipt of the

15 copy of such a notice to give security as to costs of the proceedings before

16 him relating to the opposition, and in default of such security being duly

17 given, may treat the opposition or application, as the case may be, as

18 abandoned.

19 49.-(1) A decision of the Registrar-General under section 45 (4) of  
20 this Act shall be subject to appeal to the Court.

Appeal from Registrar-General's decision on opposed application

21 (2) An appeal under this section shall be made in the prescribed

22 manner, and on the appeal the Court, shall, if required, hear the parties and

23 the Registrar-General, and shall make an order determining whether, and

24 subject to what conditions or limitations, if any, registration is to be

25 permitted.

26 (3) On the hearing of an appeal under this section, any party may,

27 either in such manner as may be prescribed of by special leave of the Court,

28 bring forward further material for the consideration of the Court.

29 (4) On an appeal under this section, no further ground of opposition

30 to the registration of a trademark shall be allowed to be taken by an opponent

(6) Appeals under this section shall be for the Registrar-General other than those stated in pursuance of section 46 of Registrar-General in pursuance of sub-section 2 of this Act by that or any other opponent, except by leave of the Court; and if any further grounds of opposition are taken, the applicant shall be entitled, on giving such notice as may be prescribed, to withdraw his application without payment of the costs of the opponent or any of the opponents.

(5) On an appeal under this section, the Court may, after hearing the Registrar-General, permit the trademark proposed to be registered to be modified in any manner not substantially affecting its identity, but in any such case, the trademark as so modified shall be advertised in the Journal, in the prescribed manner before being registered.

(6) The Court may, require an appellant, under this section to give security for costs of the appeal, and in default of such security being duly given, may direct the appeal to be treated as abandoned.

**Registration** 50.-(1) When an application for registration of a trademark has been accepted, and either:

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant, the Registrar-General shall, unless the application has been accepted in error, register the trademark.

(2) Subject to the provisions of this Act relating to international arrangements, a trademark, when registered, shall be registered as of the date of the application for registration, and that date shall be taken for the purposes of this Act to be the date of registration.

(3) On the registration of a trademark, the Registrar-General shall issue to the applicant, a certificate of registration in the prescribed form with the seal of the Registrar-General.

(4) Where registration of a trademark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar-General may, after giving notice of the non-

statement of the grounds of opposition completion to the applicant in writing in the prescribed manner, treat the  
if Registrar-General shall, send a copy application as abandoned, unless, it is completed within the time specified in  
3 that behalf in the notice.

4 51.-(1) The registration of a trademark shall be for a period of  
5 seven years, but may be renewed from time to time in accordance with the  
6 provisions of this section.

Duration and  
renewal of  
registration

7 (2) The Registrar-General shall, on application made by the  
8 registered proprietor of a trademark in the prescribed manner and within the  
9 prescribed period, renew the registration of the trademark for a period of  
10 seven years from the date of expiration of the original registration or of the  
11 last renewal of registration, as the case may be (which date is in the section  
12 referred to as "the expiration of the last registration").

13 (3) At the prescribed time before the expiration of the last  
14 registration of a trademark, the Registrar-General shall send notice in the  
15 prescribed manner and the conditions as to payment of fees and otherwise  
16 upon which a renewal of registration may be obtained, and, if at the  
17 expiration of the time prescribed in that behalf those conditions have not  
18 been duly complied with, the Registrar-General may remove the trademark  
19 from the register, subject to such conditions, if any, as to its restoration to the  
20 register as may be prescribed.

21 (4) Where a trademark has been removed from the register for non-  
22 payment of the fee for renewal, it shall, nevertheless, for the purpose of any  
23 application for the registration of a trademark during one year next after the  
24 date of the removal, be deemed to be a trademark that is already on the  
25 register:

26 Provided that the foregoing provisions of this subsection shall not have  
27 effect where the Tribunal is satisfied either:

- 28 (a) That there has been no bona fide trade use of the trademark that  
29 has been removed during the two year immediately preceding its removal;
- 30 (b) that no deception or confusion would be likely to arise from the

ground that the trademark is not use of the trademark that is the subject of the application for registration by applicant shall be entitled, on giving reason of any previous use of the trademark that has been removed.

Separate registration or part of trade mark

3 52.-(1) Where the proprietor of a trademark claims to be entitled to  
4 the exclusive use of any part thereof separately, he may apply to register the  
5 whole and any such part as separate trademarks.

6 (2) Each such separate trademark shall, satisfy all the conditions of an  
7 independent trademark and shall, subject to section 62 (2) of this Act, have all  
8 the incidents of an independent trademark.

9 (3) Where a trademark and any part or parts thereof are, by virtue of  
10 subsection (1) above, registered as separate trademarks in the name of the same  
11 proprietor, they shall be deemed to be, and shall be registered as, associated  
12 trademarks; and section 54 of this Act shall apply to them accordingly.

Registration resembling trademarks as a series

13 53.-(1) Where a person claiming to be the proprietor of several  
14 trademarks, in respect of the same goods or description of goods, which, while  
15 resembling each other in the material particulars thereof, yet differ in respect  
16 of:

17 (a) Statements of the goods in relation to which they are respectively  
18 used or proposed to be used;

19 (b) Statements of number, price, quality or names of places;

20 (c) Other matter of a non-distinctive character which does not  
21 substantially affect the identity of the trademark; or

22 (d) Colour.

23 Seeks to register those trademarks, they may be registered as a series in one  
24 registration.

25 (2) All trademarks that are by virtue of the foregoing subsection  
26 registered as a series in one registration shall be deemed to be, and shall be  
27 registered as, associated trademarks; and section 54 of this Act shall apply to  
28 them accordingly.

Assignability of trademarks

29 54.-(1) Despite any rule of law or equity to the contrary, a registered  
30 trademark shall, after the commencement of this Act, be assignable and

as defensive trademarks and of trademarks transmissible either in connection with the goodwill or a business or not.

2 (2) A registered trademark shall, after the commencement of this  
3 Act, be assignable and transmissible in respect either of all the good in  
4 respect of which it is registered, or was registered, as the case may be, or of  
5 some (but not all) of those goods.

6 (3) Subsections (1) and (2) of this section, shall apply in regard to  
7 an unregistered trademark used in relation to any goods, as they apply in  
8 regard to a registered trademark registered in respect of any goods, if:

9 (a) at the time of the transmission of the unregistered trademark, it  
10 is used in the same business as a registered trademark;

11 (b) it is assigned or transmitted at the same time and to the same  
12 person as that registered trademark; and

13 (c) it is so assigned or transmitted in respect of goods, all of which  
14 are goods:

15 (i) in relation to which the unregistered trademark is used in that  
16 business, and be in respect of which the registered trademark is assigned or  
17 transmitted.

18 (4) Where after the commencement of this Act, a trademark is  
19 assigned in respect of any goods and at the time of the assignment the  
20 trademark is used in a business in those goods, then, if the assignment is  
21 made otherwise than in connection with the goodwill of that business, the  
22 assignee shall not acquire any rights under the assignment, until the  
23 following requirements have been satisfied, that is to say, the assignee:

24 (a) Shall within six months from the date of the assignment or  
25 within such extended period, if any, as the Registrar-General may allow,  
26 apply to the Registrar-General for directions with respect to the  
27 advertisement of the assignment; and

28 (b) Shall advertise the assignment in such form and manner and  
29 within such period as the Registrar-General may direct.

30 (5) Where the Registrar-General gives directions under subsection

the trademark that is the subject of the application (4) of this section, for the advertisement of an assignment, he shall also cause notice of the assignment to be published in the Journal.

Power of Registrar-General to require, or dissolve association trademarks

3 55.-(1) Where a trademark that is registered, or is the subject of an  
4 application for registration, in respect of any goods is identical with another  
5 trademark that is registered, or is the subject of an application for registration,  
6 in the name of the same proprietor in respect of the same goods or description  
7 of goods, or so nearly resembles it as to be likely to deceive or cause confusion  
8 if used by a person other than the proprietor, the Registrar-General may at any  
9 time require that the trademarks shall be entered on the register as associated  
10 trademarks.

11 (2) On application made in the prescribed manner by the registered  
12 proprietor of two or more trademarks registered as associated trademarks, the  
13 Registrar-General may dissolve the association as respect any of them, if he is  
14 satisfied that there would be no likelihood of deception or confusion being  
15 caused if that trademark were used by another person in relation to any of the  
16 goods in respect of which it is registered, and may amend the register  
17 accordingly.

18 (3) Any decision of the Registrar-General under this section shall be  
19 subject to appeal to the Court.

Effect of association of trademarks

20 56. Trademarks that are registered as, or are deemed by virtue of this  
21 Act to be, associated trademarks shall be assignable and transmissible only as a  
22 whole, and not separately, but shall for all other purposes be deemed to have  
23 been registered as separate trademarks.

Registered proprietor's power to assign

24 57. Subject to the provisions of this Act, the person for the time being  
25 entered in the register as proprietor of a trademark shall, subject to any rights  
26 appearing from the register to be vested in any other person, have power to  
27 assign the trademark, and to give effectual receipts for any consideration for an  
28 assignment thereof.

Registration of Assignments, etc.

29 58.-(1) Where a person becomes entitled by assignment or  
30 transmission to a registered trademark, he shall make application to the

either in connection with the goodwill of the Registrar-General to register his title, and the Registrar-General shall, on  
A registered trademark shall 2 after the receipt of the application and on proof of title to his satisfaction, register him  
3 as the proprietor of the trademark in respect of the goods in respect of which  
4 the assignment or transmission has effect, and shall cause particulars of the  
5 assignment or transmission to be entered on the register.

6 (2) Except for the purposes of an appeal under this section or of an  
7 application under section 64 of this Act, a document or instrument in respect  
8 of which no entry has been made in the register in accordance with the  
9 provisions of subsection (1) of this section, shall not be admitted in evidence  
10 in any Court, in proof of the title to a registered trademark, unless the Court  
11 otherwise directs.

12 59.-(1) Subject to this and the next following section, a registered  
13 trademark may be taken off the register in respect of any of the goods in  
14 respect of which it is registered, on an application made by any person  
15 concerned to the Court or, at the option of the applicant and subject to section  
16 82 of this Act, to the Registrar-General, on either of the grounds set out in  
17 subsection (2) of this section.

18 (2) The said grounds are:  
19 (a) that the trademark was registered without any bona fide  
20 intention on the part of the applicant for registration that it should be used in  
21 relation to those goods by him, and that there has in fact been no bona fide  
22 use of the trademark in relation to those goods by any proprietor thereof for  
23 the time being, up to the date one month before the date of the application; or  
24 (b) that up to the date, one month before the date of the application,  
25 there has been a continuous period of three years or longer elapsed during which there was  
26 no bona fide use thereof in relation to those by any proprietor thereof for the  
27 time being.

28 (3) The Tribunal may refuse an application made under this section  
29 on either of the said grounds if it is shown that before the relevant date or  
30 during the relevant period, as the case may be, there has been bona fide use

Removal from  
Register on  
ground of non-use

1 applicant in writing in the prescribed manner, except that  
 2 of the trademark, by any proprietor for the time being thereof, in relation to  
 3 goods of the same description as the goods to which the application relates,  
 4 being goods in respect of which the application relates, being goods in respect  
 5 of which the trademark is registered:

6 Provided that, where on any such application, it is shown as stated above, the  
 7 Tribunal shall not refuse the application:

8 (a) if the applicant has been permitted under section 39 of this Act to  
 9 register an identical or nearly resembling trademark in respect of the goods in  
 10 question; or

11 (b) if the Tribunal is of opinion that the applicant might properly be  
 12 permitted to register such a trademark.

13 (4) An applicant shall not be entitled to rely for the purposes of  
 14 subsection (2)(b) of this section, on any non-use of a trademark that is shown to  
 15 have been due to special circumstances in the trade and not to any intention not  
 16 to use or to abandon the trademark in relation to the goods to which the  
 17 application relates.

Defensive  
 registration well-  
 known invented  
 words

18 60.-(1) Where a trademark consisting of an invented word or invented  
 19 words has, with regard to any goods in respect of which it is registered and in  
 20 relation to which it has been used (in this subsection referred to as "the familiar  
 21 goods"), become so well known that its use in relation to other goods would be  
 22 likely to be taken as indicating a connection in the course of trade between  
 23 those goods and a person entitled use the trademark in relation to the familiar  
 24 goods, the trademark may, on the application in the prescribed manner of the  
 25 proprietor registered in respect of the familiar goods, be registered in his name  
 26 in respect of those other goods as a defensive trademark, despite that, the  
 27 proprietor registered in respect of the familiar goods, does not use or propose to  
 28 use the trademark in relation to those other goods, and notwithstanding  
 29 anything in section 56 of this Act; and while so registered, the trademark shall  
 30 not be liable to be taken off the register in respect of those goods under section  
 56 of this Act.

foregoing subsection, as if for the reference in s(2) The registered proprietor of a trademark:

its intention on the part of an applicant for registration (a) may apply for its registration in respect of those goods

3 otherwise than as a defensive trademark; or

4 (b) may apply for its registration in respect of any goods otherwise

5 than as a defensive trademark notwithstanding that, it is already registered in

6 his name in respect of those goods as a defensive trademark, in place, in

7 either case, of the existing registration.

8 (3) A trademark registered as a defensive trademark and that

9 trademark as otherwise registered in the name of the same proprietor shall,

10 notwithstanding that the respective registrations are in respect of different

11 goods, be deemed to be, and shall be registered as, associated trademarks,

12 and section 54 of this Act shall apply to them accordingly.

13 (4) On application by any person concerned to the Court or, at the

14 option of the applicant and subject to section 82 of this Act, to the Registrar,

15 the registration of a trademark as a defensive trademark:

16 (a) may be cancelled on the ground that the requirements of

17 subsection (1) of this section, are no longer satisfied in respect of any goods

18 in respect of which the trademark is registered in the name of the same

19 proprietor otherwise than as a defensive trademark; or

20 (b) may be cancelled with regard to any goods in respect of which it

21 is registered as a defensive trademark on the use of the trademark in relation

22 to those goods would be taken as giving the indication mentioned in the said

23 subsection (1).

24 (5) The Registrar-General may, at any time, cancel the registration

25 as a defensive trademark of a trademark of which there is no longer any

26 registration in the name of the same proprietor, otherwise than as a defensive

27 trademark.

28 (6) Except as otherwise expressly provided in this section, the

29 provisions of this Act shall apply in respect of the registration of trademarks

trademark, by any proprietor for the time being as defensive trademarks and of trademarks so registered as they apply in other of the same description as the goods to which the application relates.

Registered Users

3 61.-(1) Subject to the provisions of this and the next following  
4 section, a person other than the proprietor of a trademark may be registered as a  
5 registered user thereof in respect of all or any of the goods in respect of which it  
6 is registered (otherwise than as a defensive trademark) and either with or  
7 without conditions or restrictions.

8 (2) The use of a trademark by a registered user thereof in relation to  
9 goods or services:

10 (a) with which he is connected in the course of trade; and

11 (b) in respect of which for the time being the trademark remains  
12 registered and he is registered as a registered user,

13 In this Act referred to as "the permitted use" of that trademark:

14 provided that, where the registration of a person as a registered user is subject to  
15 any conditions or restrictions, "the permitted use" in his case does not include,  
16 any use which does not comply with those conditions or restrictions.

17 (3) For the purposes of section 56 of this Act and for any other purpose  
18 for which the use of a trademark is material under this Act or at common law,  
19 the permitted use of a trademark shall be deemed:

20 (a) to be use by the proprietor thereof; and

21 (b) not to be use by a person other than the proprietor.

22 (4) Subject to any agreement subsisting between the parties, a  
23 registered user of a trademark shall be entitled to call upon the proprietor  
24 thereof to take proceedings to prevent infringement thereof, and, if the  
25 proprietor refuses or neglects to do so within two months after being so called  
26 upon, the registered user may institute proceedings for infringement, in his  
27 own name as if he were the proprietor, making the proprietor a defendant:

28 provided that, a proprietor so added as defendant shall not, be liable for any  
29 costs, unless, he enters an appearance and takes part in the proceedings.

30 (5) Nothing in this section shall confer on a registered user of a

the registered proprietor of a trademark, any assignable or transmissible right to the use thereof.

may apply for its registration in respect of 62:-(1) Where it is proposed that a person should be registered as

Provisions supplementary to section 59

3 (registered user of a trademark, the proprietor and the proposer registered  
4 user shall, apply in writing to the Registrar-General in the prescribed  
5 manner and shall, furnish him with a statutory declaration made by the  
6 proprietor, or by some person authorized to act on his behalf and approved  
7 by the Registrar-General:

8 (a) Giving particulars of the relationship, existing or proposed,  
9 between the proprietor and the proposed registered user, including  
10 particulars showing the degree of control by the proprietor over the  
11 permitted use which their relationship will confer and whether it is a term of  
12 their relationship that the proposed registered use shall be the sole registered  
13 user of that there shall be any other restriction as to persons for whose  
14 registration as registered users application may be made;

15 (b) Stating the goods in respect of which registration is proposed;

16 (c) Stating any conditions or restrictions proposed with respect to  
17 the characteristics of the goods, to the mode or place of permitted use is to be  
18 for a period or without limit of period, and, if for a period, the duration  
19 thereof, and shall also furnish the Registration with such further documents,  
20 information or evidence as may be required under the regulations or by the  
21 Registrar-General.

22 (2) When the requirements of the foregoing subsection have been  
23 complied with, and if the Registrar-General, after considering the  
24 information furnished to him under that subsection, is satisfied that in all the  
25 circumstances, the use of the trademark in relation to the proposed goods or  
26 any of them by the proposed registered user, subject to any conditions or  
27 restrictions which the Registrar-General thinks proper, would not be  
28 contrary to the public interest, the Register may register the proposed  
29 registered user in respect of the goods as to which he is to satisfied, subject as  
30 aforesaid.

to register his title, and the Registrar-General shall: (3) The Registrar-General shall refuse an application under the foregoing provisions of this section if, it appears to him that the grant thereof would tend to facilitate trafficking in a trademark.

(4) The Registrar-General shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the register) is not disclosed to rivals in trade.

(5) Without prejudice to the provisions of section 64 of this Act, the registration of a person as a registered user:

(a) may be varied by the Registrar-General as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trademark to which the registration relates;

(b) may be cancelled by the Registrar-General on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trademark; or

(c) may be cancelled by the Registrar-General on the application in writing in the prescribed manner of any person on any of the following ground, that is to say, that the:

(i) registered user has used the trademark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;

(ii) proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;

(iii) registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(6) Provision shall be made by the Regulations for the notification of the registration of a person as a registered user to any other registered user of

(a) shall be notified to the trademark, and for the notification of an application under the last  
 2 foregoing subsection to the registered proprietor and each registered user  
 3 (not being the applicant) of the trademark, and for giving to the applicant on  
 4 such an application, and to all persons to whom such an application is  
 5 notified and who intervene in the proceedings in accordance with the  
 6 Regulations, an opportunity of being heard.

7 (7) The Registrar-General may, at any time, cancel the registration  
 8 of a person as a registered user of a trademark in respect of any goods in  
 9 respect of which the trademark is no longer registered.

10 (8) A license contract concerning a registered mark, or an  
 11 application for a contract license shall be submitted to the Registrar-  
 12 General, who shall keep its contents confidential but shall record it and  
 13 publish a reference to it and the license contract shall have no effect against  
 14 third parties until the submission has been made.

15 63.-(1) No application for the registration of a trademark in respect  
 16 of any goods shall be refused, nor shall permission for such registration be  
 17 withheld, on the ground only that it appears that the applicant does not use or  
 18 propose to use the trademark:

Registration  
 with a view to  
 assignment to  
 company about  
 to be formed, etc.

19 (a) if the Tribunal is satisfied that a body corporate is about to be  
 20 constituted, and that the applicant intends to assign the trademark to the  
 21 body corporate with a view to the use thereof in relation to those goods by  
 22 the body corporate; or

23 (b) if the application is accompanied by an application for the  
 24 registration of a person as a registered user of the trademark, and the  
 25 Tribunal is satisfied that the proprietor intends it to be used by that person in  
 26 relation to those goods and the Tribunal is also satisfied that person will be  
 27 registered as a registered user thereof immediately after the registration of  
 28 the trademark.

29 (2) The provisions of section 57 of this Act shall have effect, in  
 30 relation to a trademark registered under the power conferred by the

(3) The Registrar-General shall refuse an application under the foregoing subsection, as if for the reference in subsection (1)(a) of that section to intention on the part of an applicant for registration that a trademark should be used by him there were substituted a reference to intention on his part that it should be used by the body corporate or registered user concerned.

(3) The Tribunal may, as a condition of the exercise of the power conferred by subsection (1) of this section, in favour of an applicant who relies on intention to assign to a body corporate as aforesaid, require him to give security for the costs of any proceedings before the Tribunal relative to any opposition or appeals, and in default of such security being duly given may treat the application as abandoned.

(4) Where a trademark is registered in respect of any goods under the power conferred by subsection (1) of this section, in the name of an applicant who relies on intention to assign to a body corporate as aforesaid, then, unless within three months, or within such further period as the Registrar-General may on application being made to him in the prescribed manner allow, the body corporate has not been registered as the proprietor of the trademark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar-General shall amend the register accordingly.

Use of one trademark equivalent to use of another in certain cases

64.- (1) Where under the provisions of this Act, use of a registered trademark is required to be proved for any purpose, the Tribunal may if and so far as the Tribunal thinks right, accept use of an associated registered trademark, or of the trademark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trademark shall for the purposes of this Act be deemed to be also a use of any registered trademark, being a part thereof, registered in the name of the same proprietor by virtue of section 49 of this Act.

(3) The use of a trademark by another person shall be recognized as use of the trademark for purpose of maintaining the registration the use is

and for the notification of its application subject to the control of its owner.

65. The application in Nigeria of a trademark to goods to be exported from Nigeria, and any other act done in Nigeria in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded within Nigeria, would constitute use of a trademark therein, shall be taken to constitute use of the trademark in relation to those goods for any purpose for which such use is material under this Act or at common law.

Use of trademark in relation to goods for export

66.-(1) Any person concerned who alleges:  
(a) that any entry has not been inserted in, or has been omitted from, the register;

General power to rectify register

(b) that any entry has been made in the register without sufficient cause;

(c) that any entry wrongly remains on the register; or

(d) that any error or defect exists in any entry on the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to section 82 of this Act, to the Registrar-General, and the Tribunal may make such order for making, expunging or varying the entry as the Tribunal thinks fit.

(2) The Tribunal may in any proceedings under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(3) In case of fraud in the registration, assignment or transmission of a registered trademark, the Registrar-General may himself apply to the Court under the provisions of this section.

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar-General, and the Registrar-General shall on receipt of the notice rectify the register accordingly.

67.-(1) Any person concerned may apply to the Court or, at the option of the applicant and subject to section 82 of this Act, to the Registrar-

Power to strike out or vary registration for breach of condition

able of transmissible right to the use thereof. General for an order under this section on the ground of any contravention of, or of a failure to observe, a condition entered on the register in relation to a trademark.

3 (2) The Registrar-General may apply to the Court for an order under  
4 this section on the ground stated above.

5 (3) On an application under the foregoing provisions of this section,  
6 the Tribunal may make on the ground stated above such order as the Tribunal  
7 thinks fit of striking out or varying the registration of the trademark in question.

Correction of register

8 **68.**-(1) The Registrar-General may, on request made in the prescribed  
9 manner by the registered proprietor:

10 (a) correct any error in the name or address of the registered proprietor  
11 of a trademark;

12 (b) enter any change in the name or address of the person who is  
13 registered as proprietor of a trademark;

14 (c) cancel the entry of a trademark on the register;

15 (d) strike out any goods or classes of goods from those in respect of  
16 which does not in any way extend the rights given by the existing registration of  
17 the trademark.

18 (2) The Registrar-General may, on request made in the prescribed  
19 manner by a registered user of a trademark, correct any error, or enter any  
20 change, in the name or address of the registered user.

21 (3) Any decision of the Registrar-General under this section shall be  
22 subject to appeal to the Court.

Alteration of registered trademark

23 **69.**-(1) The registered proprietor of a trademark may apply in the  
24 prescribed manner to the Registrar for leave to add to or alter the trademark in  
25 any manner not substantially affecting the identity thereof, and the Registrar-  
26 General may refuse leave or may grant it on such terms and subject to such  
27 limitations as he may think fit.

28 (2) The Registrar-General may cause an application under this section  
29 to be advertised in the Journal in any case where it appears to him that it is  
30 expedient so to do, and where he does so, if within the prescribed time from the

74. Where any discretionary date of the advertisement any person gives notice to the Registrar-General in  
 General by this Act or the 2 regulations the prescribed manner of opposition to the application, the Registrar-  
 3 General shall after hearing the parties if so required, decided the matter.

4 (3) Any decision of the Registrar-General under this section shall  
 5 be subject to appeal to the Court.

6 (4) Where leave as stated above is granted, the trademark as altered  
 7 shall be advertised in the Journal, unless it has already been advertised, in  
 8 the form to which it has been altered, in an advertisement under subsection  
 9 (2) of this section.

10 70.-(1) The Commission may make such regulations and prescribe  
 11 such forms as it thinks expedient, for empowering the Registrar General to  
 12 amend the register, whether by making or striking out or varying entries  
 13 therein, so far as may be requisite for the purpose of adapting the designation  
 14 therein of the goods or classes of goods in respect of which trademarks are  
 15 registered to any amended or substituted classification that may be  
 16 prescribed.

Adaptation of  
 register to revised  
 classification of  
 goods

17 (2) The Registrar shall not, in exercise of any power conferred on  
 18 him for the purpose stated above, make any amendment to the register that  
 19 would have the effect of adding any goods or classes of goods to those in  
 20 respect of which a trademark is registered (whether in one or more classes)  
 21 immediately before the amendment is to be made, or of antedating the  
 22 registration of a trademark in respect of any goods:

23 Provided that this subsection shall not have effect in relation to goods as to  
 24 which the Registrar is satisfied that compliance with this subsection in  
 25 relation thereto would involve undue complexity and that the addition of  
 26 antedating, as the case may be, would not affect any substantial quantity of  
 27 goods and would not substantially prejudice the rights of any person.

28 (3) A proposal for the amendment of the register for the purpose  
 29 aforesaid:

for an order under this section on the ground of any (a) shall be notified to the registered proprietor of the trademark  
to observe a condition entered on the register affected;

(b) shall be subject to appeal by the registered proprietor to the Court;

(c) shall be advertised in the Journal with any modifications; and

(d) may be opposed before the Registrar by any person concerned on

the ground that the proposed amendment contravenes the provisions of

subsection (2) of this section.

(4) The decision of the Registrar on any opposition under subsection

(3)(d) of this section shall be subject to appeal to the Court.

(5) Regulations under this section shall not have effect until published

in the Federal Gazette.

Certification of trademarks

71.- (1) A mark capable of distinguishing in the course of trade, goods

certified by any person in respect of origin, material, method of manufacture,

quality, accuracy or other characteristic, from goods not so certified shall be

registrable as a certification trademark in respect of those goods in the name, as

proprietor thereof, of that person:

Provided that, a mark shall not be so registrable in the name of a person who

carried on a trade in goods of the kind certified.

(3) Without prejudice to the generality of the right to the use of a

certification trademark given by such registration as stated above, that right

shall be taken to be infringed by any person authorized by him under the rules

in that behalf using it in accordance therewith, uses a mark identical with it or

so nearly resembling is as to be likely to deceive or cause confusion, in the

course of trade, in relation to any goods in respect of which it is registered, and

in such manner as to render the use of the mark likely so as to be taken either:

(a) as being used as a trademark: or

(b) in a case in which the use is use upon the goods or in physical

relation thereto or in an advertising circular or other advertisement issued to the

public, as importing a reference to some person having the right either as

proprietor or by his authorization under the relevant rules to use the trademark

or to goods certified by the proprietor.

(4) The right to the use of a certification trademark given by such registration as stated above shall be subject to any conditions or limitations entered on the register, and the use of any such mark as stated above in any circumstances to which, having regard to any such limitations, the registration does not extend shall, not constitute an infringement of that right.

(5) Where a certification trademark is one of two or more registered trademarks that are identical or nearly resemble each other, the use of any of those trademarks in exercise of the right to the use of that trademark given by registration shall not constitute an infringement of the right in the use of any other of those trademarks so given.

(6) There shall be deposited at the office of the Registrar in respect of every trademark registered under this section, rules approved by the Commission for governing the use thereof, which shall include provisions as to the cases in which shall include provisions as to the cases in which the proprietor is to certify goods and to authorize the use of the trademark, and may contain any other provisions that the Commission may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar-General against any refusal of the proprietor to certify goods or to authorize the use of the trademark in accordance with the rules).

(7) Rules deposited under subsection (6) of this section, shall be open to inspection in like manner as the register.

(8) A certification trademark shall not be assignable or transmissible otherwise than with the consent of the Commission.

(9) The provisions of the First Schedule of this Act shall have effect with respect to the registration of a mark under this section and to marks so registered.

For its owner: Protection of  
trademarks  
application in Nigeria of a trademark

1 72.-(1) Any person who has applied for protection for any trademark  
2 to in a Convention country of his legal representative or assignee shall be entitled  
3 to registration of his trademark under this Act in priority to other applicants;  
4 and the registration shall have the same date as the date of the application in the  
5 Convention country:

6 provided that:

7 (a) this subsection shall not apply, unless, application for registration  
8 is made within six months from the application for protection in the  
9 Convention country; and

10 (b) nothing in this section shall, entitle the proprietor of the trademark  
11 to recover damages for infringements happening prior to the actual date on  
12 which his trademark is registered in Nigeria.

13 (2) The registration of a trademark shall not be invalidated by reason  
14 only of the use of the trademark in Nigeria during the period specified in this  
15 section as that within which the application may be made.

16 (3) The application for the registration of a trademark by virtue of this  
17 section shall be made in the same manner as an ordinary application for the  
18 registration of a trademark under this Act.

19 (4) Where a person has applied for protection for any trademark by an  
20 application which:

21 (a) in accordance with the terms of a treaty subsisting between any  
22 two or more Convention countries, is equivalent to an application duly made in  
23 anyone of those Convention countries; or

24 (b) in accordance with the law of any Convention country, is  
25 equivalent to an application duly made in that Convention country, he shall be  
26 deemed for the purposes of this section to have applied in that Convention  
27 country.

28 (5) In this Act, "Convention country" means a country in the case of  
29 which there is for the time being in force a declaration made by the President,  
30 with a view to the fulfillment of a treaty, convention, arrangement or

90. A person who knowingly engages, declaring that country is a Convention country:

offence and is liable on conviction to a fine not exceeding ten times the value of the goods in respect of which the offence is committed. Provided that, a declaration may be made as aforesaid for the purposes either of all or of some (but not all) of the provisions of this Act, and a country in the case of which a declaration is made for the purposes of some (but not all) of the provisions of this Act is in force shall be deemed to be a Convention country for the purposes of those provisions only.

(6) A declaration made under this section shall not have effect until published in the Federal Gazette.

73.-(1) The Commission may make regulations to:

Power to make regulations

(a) regulate the practice under this Act, including the service of documents;

(b) classify goods for the purposes of registration of trademarks;

(c) make or require duplicates of trademarks and other documents;

(d) secure and regulate the publishing and selling or distributing, in such manner as the Minister thinks fit, of copies of trademarks and other documents;

(e) prescribe the fees to be paid in respect of applications, registrations and other matters under this Act;

(f) prescribe anything required or authorized by this Act to be prescribed by regulations;

(g) extend the time limited by this Act for the performance of any act, whether at the discretion of the Registrar-General or otherwise;

(h) impose restrictions as regards the registration under this Act of the arms, flags, emblems, titles or other distinctive marks of any country or international organization;

(i) generally for regulating the business of the office of the Registrar-General and all things by this Act placed under the direction or control of the Registrar-General, or the Commission.

(2) Regulations under this section shall not have effect until published in the Federal Gazette.

72.-(1) Any person <sup>Discretionary</sup> applied for protection <sup>power not to be</sup> 74. Where any discretionary or other power is given to the Registrar  
<sup>power not to be</sup> <sup>exercised without</sup> <sup>notice</sup> <sup>General</sup> by this Act or the regulations, he shall not exercise that power  
 3 adversely to an applicant for registration or the registered proprietor of  
 4 trademark without (if duly required so to do within the prescribed time) giving  
 5 to the applicant or registered proprietor an opportunity of being heard.

<sup>Registrar's power</sup> <sup>to award costs</sup> 6 75. In all proceedings before the Registrar-General under this Act,  
 7 the Registrar-General shall have power to award to any party such costs as he  
 8 may consider reasonable, and do direct how and by what parties they are to be  
 9 paid, and any such order may, by leave of the Court or a judge thereof, be  
 10 enforced in the same manner as a judgment or other of the Court to the same  
 11 effect.

<sup>Infringement</sup> 12 76.-(1) The rights of a registered proprietor are infringed if another  
 13 person without the authority, license or consent of the registered proprietor,  
 14 does or causes the doing of any act which that other person is precluded from  
 15 doing under this Act.

16 (2) An infringement of the rights of a registered proprietor under this  
 17 Act shall be actionable at the suit of the registered proprietor in question; and in  
 18 an action for an infringement, all such reliefs by way of damages, injunction,  
 19 accounts or otherwise shall be available to the plaintiff as is available in any  
 20 proceedings in respect of the infringement of other proprietary rights.

21 (3) If a trademark has been granted in respect of any goods or services  
 22 and the same goods or services are manufactured or offered by a person other  
 23 than the registered proprietor, the goods or services shall in the absence of  
 24 proof to the contrary be presumed to have been manufactured or offered by that  
 25 person.

26 (4) The grantee of a license under this Act from a registered proprietor  
 27 may, be registered letter, require the licensor to institute proceedings under  
 28 subsection (1) of this section in respect of any infringement indicated by the  
 29 grantee in the letter and if the licensor unreasonably refuses or neglects to  
 30 institute the proceedings, the licensee may institute the proceedings in his own

...aring that country is a Convention country without prejudice to the right of the licensor to intervene in the proceedings. In all legal proceedings relating to a registered trademark (including applications under section 64 of this Act), the fact that a person is registered as proprietor of the trademark shall be prima facie evidence of the validity of the original registration of the trademark and of all subsequent assignments and transmissions thereof.

Registration to be prima facie evidence of validity

3 77. In all legal proceedings relating to a registered trademark  
4 (including applications under section 64 of this Act), the fact that a person is  
5 registered as proprietor of the trademark shall be prima facie evidence of the  
6 validity of the original registration of the trademark and of all subsequent  
7 assignments and transmissions thereof.

8 78. In all legal proceedings in which the validity of the registration  
9 of registered trademark comes into question and is decided in favour of the  
10 proprietor of the trademark, the Court may certify to that effect; and if it so  
11 certifies, in any subsequent legal proceedings in which the validity of the  
12 registration comes into question, the proprietor of the trademark or  
13 obtaining a final order of judgment in his favour shall, be entitled to his cost:  
14 unless in the subsequent proceedings, the Court certifies that he ought not to  
15 have them.

Certificate of validity

16 79. In all proceedings before the Court under this Act, the costs of  
17 the Registrar-General shall be at the discretion of the Court, but the  
18 Registrar-General shall not be ordered to pay the costs of any other of the  
19 parties.

Costs of registrar

20 80. In any action or proceedings relating to a trademark or trade  
21 name the Tribunal shall admit evidence of the usages of the trade concerned  
22 and of any relevant trademark or trade name or set-up legitimately used by  
23 other persons

Trade usage etc. to be considered

24 81. (1) In any legal proceedings in which the relief sought includes  
25 alteration or rectification of the register, the Registrar-General shall have the  
26 right to appear and be heard, and shall appear if so directed by the court.

Registrar's appearance in proceedings involving rectification

27 (2) Unless otherwise directed by the Court, the Registrar-General  
28 instead of appearing and being heard may, submit to the Court a statement in  
29 writing signed by him, giving particulars of the proceedings before him in  
30 relation to the matter in issue or of the grounds of any decision given by him

by the proprietor, affecting it or of the practice of the office of the Registrar-General in like cases  
 or to the use of a certification trademark, given of such other matters relevant to the issues, and within his knowledge as  
 Registrar-General, as he thinks fit, and the statement shall be deemed to form  
 part of the evidence in the proceedings.

Court's power  
to review  
Registrar's  
decisions

82. The Court, in dealing with any question of the rectification of the  
 register (including applications under the provisions of section 39 of this Act),  
 shall have power to review any decision of the Registrar-General relating to the  
 entry in question or the correction sought to be made.

Power of Court  
on appeal

83. In any appeal from a decision of the Registrar-General to the  
 Court under this Act, the Court shall have and exercise the same discretionary  
 powers as under this Act as are conferred upon the Registrar-General.

Procedure in cases  
of option to apply  
to Court or  
Registrar

84. Where under any of the foregoing provisions of this Act, an  
 applicant has an option to make an application either to the Court or to the  
 Registrar-General:

(1) if an action concerning the trademark in question is pending, the  
 application shall be made to the Court;

(2) if in any other case, the application is made to the Registrar-  
 General, he may, at any stage of the proceedings, refer the application to the  
 Court, or he may, after hearing the parties, determine the question between  
 them, subject to appeal to the Court.

Method of giving  
evidence etc.

85.-(1) In any proceedings under this Act before the Registrar-  
 General, the evidence shall be given by statutory declaration, except in so far as  
 the Registrar otherwise directs; but in any case where the Registrar thinks it  
 right to do so, he may take evidence viva voce instead of or in addition to  
 evidence by statutory declaration.

(2) Where in any such proceedings any evidence has been given by  
 means of a statutory declaration, that evidence may, in the case of an appeal, be  
 given before the Court by means of that statutory declaration instead of by  
 affidavit; but any evidence given by statutory declaration before the Court by  
 virtue of this subsection shall have all the incidents and consequences of

(6) Without prejudice to the generality of subsection (5) of this section, regulations made under that subsection may make provision for  
 2 evidence given by affidavit (5) of this  
 3 (3) The Chief Judge of the Federal High Court may, with respect to  
 4 any proceedings before the Registrar-General under this Act or any part of  
 5 the evidence viva voce, make rules as to the-

6 (a) examination of the parties, and of witnesses, on oath or  
 7 affirmation; and

8 (b) the procedure of securing the attendance of witnesses and the  
 9 production of documents.

10 (4) Rules made under subsection (3) of this section, shall not have  
 11 effect until published in the Federal Gazette.

12 **86.-(1)** A printed or written copy of any entry in the register,  
 13 purporting to be certified by the Registrar-General and sealed with the seal  
 14 of the Registrar-General, shall be admitted in evidence in all Courts and in  
 15 all proceedings without further proof or production of the original.

Evidence of entries in register

16 (2) Any person requiring such a certified copy as stated above shall  
 17 be entitled to obtain it on payment of the prescribed fee.

18 **87.** A certificate purporting to be under the hand of the Registrar-  
 19 General as to any entry, matter or thing that he is authorized by this Act or the  
 20 rules to make or do shall be prima facie evidence of the entry having been  
 21 made, and of the contents thereof, and of the matter or thing having been  
 22 done or not done.

Evidence of things done by the Registrar

23 **88.** A person who makes or causes to be made in the register a false  
 24 entry, or a writing falsely purporting to be a copy of an entry in the register,  
 25 or produces or tenders or causes to be produced or tendered in evidence any  
 26 such writing, knowing the entry or writing to be false commits an offence  
 27 under this Act.

Falsification of register

28 **89.** Subject to the provisions of this Act, a civil proceeding may be  
 29 instituted before the Appeal Board by a person who alleges infringement of  
 his registered trademark.

Intentional infringement of a mark

10. A person who knowingly gives false information commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine of up to N1,000,000 or both such imprisonment and fine.

Falsely representing mark as registered

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91. Any person who intentionally makes a representation -  
(1) with respect to a mark not being a registered mark to the effect that it is registered;

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(2) to the effect that a registered mark is registered in respect of any goods or services of which it is not registered; or

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(3) to the effect that registration of a mark gives an exclusive right to its use in any circumstances in which having regard to limitations entered on the register, the registration does not give that right, commits an offence.

Restraint of use of Coat of Arms of Nigeria etc.

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92.-(1) Any person who in connection with any trade, business calling, or profession without the authorization of the appropriate authority:

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(a) uses the Coat of Arms of Nigeria (or Coat of Arms so closely resembling it as to be calculated to deceive) in any manner calculated to lead to the belief that he is duly authorized to use the Coat of Arms of Nigeria; or

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(b) uses any device, emblem or title in any manner calculated to lead to the belief that he is employed by or supplies goods to the President or the Governor of a State in his official capacity as such, commits an offence under this Act.

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(2) Nothing in subsection (1) of this section shall be construed as affecting the right, if any, of the proprietor of a mark containing any such Coat of Arms, device, emblem or title to continue to use that mark.

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(3) In this section, "the appropriate authority" -

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(a) in relation to the Coat of Arms of Nigeria and to employment by or the supply of goods or services to the President, means the President; and

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(b) in relation to employment by or supply of goods or services to the Governor or a State or Local Government Council, means the Governor or that State.

by affidavit. 1 93.-(1)A person who-  
the Chief Judge of the Federal High Court may, with (a) forges any registered mark;  
3 (b) falsely applies to goods any sign so nearly resembling  
4 registered mark as to be calculated to deceive;  
5 (c) makes, disposes of, or has in his possession any die, block,  
6 machine or other instrument for the purposes of forging, or of being used for  
7 forging a registered mark; or  
8 (d) causes any of the things mentioned in paragraphs (a), (b) and (c)  
9 of this section to be done, shall, subject to the provisions of this Act and unless  
10 he proves that he acted without intent to defraud, commits an offence and is  
11 liable on conviction to a fine and treble damages as determined by a Court of  
12 competent jurisdiction.

Forgery, etc. of  
marks

13 (2) For the purposes of this section, a person shall be deemed to  
14 forged a mark who either-  
15 (a) without the consent of the proprietor makes that mark as to be  
16 calculated to deceive; or  
17 (b) falsifies any genuine mark whether by alteration, additions,  
18 effacement or otherwise.

19 94. A person who sells, or exposes, or has in his possession for sale  
20 or any purpose of trade, manufacture or business, any goods or things to  
21 which any forged mark is applied, or to which any mark or sign so nearly  
22 resembling a registered mark as to be calculated to deceive is falsely applied  
23 as the case may be, shall, unless he proves:

Sale of goods or  
provision of  
services on, or in  
respect of which,  
false marks are  
used

24 (1) that, having taken all reasonable precautions against  
25 committing an offence against this Act, he had, at the time of the  
26 commission of the alleged offence, no reason to suspect the genuineness of  
27 the mark, and that on demand made by or on behalf of the prosecutor, he  
28 gave all the information in his power with respect to the persons from whom  
29 he obtained such goods or things; or

30 (2) that otherwise he had acted innocently, commits an offence.

15.-(1) Where an offence under this Act is committed by a body corporate or firm or an association of individuals:

Offences by bodies corporate and incorporate

(a) Every director, manager, secretary or other similar officer of the body corporate;

(b) every partner or officer of the firm;

(c) every person concerned in the management of the affairs of the association; or

(d) every person who was purporting to act in such capacity as aforesaid, shall severally be guilty of that offence and liable to be proceeded

against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting

the offence took place without his knowledge consent or connivance.

(2) In relation to a body corporate whose affairs are managed by its members, "director" means a member of the body corporate.

Order for delivery up in criminal proceedings

96. Where a person is charged with an offence under this Part of this Act, the Court may, if satisfied that at time of his arrest or charge, he had in his possession, custody or control, goods bearing the alleged infringing mark, order that the goods be delivered up to the proprietor of the registered mark or to such other person as the Court may direct.

Penalty for offences under this part

97. Except as otherwise provided, every person who commits an offence under this Part of the Act is liable, on conviction, and at the discretion of the Court, to a fine of up to N1,000,000 and shall in any case, forfeit every chattel, article, instruction or thing by means of or in relation to which the offence has been committed.

Restriction on importation of goods with infringing trademarks

98.-(1) The proprietor of the trademark in any good may give notice in writing to the Nigerian Customs Service (in this section referred to as "the Department"):

(a) that he is the bona fide owner of the trademark in the goods: and

(b) that he requests the Department during the period specified in the notice, to treat as prohibited good, goods to which this section applies:

importance of the invention. 1 provided that, the period specified in a notice under this subsection shall not  
(7) The certificate referred to in subsection (6) shall not exceed five years and shall not extend beyond the end of the period for which  
2 exceed five years and shall not extend beyond the end of the period for which  
3 the trademark is to subsist.

4 (2) This section applies to any goods made outside Nigeria which if  
5 it had been made in Nigeria, would be infringing on the trademark.

6 (3) Where a notice has been given under this section in respect of  
7 any goods and has not been withdrawn, the importation into Nigeria, at a  
8 time before the end of the period specified in the notice, of the goods to  
9 which this section applies shall, subject to the provisions of this Act, be  
10 prohibited: provided that where the goods to which the trademark relates  
11 have been lawfully placed in the market in any country by or with the  
12 consent of the proprietor, a licensee or any other authorized person.

13 (4) Where a notice is given under subsection (1) of this section in  
14 respect of any goods, neither the Department nor any member, officer,  
15 servant or agent of the Department shall be liable to the proprietor or to any  
16 other person for any act or omission by the Department or its servants or  
17 agents in relation to the notice.

18 Provided that, where the proprietor has suffered loss as a result of any such  
19 act or omission and a fee has been paid or is payable to the Department in  
20 respect of the notice, an amount equal to the loss or to the amount of the fee  
21 for one year, whichever is less, shall be repaid by the Department to the  
22 owner or, if the fee has not been paid, shall be waived.

23 (5) The Minister of Interior may make regulations prescribing the  
24 form in which notices are to be given under this section, and requiring a  
25 person giving such a notice, either at the time of giving the notice or at the  
26 time when the goods in question are imported, or at both of those times, to  
27 furnish the Department with such evidence, and to comply with such other  
28 conditions as may be specified in the regulations; and any such regulations  
29 may include such incidental and supplementary provisions as the Minister  
30 of Interior considers expedient for the purposes of this section.

95.-(1) Where an offence under this Act is committed by a person, a firm or an association of individuals, (6) Without prejudice to the generality of subsection (5) of this section, regulations made under that subsection may include provision for requiring a person who has given a notice purporting to be a notice under this section to pay such fees in respect of the notice as may be prescribed by the regulations.

(7) For the purposes of the Customs and Excise Management Act, any fees paid in pursuance of any regulations made under this section shall be treated as money collected on account of the Department.

(8) Notwithstanding anything in the Customs and Excise Management Act, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.

(9) This section shall have effect as if it formed part of the Customs and Excise Management Act.

**Fees** 99. There shall be paid to the Officer of the registrar, such fees as are prescribed by regulations made under this Act.

**Restriction on disclosure of information by registry staff** 100. Any staff of the office of the Registrar who discloses to any other person (not being a member of the Tribunal or an officer of the office authorized to receive such information) any information concerning any document, drawing, photograph, plan, model or any other information whatsoever, which to his knowledge represents or illustrates-

(1) any existing or proposed machinery, installation or other structure; or

(2) any industrial property right submitted in an application for registration under this Act, Commits an offence and is liable on conviction to imprisonment for term of 12 months or to a fine of N500,000 to both such imprisonment and fine.

**Trademarks Journal** 101.-(1) The Registrar shall, from time to time, publish a journal (in this Act referred to as "the Journal") to be known as the Trademarks Journal.

(2) There shall be published in the Journal all matters required by or

the period specified in a notice under this subsection shall not  
and shall not extend beyond the end of the period within

2 trademarks as the Registrar thinks fit.

3 **102.**-(1) Where the relations between two or more persons  
4 interested in a trademark are such that no one of them is entitled as between  
5 himself and the other or others of them to use it except:

Joint  
proprietorship  
of trademark

6 (a) on behalf of both or all of them; or

7 (b) in relation to an article with which both or all of them are  
8 connected in the course of trade; those persons may be registered as joint  
9 proprietors of the trademark, and this Act shall have effect in relation to any  
10 rights to the use of the trademark vested in those persons as if those rights  
11 had been vested in a single person.

12 (2) Subject to the foregoing subsection, nothing in this Act shall  
13 authorize the registration of two or more persons who use a trademark  
14 independently, or propose so to use it, as joint proprietors thereof.

15 **103.**-(1) There shall not be entered in the register, any notice of any  
16 trust, whether express, implied or constructive; and no such notice shall be  
17 receivable by the Registrar.

Trusts and equities

18 (2) Subject to the provisions of this Act, equities in respect of a  
19 trademark maybe enforced in like manner as in respect of any other personal  
20 property.

21 **104.** Where by this Act any act has to be done by or to any of person  
22 in connection with a trademark or proposed trademark or any procedure  
23 relating thereto, the act may, under and in accordance with the Regulations,  
24 be done by or to an agent of that person duly authorized in the prescribed  
25 manner.

Recognition of  
agents

PART C

27 **105.**-(1) Subject to this section, an invention is patentable:

Patentable  
inventions

28 (a) If it is new, involves an inventive step and is capable of  
29 industrial application; or

30 (b) if it constitutes an improvement upon a patented invention and

erson who- 1 also is new, involves an inventive step and is capable of industrial application;  
ny registered marks 2 marks  
3 (c) in the case of a computer programme, if it is not of a scientific or  
4 mathematical nature and does not contravene the provisions of this Act.  
5 (2) For the purposes of subsection (1) of this section:  
6 (a) an invention is new if, it does not form part of the state of the art;  
7 (b) an invention results from inventive step if, it does not obviously  
8 follow from the state of the art, either as to the method, the application, the  
9 combination of methods, or the product which it concerns, or as to the  
10 industrial result it produces; and  
11 (c) an invention is capable of industrial application if, it can be  
12 manufactured or used in any kind of industry.  
13 (3) In subsection (2) of this section, "the art" means the art or field of  
14 knowledge to which an invention relates and "the state of the art" means  
15 everything concerning that art or field of knowledge which has been made  
16 available to the public anywhere and at any time whatever (by means of a  
17 written or oral description, by use or in any other way) before the date of the  
18 filing of the patent application relating to the invention or the foreign priority  
19 date validly claimed in respect of the invention.  
20 (4) An invention shall not be deemed to have been made available to  
21 the public merely by reason of the fact that, within the period of six months  
22 preceding the filing of a patent application in respect of the invention, the  
23 inventor or his successor in title exhibited it in an official or officially  
24 recognized international exhibition.  
25 (5) Patents cannot be obtained in respect of:  
26 (a) diagnostic, therapeutic and surgical methods for the treatment of  
27 humans or animals;  
28 (b) plant varieties, animals or plant and animal breeds, or essentially  
29 biological processes for the production of plants or animal;  
30 (c) inventions, the publication or exploitation of which are contrary to  
public order or morality, and the protection of human, animal or plant life or

1 health or which are likely to be seriously prejudicial to the environment.  
2 (1) A patent shall be granted by the issue to the patentee of a  
document containing: (6) Principles and discoveries are not inventions for the purposes

3 of this Act.

4 106.- (1) Subject to this section, the right to a patent in respect of an  
5 invention is vested in the statutory inventor who is the person who, whether  
6 or not he is the true inventor, is the first to file, or validly claim a foreign  
7 priority for, a patent application in respect of the invention.

8 (2) Where an invention is jointly made by two or more persons, the  
9 right to the patent shall belong to all of them jointly.

10 (3) The true inventor is entitled to be named as such in the patent,  
11 whether or not he is the statutory inventor, and the entitlement in question is  
12 not modifiable by contract.

13 (4) If the essential elements of a patent application have been  
14 obtained by the purported applicant from the invention of any other person  
15 or from the person's successor in title without the consent of that person or  
16 his said successor both to the obtaining of those essential elements and to the  
17 filing of the application, all rights in the application and in any patent  
18 granted in pursuance of the application shall be deemed to be transferred to  
19 that other person or his said successor, as the case may be.

20 (5) Where an invention is made in the course of employment or in  
21 the execution of a contract for the performance of specified work, the right to  
22 a patent in the invention is vested in the employer or, as the case may be, in  
23 the person who commissioned the work.

24 (6) Where the inventor in subsection (5) of this section is an  
25 employee, and:

26 (a) his contract of employment does not require him to exercise any  
27 inventive activity but he in making the invention used data or means that his  
28 employment put at his disposal; or

29 (b) the invention is of exceptional importance, the inventor is  
30 entitled to fair remuneration taking into account his salary and the

new, involves an inventive step and is capable of industrial application.

(c) In the case of a computer program, if it is not a patentable invention, the entitlement referred to in subsection (6) is not modifiable by contract and may be enforced by civil proceedings.

Registrar of Patents and Designs

107.-(1) There shall be a Registrar of Patents and Designs (in this Act referred to as "the Patents Registrar") who shall be appointed by the Commission and whose office shall be situated in the Federal Capital Territory, Abuja.

(2) The Patents Registrar shall, in the exercise of his functions other than the taking of any decision which under this Act is subject to appeal to the Court, act under the general direction of the Registrar-General.

(3) There may be appointed one or more Deputy Registrars of Patents and Design and one or more Assistant Registrars of Patents and Design who shall, subject to the control of the Registrar-General, have all the powers conferred by this Act on the Patents Registrar, and the most senior of whom shall whenever the Patents Registrar is for any reason unable to perform his duties, act temporarily, in his stead.

(4) The Patents Registrar shall have an official seal which shall be officially and judicially noticed.

Register

108.-(1) There shall be kept the record called the Register of Patents and Designs in which shall be entered all registered patents and designs with the names and addresses of their owners, the date on which applications were made for their registrations, notifications of assignments and transmissions, the names and addresses of all registered users and such other matter relating to registered Patent and Design as may be prescribed.

(2) The register shall be kept under the control and management of the Registrar-General at the Patents Registrar's office.

Patent application

109.-(1) Every patent application:

(a) shall be made to the Registrar and shall contain:

(I) the applicant's full name and address and, if that address is outside Nigeria, an address for service in Nigeria,

are likely to be seriously prejudicial to the environment; (ii) a description of the relevant invention with any appropriate multiples and discoveries are not inventions; and drawings, if any.

- 3 (iii) a claim or claims,
- 4 (iv) an abstract; and
- 5 (v) such other matters as may be prescribed.

6 (b) shall be accompanied by:

- 7 (i) where appropriate, a declaration signed by the true inventor
- 8 requesting that he be mentioned as such in the patent and giving his name
- 9 and address, and

- 10 (ii) if the application is made by an agent, a signed power of
- 11 attorney but notwithstanding any rule of law, or legislation, certification of
- 12 the signature of the power of attorney shall not be necessary;

13 (c) shall be subject to the payment of the prescribed application fee.

14 (2) In an application under this section:

- 15 (a) the description referred to in subsection (1) (a) (ii) of this
- 16 section shall disclose the relevant invention in a manner sufficiently clear
- 17 and complete for the invention to be put into effect by a person skilled in the
- 18 art or field of knowledge to which the invention relates and shall be used for
- 19 the purposes of interpretation of a claim;

20 (b) the claim referred to in subsection (1)(a)(ii) of this section shall:

- 21 (i) be clear and concise,
- 22 (ii) define the protection sought, and
- 23 (iii) be fully supported by the description but shall not go beyond

24 the limits of the description;

25 (c) The abstract shall not be taken into account for the purpose of

26 interpreting the scope of protection but shall merely be used for the purpose

27 of technical information; and

28 (d) The applicant may, up to the time when the application is in

29 order for grant, withdraw the application at any time during its pendency.

30 (3) An application under this section shall relate to one invention

be so published and all such other matter only or to a group of inventions so linked as to form a single general inventive  
concept and:

2 concept and:  
3 (a) the applicant may up to the time when the application is in order

4 for grant:  
5 (i) amend the application, provided that the amendment does not go  
6 beyond the disclosure in the initial application, and

7 (ii) divide the application into two or more applications known as  
8 divisional applications, but each divisional application shall not go beyond the  
9 disclosure in the initial application;

10 (b) each divisional application is entitled to the initial date and where  
11 applicable, the priority date of the initial application, so however that, the fact  
12 that a patent has been granted on an requirement of unity of invention under  
13 paragraph (a) of this subsection shall not be a ground for the invalidation of the  
14 patent.

15 (4) Where the applicant for a patent seeks to be availed of a foreign  
16 priority in respect of an earlier application made in a country outside Nigeria:

17 (a) the applicant shall attach to his application under subsection (1) of  
18 this section, a written declaration showing:

19 (i) the date and number of the earlier application,  
20 (ii) the country in which the earlier application was made, and  
21 (iii) the name of the person who made the earlier application; and

22 (b) not more than three months after the making of the application  
23 under subsection (1) of this section, the applicant shall furnish the Registrar  
24 with a copy of the earlier application certified as correct by the Industrial  
25 Property Office or its equivalent in the country where the earlier application  
26 was made;

27 (c) the effect of the declaration in paragraph (a) of this subsection  
28 shall be as provided in any international convention to which Nigeria is a party.

29 (5) The applicant shall furnish the Registrar-General with:

30 (a) the date and number of any application for a patent filed by the

1 applicant in a country outside Nigeria (in this section referred to as a  
2 "foreign application") which relates to the same or is essentially the same  
3 invention as that claimed by the application filed with the office of the  
4 Registrar-General;

5 (b) the following documents relating to any of the foreign  
6 applications referred to in paragraph (a), that is, a copy of:

7 (i) any communication received by the applicant concerning the  
8 results of any search or examination carried out in respect of the foreign  
9 application,

10 (ii) the patent granted on the basis of the foreign application,

11 (iii) any final decision rejecting the foreign application or refusing  
12 the grant requested in the foreign application, and

13 (iv) any final decision invalidating the patent granted on the basis  
14 of the foreign application referred to in paragraph (a) of this subsection.

15 **110.-(1)** The Registrar-General shall substantively examine every  
16 patent application as to its conformity with section 105(1), (3) and (4) of this  
17 Act.

18 (2) Where the provisions in Subsection (1) have not been complied  
19 with, the Registrar-General may reject the application and notify the  
20 applicant of same.

21 (3) Where the provisions of Section 105(4) of this Act has not been  
22 complied with, the Registrar-General shall disregard any claim of foreign  
23 priority.

24 (4) Where the examination mention in subsection (1) of this  
25 subsection shows that a patent application satisfied the requirements of  
26 Section 105(1) and (3) of this Act, a patent may be granted to the applicant.

27 (5) Where the examination under this section shows that section  
28 105(4) of this Act has been complied with, the foreign priority claimed shall  
29 be mentioned in the patent grant.

30 (6) Patents that are granted may be challenged as to their validity.

of a group of inventions so linked as to form a single general inventive

Form of grant,  
registration and  
publication

and:

- 1 111.-(1) A patent shall be granted by the issue to the patentee of a
- 2 document containing:
- 3 (a) the number of the patent in the order of grant;
- 4 (b) the name and address of the patentee and, if that address is outside
- 5 Nigeria, an address for service in Nigeria;
- 6 (c) the dates of the patent application and the grant;
- 7 (d) if foreign priority is claimed:
- 8 (i) an indication of that priority, and
- 9 (ii) the number and date of the application on which the claim is based
- 10 and the name of the country where it was made;
- 11 (e) the description of the invention (with any relevant plans and
- 12 drawings) and the claims; and
- 13 (f) where appropriate, the name and address of the true inventor.

14 (2) The Registrar shall maintain a Register of Patents which shall

15 consist of duplicates of the documents issued under subsection (1) of this

16 section, together with such further matter as is required by this Act to be

17 registered.

18 (3) As soon as may be after a patent has been granted under subsection

19 (1) of this section, the Registrar-General shall cause to be published:

- 20 (a) a notification of the grant containing the details mentioned in
- 21 paragraphs (a) to (f) of that subsection (except the description and the plans and
- 22 drawings, if any); or

23 (b) if a summary form of notification is prescribed, a notification in

24 that form.

25 (4) when the registrar grants a patent under this Act, the Registrar

26 shall make available a copy of the patent to any member of the public on the

27 payment by that person of the prescribed fee.

Rights conferred  
by patent

28 112.-(1) A patent confers upon the patentee the right to preclude any

29 other person from doing any of the following acts:

- 30 (a) where the patent has been granted in respect of a product, the act of

1 making, importing, selling or using the product, or stocking it for the  
2 purpose of sale or use; and

3 (b) where the patent has been granted in respect of a process, the act  
4 of applying the process or doing, in respect of a product obtained directly by  
5 means of the process, any of the acts mentioned in paragraph (a) of this  
6 subsection.

7 (2) The scope of the protection conferred by a patent shall be  
8 determined by the terms of the claims; and the description (and the plans and  
9 drawings, if any) included in the patent shall be used to interpret the claims.

10 (3) The rights under a patent shall not extend to:

11 (a) an act done privately and on a non-commercial scale;

12 (b) the use of the invention for a scientific research, including  
13 experimentation on the invention to test the invention or improve it;

14 (c) the use of the invention for teaching purposes;

15 (d) the preparation of medicines under individual prescription; or

16 (e) any act including testing, making or any other act solely for  
17 purposes reasonably related to the development, submission of information  
18 required under any law in Nigeria that regulates the manufacture,  
19 construction and use of any product;

20 (f) an act done in respect of a product covered by the patent after the  
21 product has been lawfully sold in any country; and

22 (g) the use of articles on an aircraft, a land vehicle or vessel of any  
23 other country which temporarily or accidentally enters the airspace, territory  
24 or waters of Nigeria.

25 (4) Where, at the date of the filing of a patent application in respect  
26 of a product or process or at the date of a foreign priority validly claimed in  
27 respect of the application, a person other than the applicant:

28 (a) was conducting an undertaking in Nigeria; and

29 (b) in good faith and for the purposes of the undertaking, was  
30 manufacturing the product or applying the process or had made serious

description of the relevant invention with any preparations with a view to doing so; then, notwithstanding the grant of a  
 2 patent, there shall exist a right (exercisable by the person for the time being  
 3 conducting the undertaking, and not otherwise) to continue the manufacture or  
 4 application, or to continue and complete the preparations and thereafter,  
 5 undertake the manufacture or application, as the case may be, and in respect of  
 6 any resulting products, to do any other act mentioned in subsection (1) of this  
 7 section.

Protection of undisclosed information

8 113.-(1) Where it is required that an undisclosed test or data, the  
 9 origination of which involves a considerable effort, be submitted as a condition  
 10 of approving the marketing of pharmaceutical or agricultural chemical  
 11 products which utilize new chemical entities, the data shall be protected  
 12 against unfair commercial use.

13 (2) The data required under subsection (1) of this section shall be  
 14 protected against disclosure except:

- 15 (a) where it is necessary to protect the public; or
- 16 (b) steps are taken to ensure that the data is protected against unfair  
 17 commercial use

Duration and lapse of patent

18 114.-(1) Subject to this Act, a patent shall expire at the end of the  
 19 twentieth year from the date of the filing of the relevant patent application.

20 (2) A patent shall lapse, if the prescribed annual fees are not duly paid  
 21 in respect of it:  
 22 provided that:

- 23 (a) a period of grace of six months shall be allowed for the payment of  
 24 the fees; and
- 25 (b) if the fees and any prescribed surcharge are paid within that  
 26 period, the patent shall continue as if the fees had been duly paid.

27 (3) The expiration or lapse of a patent shall be registered and notified.

Surrender of patent

28 115.-(1) Subject to subsection (2) of this section, the patentee may  
 29 surrender a patent by written declaration addressed to the Registrar-General.

30 (2) The surrender of a patent:

- 1 (a) may relate to all or any of the claims made by the patent;
- 2 (b) subject to paragraph (d) of this subsection, shall be registered  
3 and notified;
- 4 (c) shall not be effective until it has been registered; and
- 5 (d) if it relates to a patent as to which a contractual license or license  
6 of right is registered, shall be registered only if it is accompanied by the  
7 written consent of the licensee.

8 **116.-(1)** Subject to this section, on the application of any person Nullity of patent  
9 (including a public officer acting in the exercise of his functions) the Court  
10 shall declare a patent null and void:

- 11 (a) if the subject of the patent is not patentable under section 1 of  
12 this Act;
- 13 (b) if the description of the invention or the claim does not conform  
14 with section 105(2) of this Act; or
- 15 (c) if for the same invention a patent has been granted in Nigeria as  
16 the result of a prior application or an application benefiting from an earlier  
17 foreign priority.

18 (2) Subsection (1) of this section may apply to the whole of a patent  
19 or to any particular claim or claims made by it.

20 (3) For the purpose of disposing of an application under subsection  
21 (1) of this section, the Court on the motion of the applicant or of its own  
22 motion may require the patentee of the relevant patent to produce in  
23 evidence any of the following:

- 24 (a) a list of any publications or earlier patents referred to in  
25 connection with a patent application made in respect of the same invention  
26 by the patentee to the appropriate authority in any' country outside Nigeria;
- 27 (b) any proceedings relating to the patent application in question or  
28 any patent granted in pursuance of it; and
- 29 (c) any publications or patents mentioned in any report sent to the

1 patentee by a governmental or inter-governmental research or investigation  
2 institute.

3 (4) Where a declaration is made under subsection (1) of this section:

4 (a) The patent in question shall be deemed to have been null and void  
5 since the date of its grant, so however that, it shall not be necessary to repay  
6 royalties paid by any licensee, unless, the Court so orders, and

7 (b) The proper officer of the Court shall inform the Registrar General,  
8 who shall register and publish the declaration.

9 (5) The Court:

10 (a) Shall not make a declaration under subsection (1) of this section  
11 without first giving the patentee an opportunity to be heard;

12 (b) In applying subsection (1) of this section, shall have regard only to  
13 the state of affairs existing when the proceedings were instituted; and

14 (c) Shall dismiss an application under subsection (1) of this section if,  
15 the applicant (not being a public officer) fails to satisfy the Court that he has a  
16 material interest in making the application.

17 117.-(1) Subject to this section, if a patentee (not being precluded by  
18 the terms of any previously registered license from granting a further license)  
19 applies in writing to the Registrar-General for the words "licenses of right" to  
20 be registered in respect of his patent, the Registrar-General shall enter the  
21 words accordingly in the Patents Register and notify the entry.

22 (2) Where an entry is made under subsection (1) of this section in  
23 respect of a patent:

24 (a) any person shall have the right to obtain a license to exploit the  
25 patent on such terms as, failing agreement between that person and the  
26 patentee, shall be fixed by the Court on the application of that person; and

27 (b) the amount of the annual fees payable in respect of the patent shall  
28 be reduced by half, the reduction first taking effect in relation to the annual fees  
29 first payable after the date of the entry.

30 (3) A patentee may, at any time, apply to the Registrar-General for an

1 entry under subsection (1) of this section to be cancelled; and, if no licenses  
 2 have been granted under this section or all the grantees agree, the Registrar  
 3 shall thereupon cancel the entry and notify the cancellation, but only after  
 4 payment of all annual or other fees which would have been payable if the  
 5 entry had never been made.

6 (4) The grantee of a license under this section shall not be entitled  
 7 to assign the license or grant further licenses under it.

8 (5) Subsections (1)(b), (2)(a), (3) and (6) of section 158 of this Act  
 9 shall apply in relation to licenses granted under this section as they apply to  
 10 licenses and contracts under section 158 of this Act.

11 **118.** The provision of the First and Second Schedules to this Act  
 12 shall have effect in relation to compulsory licenses and the use of patents for  
 13 the service of government agencies.

First and Second  
 Schedules.  
 Compulsory  
 Licenses and  
 official use

14 **119.**-(1) A layout - design is original if it is the result of its creator's  
 15 own intellectual effort and is not common place among creators of layout-  
 16 designs and manufacturers of integrated circuits at the time of its creation.

Originality

17 (2) A layout - design which consists of a combination that is  
 18 common place shall be protected only if the combination, taken as a whole,  
 19 is original within the meaning of subsection (1) of this section.

20 **120.**-(1) The right to a layout-design protection:

Right to  
 Protection

21 (a) belongs to the creator of the layout-design and may be assigned  
 22 or transferred by succession;

23 (b) where two or more persons jointly created the layout-design,  
 24 belongs to them jointly.

25 (2) Where a layout - design was created in execution of a  
 26 commission or an employment contract, the right to the layout-design  
 27 protection belongs, in the absence of any contractual provision to the  
 28 contrary, to the person who commissioned the work or to the employer.

29 **121.**-(1) A protection under this Act does not depend upon whether  
 30 or not the integrated circuit which incorporates the protected layout design is

Effects of  
 protection

1 self incorporated in an article.

2 (2) Subject to subsection (3) of this section, and to section 134, the  
3 effect of the protection makes the following acts unlawful if performed without  
4 the authorization of the right holder:

5 (a) reproducing, whether by incorporation in an integrated circuit or  
6 otherwise, the protected layout-design in its entirety or any part of it, except the  
7 act of reproducing any part that does not comply with the requirement of  
8 originality referred to in section 119 of this Act;

9 (b) importing, selling or otherwise distributing for commercial  
10 purposes the protected layout-design, is incorporated or an article  
11 incorporating such an integrated circuit in so far as it continues to contain an  
12 unlawfully reproduced layout-design.

13 (3) The effect of the protection of a layout-design under this Act shall  
14 not extend to:

15 (a) the reproduction of the protected layout-design for private  
16 purposes or for the sole purpose of evaluation, analysis, research or teaching;

17 (b) the incorporation in an integrated circuit of a layout- design  
18 created on the basis of such analysis or evaluation and which is itself original in  
19 the meaning of section 119 of this Act or the performance of any of the acts  
20 referred to in subsection (1) of this section in respect of that layout-design;

21 (c) the performance of any of the acts referred to in subsection (2) (b)  
22 of this section, where the act is performed in respect of a protected layout-  
23 design, or in respect of an integrated circuit in which the layout-design is  
24 incorporated, that has been put on the market by, or with the consent of the right  
25 holder;

26 (d) the performance of any of the acts referred to in subsection (2) (b)  
27 of this section in respect of an integrated circuit incorporating an unlawfully  
28 reproduced layout-design or any article incorporating such an integrated  
29 circuit, where the person performing or ordering such an act did not know and  
30 had no reasonable ground to know when acquiring the integrated circuit or the

1 article incorporating such an integrated circuit, that it incorporated an  
2 unlawfully reproduced layout-design, but after the person receives  
3 sufficient notice that the layout-design was unlawfully reproduced, he may  
4 perform any of the said acts, only with respect to the stock on hand or  
5 ordered before that time and shall be liable to pay to the right holder, a sum  
6 equivalent to a reasonable royalty as is payable under a freely negotiated  
7 license, in respect of the layout-design; or

8 (e) the performance of any of the acts referred to in subsection (1)  
9 (b) of this section, where the act is performed in respect of an identical  
10 layout-design which is original and has been created independently, by a  
11 third party.

12 **122.**-(1) The protection of a layout-design under this Act shall  
13 commence:

Commencement  
of protection

14 (a) on the date of the first commercial exploitation anywhere in the  
15 world, of the layout-design by or with the consent of the right holder,  
16 provided an application for protection is filed, by the right holder, the  
17 Registrar-General's office within the limit referred to in section 135 (3) of  
18 this Act, or;

19 (b) on the filing date accorded to the application for the registration  
20 of the layout- design filed by the right holder, if the layout-design had not  
21 been previously exploited commercially, anywhere in the world.

22 (2) The protection of a layout-design under this Act shall terminate  
23 at the end of the tenth calendar year after the date of commencement of the  
24 protection.

25 **123.**-(1) An application for the registration of a layout-design shall  
26 be in writing and shall be filed with the Registrar-General's office.

Application  
requirements

27 (2) A separate application shall be filed for each layout-design.

28 (3) The application shall:

29 (a) contain a request registration of the layout-design in the

1 Register of Layout-Designs and a brief and precise designation of the layout-  
2 design;

3 (b) indicate the name, address, nationality and, if different from the  
4 address, the habitual residence of the applicant;

5 (c) be accompanied by the power of attorney appointing the  
6 representative of the applicant, if any, and by a copy of the drawing of the  
7 layout-design along with information defining the electronic function which  
8 the integrated circuit is intended to perform; but the application may omit such  
9 parts of the copy or drawing that relate to the manner of manufacture of the  
10 integrated circuit, provided that, the parts submitted are sufficient to allow the  
11 identification of the layout-design;

12 (d) specify the date of first commercial exploitation of the layout-  
13 design anywhere in the world or indicate that the exploitation has not  
14 commenced; and

15 (e) provide particulars establishing the right to protection under  
16 section 120 of this Act.

17 (4) Where the application does not duly comply with the requirements  
18 of subsection (2) of this section, the Registrar shall notify the applicant of the  
19 defects and invite him to correct them within two months, and if the defects are  
20 corrected within the time limit, the Registrar shall accord as the filing date, the  
21 date of receipt the application contained an express or implicit indication that  
22 the registration of a layout-design is requested and indications allowing the  
23 identity of the applicant to be established, accompanied by a copy or drawing  
24 of the layout-design.

25 (5) Where the requirements in subsection (4) of this section were not  
26 complied with at the date of receipt of the application but are corrected within  
27 the time limit, the date of the receipt of the required correction shall be deemed  
28 to be the filing date of the application and the Registrar shall confirm the filing  
29 date and communicate it to the applicant. but if the defects are not corrected  
30 within the time limit, the application shall be deemed not to have been filed.

1 (6) Each application for protection of a layout-design shall be  
2 subject to the payment of the prescribed fees, but, if the fee is not paid, the  
3 Registrar-General's office shall notify the applicant that the application is  
4 deemed not to have been filed, unless, payment is made within two months  
5 from the date of the notification and if the application fee is not paid within  
6 that time limit, the application shall be deemed not to have been filed.

7 124.-(1) The Registrar's office shall maintain a Register (in this Act  
8 referred to as the "Register of Layout-Designs") in which the office shall, for  
9 each protected layout-design, effect all the recordings provided for in this  
10 Act.

11 (2) Where an application complies with the requirements of section  
12 123 of this Act, the Registrar shall register the layout-design in the Register  
13 of Layout-Designs without examination of the originality of the layout-  
14 design, the applicant's entitlement to protect or the correctness of the facts  
15 stated in the application.

16 (3) The Register of Layout-Designs shall contain the number, title,  
17 filing date and, where indicated in the application under section 123(2)(d) of  
18 this Act, the date of the world, of the layout-design as well as the name and  
19 address of the right holder and other prescribed particulars.

20 (4) Any person may consult the Register of Layout-Designs and  
21 obtain extracts from the Register, subject to the payment of the prescribed  
22 fee.

23 (5) The registration of a layout-design shall be published in the  
24 Industrial Property Gazette.

25 125.-(1) Where the essential content of an application for a layout-  
26 design has been taken from the layout-design of another, the person may, in  
27 writing, request the Registrar-General to transfer the application to him and  
28 where the application has already resulted in a registration, that person may,  
29 within three years from the publication of the registration, in writing, request  
30 the Registrar-General to transfer the registration to him and rectify the entry

Right to transfer.  
etc

1 in the Register accordingly.

2 (2) The Registrar-General shall on receipt of a request under  
3 subsection (1) of this section, send immediately a copy of the request to the  
4 right holder, and, within the prescribed period and in the prescribed manner, the  
5 right holder may send to the Registrar a counter statement of the grounds on  
6 which the right holder relies.

7 (3) If the right holders sends a counter-statement, the Registrar shall  
8 furnish a copy of the counter-statement to the person requesting the transfer,  
9 and after hearing the parties if either or both parties wish to be heard, consider  
10 the merits of the case, and decide whether to transfer the application or  
11 registration and, where applicable, whether to rectify the register.

- Changes in  
ownership;  
contractual  
license

12 **126.**-(1) Any change in the ownership of a protected layout-design  
13 shall be in writing and once the layout-design has been registered, the change in  
14 ownership shall, at the request of any interested party made to the Registrar-  
15 General's office, be recorded and published by the Registrar-General but the  
16 change shall have no effect against third parties until the recording is effected.

17 (2) Any license contract concerning a layout-design shall, upon  
18 registration of the layout-design be submitted to the Registrar's office which  
19 office shall keep it's content confidential but shall publish a reference to the  
20 license contract which license contract has no effect against third parties until  
21 the submission is made.

Cancellation

22 **127.**-(1) Any interested person may request that the registration of a  
23 layout-design be cancelled on the grounds that:

24 (a) the layout-design is not protectable under sections 119 and 135 of  
25 this Act; o

26 (b) the right holder is not entitled to protection under section 120 of  
27 this Act;

28 (c) where the layout-design has been commercially exploited  
29 anywhere in the world, before the filing of the application for registration of the  
30 layout-design, the said application was not filed within the time limit referred

1 to in sections 122(1) and 135(3) of this Act.)

2 (2) Where the grounds for cancellation are established with respect  
3 to a part only of a layout-design, only the corresponding part of the  
4 registration shall be cancelled.

5 (3) A request for the cancellation of the registration of a layout-  
6 design under subsections (1) and (2) of this section shall be filed with the  
7 Registrar-General or the Court in writing and the request shall state the  
8 grounds on which it is based.

9 (4) Any cancelled layout-design registration or part of the  
10 cancelled layout-design shall be regarded as null and void from the date of  
11 commencement of the protection.

12 (5) The final decision of the Registrar-General or the Court shall be  
13 notified to the Registrar who shall record it and publish a reference to the  
14 decision as soon as possible.

15 **128.** Where an applicant's ordinary residence or principal place of  
16 business is outside Nigeria he shall be represented by an agent resident in  
17 Nigeria.

Representation

18 **129.-(1)** An infringement under this Act consists of the  
19 performance of any act which is unlawful under section 121 of this Act.

Infringement:  
enforcement of  
exclusive right

20 (2) On the request of the right holder or of his licensee, if the latter  
21 has requested the right holder to institute Court proceedings for a specific  
22 relief and the right holder has refused or failed to do within reasonable  
23 period, the Court may grant an injunction to prevent infringement or an  
24 imminent infringement, award damages and grant any other remedy  
25 provided for under the law.

26 (3) An action under subsection (2) of this section may be initiated  
27 only after an application for registration of the layout-design has been filed  
28 with the Registrar's office.

29 **130.-(1)** A person who, without authorization knowingly performs  
30 any act which is unlawful under section 120 of this Act commits an offence

Penal provisions

1 under this Act, and is liable, on conviction to a fine of up to N500,000 or treble  
2 damages at the discretion of the Court.

3 (2) The Court may also order the seizure, forfeiture or destruction of  
4 the layout-designs, integrated circuits or articles concerned or any materials or  
5 implements the predominant use of which has been in the commission of the  
6 offence.

Exploitation by  
government, etc.

7 **131.-(1) Where:**

8 (a) the public interest in particular, national security, nutrition, health  
9 or the development of other vital sectors of the national economy requires the  
10 exploitation of a protected layout-design for public non-commercial use; or

11 (b) a judicial or an administrative body has determined that the  
12 manner of exploitation of a protected layout-design, by the right holder or his  
13 licensee, is anti-competitive, and the Minister is satisfied that the exploitation  
14 of the layout-design in accordance with this section may remedy such practice,  
15 the Minister may decide that, even without the authorization of the right holder,  
16 a Government agency or a third person designated by the Minister may exploit  
17 the layout-design.

18 (2) The exploitation of a layout-design shall be:

19 (a) limited, in scope and duration, for the purpose for which it was  
20 authorized and be predominantly for the supply of the domestic market and  
21 non-exclusive;

22 (b) subject to the payment to the right holder of an adequate  
23 remuneration for the exploitation, taking into account the economic value of  
24 the Minister's authorization, as determined in the Minister's decision and,  
25 where applicable, the need to correct anti-competitive practices.

26 (3) Upon the request of the right holder or of the beneficiary of the  
27 authorization, the Minister may, after hearing the parties, if either or both wish  
28 to be heard, vary the terms of the decision authorizing the exploitation of the  
29 layout-design to the extent that changed circumstances justify the variation.

30 (4) Upon the request of the right holder, the Minister shall terminate

1 the non-voluntary license if he is satisfied that the circumstances which led  
2 to his decision have ceased to exist and are unlikely to recur or that the  
3 beneficiary of the authorization has failed to comply with the terms of the  
4 authorization.

5 (5) Notwithstanding subsection (4) of this section, the Minister  
6 shall not terminate an authorization, if he is satisfied that the adequate  
7 protection of the legitimate interests of the beneficiary of the authorization  
8 justifies the maintenance of the authorization, the enterprise or business of  
9 the beneficiary of the authorization or with the part of the enterprise or  
10 business within which the layout-design is being exploited.

11 (6) A request for the Minister's authorization shall be accompanied  
12 by evidence that the right holder has received, from the person seeking the  
13 authorization, a request for a contractual license, but that the person has been  
14 unable to obtain the license on reasonable commercial terms and conditions  
15 and within a reasonable time.

16 (7) A decision of the Minister under this section may be the subject  
17 of an appeal before the Court.

18 **132.**-(1) The Registrar shall give a party to any proceedings  
19 before him an opportunity of being heard before exercising any  
20 discretionary power vested in the Registrar by this Act, adversely against the  
21 party.

Exercise of  
discretionary  
powers, etc.

22 (2) If the Registrar is satisfied that the circumstances justify it, he  
23 may, upon receiving a written request, extend the time for doing any act or  
24 taking any proceedings under this Act, upon notice to the parties concerned  
25 and upon such terms as he may direct.

26 (3) An extension under subsection (2) of this section, may be  
27 granted notwithstanding that the time for doing the act or taking the  
28 proceedings has expired but the time for filing an application referred to in  
29 section 135(3) may not be extended.

Application of  
international  
treaties

1           **133.** The provisions of any international treaties in respect of  
2 industrial property to which Nigeria is a party shall apply to matters dealt with  
3 by this Act.

Regulations for  
layout-designs

4           **134.**-(1) The Minister may by regulations, prescribe details for the  
5 implementation of this Part of this Act and the regulations may, in particular,  
6 provide for the payment of fees in connection with applications for the  
7 registration of layout-designs of an integrated circuit and matters related to it.

8           (2) The Registrar may issue administrative instructions relating to the  
9 procedures under this Act, the Regulations made under the Act and to the other  
10 functions of his office.

Interpretation  
of this part

11           **135.**-(1) For the purposes of this Part of this Act:

12 "integrated circuit" means a product, in its final form or an intermediate form,  
13 in which the elements, at least one of which is an active element, and some or  
14 all of the interconnections are integrally formed in a piece of material and  
15 which is intended to perform an electronic function;

16 "layout-design" is synonymous with "topography" and means the three-  
17 dimensional disposition, however expressed, of the elements, at least one of  
18 which is an active element, and of some or all of the interconnects of an  
19 integrated circuit, or such a three-dimensional disposition prepared for an  
20 integrated circuit intended for manufacture;

21 "right holder" means the natural person who, or the legal entity which, is to be  
22 regarded as the beneficiary of protection referred to in section 121 of this Act.

23           (2) A protection under this Act may be obtained for layout-designs of  
24 integrated circuits if, and to the extent that, they are original within the meaning  
25 of section 119 of this Act.

26           (3) A registration may only be applied for if, the layout-design has not  
27 yet been commercially exploited anywhere in the world, for more than two  
28 years prior to the coming into force of this Act.

29           (4) A protection under this Act shall not be available for layout-  
30 designs which have been commercially exploited anywhere in the world, for

1	more than two years prior to the coming into force of this Act.	
2	136. A utility model certificate may be granted in respect of an	Grant of utility model
3	invention in accordance with the provisions of sections 137 to 138 of this	
4	Act.	
5	137. An invention is eligible for a utility model certificate if it is	Eligibility for utility model certificate
6	new and industrially applicable.	
7	138.-(1) Subject to the provisions of this Act, the provisions of Part	Applicability of provisions
8	II of this Act shall apply, mutatis mutandis, to utility model certificates or	
9	applications therefore as if they were patents.	
10	(2) Section 1 of this Act shall not apply in the case of inventions for	
11	which model certificates are requested and accordingly:	
12	(a) in the examination of an application for utility model certificate	
13	it shall not be necessary to consider whether the invention is patentable	
14	under section 1 of this Act; and	
15	(b) the grounds of opposition shall not include absence of an	
16	inventive step as required by paragraph (b) of sub-section (1) of section 116	
17	of this Act.	
18	(3) A utility model certificate shall not be revoked or invalidated	
19	under sections 116 and 155 of this Act respectively, on the ground that the	
20	invention on which it is based lacks an inventive step.	
21	(4) Where:	
22	(a) the right to a patent conflicts with the right to a utility model	
23	certificate in the case referred to in subsection (2) of section 2; or	
24	(b) a patent and a utility model certificate are interdependent within	
25	the meaning of paragraphs 2 and 3 of Part I in the First Schedule to this Act;	First Schedule
26	the said provisions shall apply as if the word "patent" wherever it occurs,	
27	were replaced by the words "patent or utility model certificate".	
28	139.-(1) The term of the utility model certificate shall expire at the	Terms of protection
29	end of seven years from the date of filing of the application and, accordingly,	
30	subsection 1 shall not apply to a utility model certificate.	

1 (2) A utility model certificate shall not lapse merely on the ground of  
2 non-working.

Conversion of  
application for  
utility model  
certificate to  
application for  
patent

3 **140.**-(1) At any time before the grant of a utility model certificate or a  
4 notification of rejection of the application, an applicant for a utility model  
5 certificate may, upon payment of a prescribed fee, convert his application to a  
6 patent application, which shall be accorded the filing date of the initial  
7 application.

8 (2) A converted application under subsection (1) of this section shall  
9 not be reconverted.

Counterfeiting  
of invention

10 **141.** Any person who imitates or counterfeits an invention knowing  
11 or having reason to believe that a utility model certificate has been issued in  
12 respect of it under this Part of this Act or knowingly sells, exhibits or imports  
13 with intent to sell any counterfeit or imitated article in respect of which a  
14 certificate has been granted under this Part of this Act commits an offence, and  
15 liable on conviction to imprisonment for a term not exceeding one year or to a  
16 fine not exceeding N500,000.00 or to both.

Penalty for use  
without consent

17 **142.** Any person who without the consent of the owner of a utility  
18 model certificate:

19 (1) makes for sale or hire;

20 (2) imports into Nigeria;

21 (3) in the course of business:

22 (a) sells or lets for hire,

23 (b) offers or exposes for sale or hire,

24 (c) stocks for the purpose of sale or hire,

25 (d) exhibits in public, or

26 (e) distributes, any article which is and which he knows or has reason  
27 to believe is protected by a grant of utility model certificate under this Part  
28 commits an offence and is liable, on conviction to a fine, at the discretion of the  
29 Court, of up to N1,000,000 or treble damages, whichever is greater.

1                   143.-(1) For the purposes of this Act, any composition of lines or  
2                   colours or any three dimensional form, whether or not associated with lines  
3                   or colours is deemed to be an industrial design, provided that the  
4                   composition or form gives a special appearance to a product of industry or  
5                   handcraft.

Nature of  
industrial design

6                   (2) Where application is made for the registration of an industrial  
7                   design, the design shall be presumed to be new at the filing time, except, in  
8                   so far as the following provisions of this section provide otherwise.

9                   (2) A protection under this Act does not extend to anything in an  
10                  industrial design which serves solely to obtain a technical result and to the  
11                  extent that the protection leaves no freedom as regards arbitrary features of  
12                  appearance.

13                  144.-(1) Subject to this section, an industrial design is registrable  
14                  if:

Registrable  
design

15                  (a) it is new; and

16                  (b) it is not contrary to public order or morality.

17                  (3) An industrial design is not new if, before the filing date of  
18                  application for registration, it has been made available to the public  
19                  anywhere and at any time by means of description, use or in any other way,  
20                  unless it is shown to the satisfaction of the Registrar that, the creator of the  
21                  design could not have known that it had been made so available.

22                  (4) An industrial design shall not be deemed to have been made  
23                  available to the public solely by reason of the fact that within the period of  
24                  six months preceding the filing of the application for registration, the creator  
25                  has exhibited it in an official or officially recognized exhibition.

26                  (5) An industrial design is not new merely because it differs in  
27                  minor or inessential ways from an earlier design or concerns a type of  
28                  product, other than the type with which an earlier design is concerned.

29                  145.-(1) Subject to this section, the right to registration of an  
30                  industrial design shall be vested in the statutory creator, that is, the person

Right to  
registration

1 who, whether or not he is the true creator, is the first to file, or validly claim a  
2 foreign priority for, and made application for registration of the design.

3 (2) The true creator shall be entitled to be named as such in the  
4 Register, and the entitlement in question shall not be modifiable by contract.

5 (3) if the essential elements of an application for the registration of an  
6 industrial design have been obtained by the purported applicant from the  
7 creation of another person without the consent of that other person, both to the  
8 obtaining of those essential elements and to the filing of the application, all  
9 rights in the application and in any consequent registration shall be deemed to  
10 be transferred to that other person.

11 (4) Where an industrial design is created in the course of employment  
12 or in the execution of a contract for the performance of specified work, the  
13 ownership of the design shall be vested in the employer or as the case may be, in  
14 the person who commissioned the work.

15 (5) Where the creator of an industrial design is an employee, then, if  
16 his contract of employment does not require him to exercise any creative  
17 activity, but he has in creating the design, used data or means that his  
18 employment has put at his disposal:

19 (a) he shall be entitled to fair remuneration, taking into account his  
20 salary and the importance of the design which he has created; and

21 (b) the entitlement in question is not modifiable by contract and may  
22 be enforced by civil proceedings.

Application for  
registration

23 146.-(1) An application for the registration of an industrial design  
24 shall be made to the Registrar of Patents and Designs, and:

25 (a) shall contain:

26 (i) a request for registration of the design,

27 (ii) the applicant's full name and address and, if that address is outside  
28 Nigeria, an address for service in Nigeria,

29 (iii) a specimen of the design or a photographic or graphic  
30 representation of the design.

1 (iv) an indication of the kind of product (or, where a classification  
2 has been prescribed, the class of product) for which the design will be used,  
3 and

4 (2) such other matter as may be prescribed, and

5 (a) shall be accompanied by:

6 (i) where the applicant is not the creator, the request shall  
7 applicant's right to the registration of the industrial design and where  
8 appropriate, a declaration signed by the true creator requesting that he be  
9 named as such in the Register and giving his name and address, and

10 (ii) if the application is made by an agent, a signed power of  
11 attorney (so however that, notwithstanding an) rule of law, legalization or  
12 certification of the signature of the power of attorney shall be unnecessary).

13 (c) he shall be subject to the payment of the prescribed fee.

14 (3) Where an applicant for the registration of an industrial design  
15 seeks to avail himself of a foreign priority in respect of an earlier application  
16 made in a country outside Nigeria:

17 (a) he shall append to his application under subsection (1) of this  
18 section a written declaration showing:

19 (i) the date and number of the earlier application,

20 (ii) the country in which the earlier application was made, and

21 (iii) the name of the person who made the earlier application; and

22 (b) not more than three months after the making of the application  
23 under subsection (1) of this section, he shall furnish the Registrar-General  
24 with a copy of the earlier application certified correct by the Industrial  
25 Property Office (or its equivalent) in the country where the earlier  
26 application was made:

27 (c) a declaration made by him under paragraph (a) of this  
28 subsection shall have effect as provided for in any international Convention  
29 to which Nigeria is a party.

30 (4) At the time of filing an application, the application may contain

1 a request that the publication of the industrial design upon registration, be  
2 deferred for a period not exceeding twelve months from the date of filing or, if  
3 priority is claimed, from the date of priority of the application.

Examination of  
application for  
registration

4 147.-(1) The Registrar-General shall:

5 (a) accord as the filing date, the date of receipt of the application,  
6 provided that, at the time of receipt, the application contains indications  
7 allowing the identity of the applicant to be established and the required graphic  
8 representations of the article that embodies the industrial design;

9 (b) if he finds that the application did not, at the time of receipt, fulfill  
10 the requirements referred to in paragraph (a) of this subsection, invite the  
11 applicant to file the required correction and accord a the filing date, the date of  
12 receipt of the required correction, but if no correction is made, the application  
13 shall be treated as abandoned.

14 (2) The Registrar shall examine every application for registration of  
15 an industrial design as to its conformity with sections 144 (1)(b) and 146 of this  
16 Act, and:

17 (a) if the application fails in any respect to conform with section  
18 144(1)(b) or 146 (1) or (2) of this Act, the Registrar shall reject the application;  
19 and

20 (b) if the application fails in any respect to conform with section 146  
21 (3) of this Act, the Registrar shall disregard any claim for foreign priority.

22 (3) Where the substantive examination mentioned in subsection (1) of  
23 this section shows that an application for the registration of an industrial design  
24 satisfies the requirements of sections 144(1)(b) and 146 of this Act, the design  
25 shall be registered in accordance with the application and, where the said  
26 examination shows that section 146(3) of this Act has been complied with  
27 regarding a claim for foreign priority, the foreign priority claimed shall be  
28 recorded in the Register.

Registration and  
publication

29 148.-(1) An industrial design shall be registered by the issue to the  
30 applicant of a registration certificate containing:

- 1 (a) the number of the design in order of registration;
- 2 (b) the name and address of the registered owner and if that address  
3 is outside Nigeria, an address for service in Nigeria;
- 4 (c) the date of the application and of the issue of the registration  
5 certificate;
- 6 (d) if foreign priority is claimed:
- 7 (i) an indication of the fact, and
- 8 (ii) the number and date of the application on which the claim is  
9 based and the name of the country where the application was made;
- 10 (e) a reproduction or representation of the design and an indication  
11 of the kind (or, where a classification has been prescribed, the class) of  
12 products for which it will be used; and
- 13 (f) where appropriate, the name and address of the true creator.
- 14 (2) The Registrar-General shall maintain a Register of Industrial  
15 Designs which shall consist of duplicates of the registration certificates  
16 issued under subsection (1) of this section, together with such further matter  
17 as is required by this Act to be registered.
- 18 (3) Within a reasonable time after a design has been registered  
19 under subsection (1) of this section, the Registrar shall cause to be  
20 published:
- 21 (a) a notification of the registration containing the details  
22 mentioned in paragraphs (a) to (f) to that subsection; or
- 23 (b) if a summary form of notification is prescribed, a notification in  
24 that form.
- 25 149.-(1) An applicant for the registration of an industrial design  
26 may ask for the design to not be published for a specified period not  
27 exceeding twelve months from the date of the application; and, where he  
28 does so, then, notwithstanding any other provision of this Act:
- 29 (a) the specimen and other matters mentioned in section 146(1) (a)  
30 (iii) and (iv) of this Act shall be kept in a sealed package, which shall be

Application  
under sealed  
cover

1 opened by the Registrar:

2 (i) when the specified period as elapsed,

3 (ii) if, before the specified period has elapsed, the applicant asks for  
4 the application to be converted into an open application, or

5 (iii) if the package is still sealed, at the expiration of twelve months  
6 after the date of the application,

7 (b) a provisional registration certificate shall be issued and a  
8 provisional notification published under section 148 of this Act, each of which  
9 shall exclude the reproduction and other matters mentioned in section  
10 148(1)(e) of this Act;

11 (c) the institution of legal proceedings on the basis of a registered  
12 industrial design during the period of deferment of publication shall be, subject  
13 to the condition, that the information contained in the Register and in the file  
14 relating to the application has been communicated to the person against whom  
15 the action is brought;

16 (d) when the sealed package has been opened pursuant to paragraph  
17 (a) of this subsection, the Registrar shall proceed in accordance with sections  
18 147 and 148 of this Act in so far as he has not already done so and, if authorized  
19 by those sections, shall issue a revised registration certificate and publish a  
20 revised notification which shall have the same effect as any other certificate  
21 issued or notification published under section 148 of this Act.

22 (2) Notwithstanding subsection (1) of this section, a sealed package  
23 may be opened by the Registrar-General at any time on the direction of a Court  
24 and shall be resealed when the Court no longer requires it:

25 Provided that, if the time at which the package may be opened under subsection  
26 (1)(a) of this section arrives before the Court has ceased to require it, the  
27 package shall be deemed to have been duly opened at that time and shall not be  
28 resealed.

Rights conferred  
by registration

29 **150.-(1)** Registration of an industrial design confers upon registered

1 owner the right to preclude any other person from doing any of the following  
2 acts:

3 (a) reproducing the design in the manufacture of a product;  
4 (b) importing, selling or utilizing for commercial purposes a  
5 product reproducing the design; and

6 (c) holding such a product for the purpose of selling it or of  
7 utilizing it for commercial purposes.

8 (2) The reproduction of a registered industrial design is not lawful  
9 for the purposes of sub-section (1) of this section, merely because it is an  
10 application of an earlier design to an article other than an article to which the  
11 earlier design was applied.

12 (3) The rights conferred by this section:

13 (a) shall extend only to acts done for commercial or industrial  
14 purposes; and

15 (b) shall not extend to acts done in respect of a product  
16 incorporating a registered industrial design after the product has been  
17 lawfully sold in any country.

18 **151.**-(1) Subject to this Act, registration of an industrial design:

19 (a) shall be effective in the first instance for five years from the date  
20 of the application for registration; and

21 (i) on payment of the prescribed fee may be renewed for two  
22 further consecutive periods of five periods of five years.

23 (2) The fee mentioned in subsection (1) (b) of this section shall be  
24 paid within the twelve months immediately preceding the renewal period to  
25 which it relates;

26 provided that:

27 (a) a period of grace of six months after the beginning ( the renewal  
28 period shall be allowed for the payment of the fee; and

29 (b) if the fee and any prescribed surcharge are paid within that  
30 period, this subsection shall be deemed to have been complied with.

Duration of  
renewal of  
registration

1 (3) The fact that the registration of an industrial design has ceased to  
2 be effective or has been renewed shall be registered and the Registrar-General  
3 shall provide notice of such to the registered owner of the design.

Renunciation of  
registration

4 **152.**-(1) Subject to subsection (2) of this section, the registered owner  
5 of an industrial design may renounce the registration by a written declaration  
6 addressed to the Registrar-General.

7 (2) A renunciation under subsection (1) of this section:

8 (a) may be limited-

9 (i) to any particular kind or kinds of product,

10 (ii) if a classification of products has been prescribed, to any  
11 particular class or classes of product, or

12 (iii) if the application for registration comprised several designs, to  
13 anyone or more of those designs;

14 (b) subject to paragraph (d) of this subsection, shall be registered and  
15 notified;

16 (c) shall not be effective until it has been registered; and

17 (d) if it relates to a design as to which a contractual licence is  
18 registered, shall be registered only if:

19 (i) it is accompanied by the licensee's written consent to registration,

20 (ii) the licensee has in the license contract agreed that this paragraph  
21 shall not apply.

Nullity of  
registration

22 **153.**-(1) Subject to this section, on the application of any person  
23 (including a public officer acting in the exercise of his functions), the Court  
24 shall declare the registration of an industrial design to be null and void:

25 (a) If the design, because of its failure to conform with section 144(1)

26 (b) of this Act, ought not to have been registered; or

27 (b) if the design fails to comply with section 144(1)(a) or 145 of this  
28 Act.

29 (2) Where:

30 (a) a declaration under subsection (1) of this section relates to an

1 application comprising several designs; and

2 (b) the grounds for making the declaration affect only some of  
3 those designs, the declaration shall apply only to the designs so affected.

4 (3) Where a declaration is made under subsection (1) of this  
5 section:

6 (a) the registration in question shall be deemed, to the extent  
7 specified in the declaration, to have been null and void ab initio, so however  
8 that it shall not be necessary to repay royalties paid by any licensee unless  
9 the Court so orders; and

10 (b) the proper officer for the Court shall inform the Registrar, who  
11 shall register and notify the declaration.

12 (4) The Court:

13 (a) shall not make a declaration under subsection (1) of this section  
14 without first giving the design owner an opportunity to be heard;

15 (b) in applying subsection (1) (a) of this section, shall have regard  
16 only to the state of affairs existing when the proceedings were instituted; and

17 (c) shall dismiss an application under subsection (1) of this section,  
18 if the applicant (not being a public officer) fails to satisfy the Court that he  
19 has a material interest in making the application.

20 **154.**-(1) A person concerned who alleges that an entry has not been  
21 inserted in, or has been omitted from, the register:

22 (a) that an entry has been made in the register without sufficient  
23 cause; or

24 (b) that an entry wrongly remains on the register;

25 (c) that an error or defect exists in any entry on the register, may  
26 apply in the prescribed manner to the Court or, at the option of the applicant  
27 and subject to section 157 of this Act, to the Registrar, and the Tribunal may  
28 make such order for making, expunging or varying the entry as the Tribunal  
29 thinks fit.

30 (2) The Tribunal may in any proceedings under this section, decide

1 any question that it may be necessary or expedient to decide in connection with  
2 the rectification of the register.

3 (3) In case of fraud in the registration, assignment or transmission of a  
4 registered patent or design, the Registrar-General may himself apply to the  
5 Court under the provisions of this section.

6 (4) Any order of the Court rectifying the register shall, direct that  
7 notice of the rectification be served in the prescribed manner on the Registrar,  
8 and the Registrar shall, on receipt of the notice rectify the register accordingly.

9 (5) The power to rectify the register conferred by this section I  
10 includes power to remove a registration in Part A of the register to Part B of the  
11 register.

Option to apply  
to Registrar-  
General or Court

12 **155.-(1)** A person concerned may, apply to the Court or, at the option  
13 of the applicant and subject to section 157 of this Act, to the Registrar for an  
14 order under this section on the ground of any contravention of, or failure to  
15 observe, a condition entered on the register in relation to a patent or design.

16 (2) The Registrar may apply to the Court for an order under this  
17 section on the ground stated in subsection (1);

18 (3) On an application under subsections (1) and (2) of this section, the  
19 Tribunal may make such order as the Tribunal thinks fit for striking out or  
20 varying the registration of the patent or design in question.

Power to strike  
out or vary  
registration for  
breach of condition

21 **156.-(1)** The Registrar may, on request made in the prescribed manner  
22 by the registered owner-

23 (a) correct any error in the name or address of the registered owner of  
24 a patent or design;

25 (b) enter any change in the name or address of the person who is  
26 registered as an owner of a patent or design;

27 (c) cancel the entry of a patent or design on the register;

28 (d) strike out any goods or classes of goods from those in respect of  
29 which a patent or design is registered; or

30 (e) enter a disclaimer or memorandum relating to a patent or design

1 which does not in any way extend the rights given by the existing  
2 registration of the patent or design.

3 (2) The Registrar may, on request made in the prescribed manner  
4 by a registered user of a patent or design, correct any error, or enter any  
5 change, in the name or address of the registered user.

6 (3) Any decision of the Registrar under this section shall be subject  
7 to appeal to the Court.

8 **157.** Where under the provisions of section 154, 155, and 156 of  
9 this Act, an applicant has an option to make an application to the Court or to  
10 the Registrar-General:

Procedure in  
cases of option  
to apply to  
Registrar or  
Court

11 (a) if an action concerning the patent or design in question is  
12 pending, the application shall be made to the Court;

13 (b) if in any other case the application is made to the Registrar-  
14 General, he may, at any stage of the proceedings, refer the application to the  
15 Court, or he may, after hearing the parties, determine the question between  
16 them, subject to appeal to the Court.

17 **158.-(1)** Subject to this section:

Contractual  
license

18 (a) the owner of a patent or a registered industrial design may by a  
19 written contract signed by the parties, grant a license to any person to exploit  
20 the relevant invention or design; and

21 (b) in the absence of any provision to the contrary in the contract,  
22 the licensee shall be entitled to do anywhere in Nigeria in relation to the  
23 patent or design, any of the acts mentioned in section 113 or 117 of this Act,  
24 as the case may be.

25 (2) Where a license is granted under subsection (1) of this section:

26 (a) the license shall be registered, and shall be of no effect against  
27 third parties until registration is effected and the prescribed fee paid; and

28 (b) the registration shall be cancelled at the request of the licensor if  
29 the Registrar is satisfied that the license has been terminated.

30 (3) Any clause in a contract for a license under subsection (1) of

1 this section is null and void, in so far as it imposes on the licensee in the  
2 industrial or commercial field, restrictions which do not derive from the rights  
3 conferred by the relevant patent or design or are unnecessary for the  
4 safeguarding of those rights:

5 provided that:

6 (a) Limitations concerning the scope, extent, territory or duration of  
7 the exploitation of the patent or design or the quality or quantity of the products  
8 in connection with which the patent or design may be exploited; and

9 (b) in the case of a patent, limitations justified by the interest of the  
10 licensor in the technically efficient exploitation of the subject of the patent, are  
11 not restrictions of the kind mentioned in this subsection.

12 (4) In the absence of any provision to the contrary in a contract for a  
13 license under subsection (1) of this section:

14 (a) the grant of the license shall not prevent the licensor from:

15 (i) Granting further licenses to other persons, or

16 (ii) himself exploiting the relevant patent or design;

17 (b) the license shall not be assignable by the licensee; and

18 (c) the licensee shall not be entitled to grant further licenses.

19 (5) Where a contract under subsection (1) of this Section provides for  
20 a licensee to grant further licenses, this section shall apply in relation to any  
21 such further license as it applies in relation to licenses granted under the said  
22 subsection (1).

23 (6) The Minister, if he is satisfied that it is in the interest of Nigeria and  
24 its economic development to do so, may by order in the Federal Gazette,  
25 provide that contracts under subsection (1) of this section (or any specified  
26 class thereof) shall, in so far as they involve the payment of royalties outside  
27 Nigeria, be invalid without the approval of such authority as may be specified  
28 in the order.

Assignments,  
transfers and  
joint ownership

29 159.-(1) Subject to this section, a person's rights in a patent  
30 application, in an application for the registration of a joint design, in a patent or

1 in a registered design may be assigned, transferred by succession or held in  
2 joint ownership.

3 (2) An assignment under subsection (1) of this section shall be in  
4 writing and signed by the parties.

5 (3) An assignment or transfer by succession under sub-section (1)  
6 of this section shall have no effect against third parties, unless it has been  
7 registered and the prescribed fee paid.

8 (4) In the absence of any provision to the contrary, joint owners of a  
9 patent or registered design may, separately transfer their shares, exploit the  
10 patented invention, utilize the registered design or exercise the rights  
11 conferred by section 113 or 117 of this Act, as the case may be; but a license  
12 under this act may not be granted by joint owners otherwise than jointly.

13 (5) Any reference (however expressed) in this Act to an applicant  
14 for a patent, an applicant for the registration of a design, the owner of a  
15 patent or design includes unless the context otherwise requires, a reference  
16 to any predecessor or successor in title and, where appropriate, to joint  
17 applicants, joint patentees or joint owners, as the case may be.

18 160.-(1) The rights of a patentee or design owner are infringed if  
19 another person, without the license of the patentee or design owner, does or  
20 causes the doing of any act which that other person is precluded from doing  
21 under section 113 or 117 of this Act, as the case may be.

22 (2) An infringement of the rights of a patentee or design owner  
23 shall be actionable at the suit of the patentee or design owner in question;  
24 and in any action for such an infringement, all such relief by way of  
25 damages, injunction, accounts or otherwise shall, be available to the  
26 plaintiff as is available in any corresponding proceedings in respect of the  
27 infringement of other proprietary rights.

28 (3) For the purposes of civil proceedings in respect of the  
29 infringement of the rights of the owner:

30 (a) if the subject matter of a patent is a process for obtaining a

1 product, the Court may order the defendant to prove that the process used to  
2 obtain an identical product is different from the patented process;

3 (b) any identical product when produced without the consent of the  
4 owner of the patent shall, in the absence of proof to the contrary, be deemed to  
5 have been obtained by the patented process in any of the following  
6 circumstances:

7 (i) if the product obtained by the patented process is new, or

8 (ii) If there is substantial likelihood that the identical product was  
9 made by the process and the owner of the patent has been unable through  
10 reasonable efforts to determine the process actually used.

11 (4) The grantee of a license under this Act from a patentee or design  
12 owner may, by registered letter, require the licensor to institute proceedings  
13 under subsection (1) of this section, in respect of any infringement indicated by  
14 the grantee in the letter; and, if the licensor unreasonably refuses or neglects to  
15 institute the proceedings, the licensee may institute them in his own name,  
16 without prejudice to the right of the licensor to intervene in the proceedings.

17 (5) In requiring the production of evidence, the Court before which  
18 the proceedings referred to in subsection (4) of this section are taking place  
19 shall take into account, the legitimate interests of the alleged infringer in not  
20 disclosing his manufacturing and business secrets.

Liability for  
infringement

21 **161.** A person who without the consent of the patentee:

22 (1) makes for sale or hire;

23 (2) imports into Nigeria; or

24 (3) processes in the course of business with a view to committing any  
25 act of infringement; or

26 (4) in the course of business:

27 (a) sells or lets for hire,

28 (b) offers or exposes for sale or hire,

29 (c) stocks for the purpose of sale or hire,

30 (d) exhibits in public, or

1 (e) distributes, any article or substance or method or process of  
 2 manufacture which is and which is an which he knows or has reason to  
 3 believe is protected by a grant of patent under this Part, commits an offence  
 4 and is liable, on conviction to a fine of at least N1,000,000.00 or treble  
 5 damages at the discretion of the Court.

6 **162.** A person who knowingly:

Counterfeiting

7 (1) counterfeits or imitates an article; or

8 (2) imports or exhibits for the purpose of sale any counterfeited or  
 9 imitated article; in respect of which a patent has been granted under this Part,  
 10 commits an offence and is liable on conviction to a fine of at least  
 11 N1,000,000.00 or treble damages at the discretion of the Court.

12 **163.** Where a person is charged with an offence under section 161  
 13 or 162, the Court may, if satisfied that at the time of his arrest or charge, he  
 14 had in his possession, custody or control:

Order for delivery  
 up in criminal  
 proceedings  
 under section  
 161 Or 162

15 (a) in the course of business an infringing copy of the invention:

16 (b) or any counterfeit or imitation of the invention, order that the  
 17 copy of the invention or the counterfeit or imitation of the invention be  
 18 delivered up to the patentee or to such other person as the Court may direct.

19 **164.** If any person makes or causes to be made, a false entry in the  
 20 Register of Patents, or a writing falsely purporting to be a copy of any entry  
 21 in such register, or produces or tenders, or causes to be produced or tendered  
 22 in evidence any such writing knowing the entry to be false, he commits an  
 23 offence and is liable, on conviction to a fine of at least N1,000,000.00 or  
 24 treble damages at the discretion of the Court.

Falsification of  
 register

25 **165.-(1)** If any person falsely represents that any article sold by  
 26 him is patented in Nigeria or is the subject of an application for a patent in  
 27 Nigeria, he commits an offence and is liable on conviction to a fine of at least  
 28 N1,000,000.00 or treble damages at the discretion of the Court.

29 (2) For the purposes of subsection (1) of this section, a person shall  
 30 be deemed to represent:

1 (a) that an article is patented in Nigeria, if there is stamped, engraved  
2 or impressed on, or otherwise applied to the article, the word "patent" or  
3 "patented" or some other word, expressing or implying that a patent for the  
4 article, has been obtained in Nigeria; or

5 (b) that an article is the subject of an application for a patent in  
6 Nigeria, if there are stamped, engraved or impressed on, or otherwise applied  
7 to, the article, the words "patent applied for," "patent pending," or some other  
8 words, implying that an application for a patent for that article has been made in  
9 Nigeria.

Legal proceedings

10 166.-(1) Jurisdiction to hear and dispose of legal proceedings under  
11 this Act is hereby vested in the Federal High Court and, the provisions of this  
12 Act applicable to legal proceedings under that Act shall apply with necessary  
13 modifications.

14 (2) The Court hearing proceedings under this Act may sit with and be  
15 advised by two assessors having expert knowledge of matters of a  
16 technological or economic nature.

17 (3) The Chief Judge of the Federal High Court may, make rules of  
18 Court for the regulation of legal proceedings, under this Act if he thinks it  
19 necessary to do so.

Foreign priority

20 167.-(1) The Commission with the approval of the Minister may, with  
21 a view to the fulfilment of a treaty, convention or other international  
22 arrangement or agreement to which Nigeria is a party, declare by order in the  
23 Federal Gazette that any country specified in the order is a convention country  
24 for the purposes of this section.

25 (2) So long as there is in force an order under subsection (1) of this  
26 section declaring a country to be a convention country, a patent application or a  
27 design application in Nigeria, if an earlier corresponding application for the  
28 protection of an invention or the registration of a design has been made in that  
29 convention country, shall be treated as having been made on the date when that  
30 earlier application was made.

1 (3) Subsection (2) of this section shall not apply where the earlier  
2 application was made;

3 (a) in the case of an invention, more than twelve months; or

4 (b) in the case of a design, more than six months, before the  
5 application in Nigeria.

6 (4) Where a person has applied for the protection of an invention or  
7 the registration of a design by an application which:

8 (a) in accordance with a treaty, convention or other international  
9 arrangement subsisting between any two or more convention countries is  
10 equivalent to an application duly made in anyone of those convention  
11 countries; or

12 (b) in accordance with the law of any convention country is  
13 equivalent to an application duly made in that convention country, he shall  
14 be deemed for the purposes of this Act to have applied in each of those  
15 convention countries or in that convention country, as the case may be.

16 (5) Where a patent application or a design application is to be  
17 treated by virtue of subsection (2) of this section as having been made on the  
18 date of an earlier application in a convention country, that earlier date is  
19 referred to in this Act as a foreign priority, and in this Act the express  
20 "foreign priority" shall be construed accordingly.

21 **168.-(1)** The Registrar-General may, correct any clerical error in an  
22 entry in the Register, but before doing so shall give the person to whom the  
23 entry relates, an opportunity to make representations.

Registration:  
Miscellaneous  
provisions

24 (2) Any person:

25 (a) may consult the Register free of charge during the prescribed  
26 hours; and

27 (b) on payment of the prescribed fee, may obtain a copy of any  
28 entry in the Register.

29 (3) A copy of an entry in the Register sealed with the Registrar-  
30 General's seal shall be admissible as evidence of what is stated therein; and

1 any document purporting to be such a copy shall be presumed, until the  
2 contrary is proved, to be what it purports to be.

3 (4) Any person aggrieved by a decision of the Registrar-General in the  
4 exercise of his functions under this Act may, appeal to the Court.

5 (5) The Registrar shall, publish a journal to be known as the Patents  
6 and Designs Journal, in which shall be published all such matters as are  
7 required by this Act to be published or notified and such other matters relating  
8 to patents and designs as the Registrar-General thinks fit.

9 (6) Subject to this Act and any rules made under section 134(b) of this  
10 Act, the Registrar-General shall maintain and make entries in the Registrar-  
11 General thinks fit.

12 (7) Any act or thing directed to be done by or to the Registrar-General  
13 may also be done by any officer in the office of the Registrar-General under the  
14 direction of the Registrar-General.

Effect against  
the state.  
First Schedule

15 **169.** Subject to Part II of the First Schedule to this Act, a patent or  
16 registered design shall have the same effect against the State as against an  
17 individual.

Rules

18 **170.-(1)** The Commission may make rules:

19 (a) prescribing anything requiring to be prescribed for the purposes of  
20 this Act, (including summary forms of notification of the grant of a patent and  
21 the registration of a design, and classifications of products to which designs  
22 relate);

23 (b) regulating the manner in which the Registrar-General shall  
24 maintain and make entries in the Register; and

25 (c) containing such administrative or procedural provisions as appear  
26 to him to be necessary or expedient in order to facilitate the operation of this  
27 Act.

28 (d) establishing qualifications and procedures for substantive  
29 examination of applications for patents, designs, etc. as required by this Act.

30 (2) The Minister of Industry with the approval of the Federal

1 Executive Council may make rules establishing schemes to encourage  
2 inventive activity; and, without prejudice to the generality of the foregoing,  
3 any such scheme may include provision for the payment of grants to persons  
4 who have discovered or perfected, or appear to have reasonable prospects of  
5 discovering or perfecting, important inventions which cannot be further  
6 developed for financial reasons.

7 PART D

8 171.-(1) There is established a Plant Varieties, Animal Breeders and  
9 Farmers Rights Registry (in this Act referred to as "the Plant and Breeders  
10 Registry").

11 (2) The Registry shall be headed by the Registrar of Plant Varieties,  
12 Animal Breeders and Farmers Rights (Plant and Breeders Registrar) who  
13 shall be appointed by the Registrar-General.

14 (3) The Plant and Breeders Registrar shall have an official seal  
15 which shall be officially and judicially noticed.

16 (4) Any act or thing directed to be done by or to the Plant and  
17 Breeders Registrar may, be done by or to any other officer in the public  
18 service of the Federation appointed by the Commission.

19 (5) There may be appointed one or more Deputy Registrars and one  
20 or more Assistant Registrars who shall, subject to the control of the Registrar  
21 have all the powers conferred by this Act on the Registrar-General, and the  
22 most senior of whom shall whenever the Plant and Breeders Registrar is for  
23 any reason unable to perform his duty, act temporarily in his stead.

24 172.-(1) For the purposes of this Act, there shall be a register to be  
25 known as the Register of Plant Varieties, Animal Breeders and Farmers  
26 Rights (in this Act referred to as "the Register") which shall be kept at the  
27 Registry, in which shall be entered particulars required by this Act for  
28 registration.

29 (2) The register shall at all convenient times be open to the  
30 inspection of the public, subject to such rules as may be prescribed.

1           173.-(1) For the purposes of breeders rights, the register shall inter  
2   alia contain the following:

- 3           (a) the description of the plant variety or animal breed;  
4           (b) the denomination of the variety or breed;  
5           (c) the name of the variety or breed;  
6           (d) the name and address of the breeder;  
7           (e) the date on which the breeders right was granted;  
8           (f) the right of such breeders in respect of the variety or breed; and  
9           (g) such other matters as may be prescribed.

10          (2) For the purposes of the protection of farmers right, the register  
11 shall contain:

- 12          (a) a variety or breed with specific attributes identified by a farmer or  
13 community and may not have to meet the criteria for distinction, uniformity  
14 and stability;  
15          (b) description of the community or locality in the country in relation  
16 to the development of the new variety or breed.

Application for  
Registration

17          174.-(1) A person may take an application to the Registrar for the  
18 registration of any plant variety or animal breed:

- 19          (a) of such genera and species as may be classified by regulations;  
20          (b) which is an extant variety; or  
21          (c) which is a farmers variety.

Registrable  
varieties or breeds

22          175.-(1) Subject to the provisions of subsection (2) of section 173 of  
23 this Act, a new variety or breed shall be registered under this Act if, it conforms  
24 to the criteria of distinctiveness, uniformity and stability.

25          (2) Notwithstanding anything contained in subsection (1) of this  
26 section, an extant variety or breed shall be registered under this Act within a  
27 specified period, if it conforms to such criteria of distinctiveness, uniformity  
28 and stability as shall be specified by regulations made by the Commission  
29 under this Act.

1 (3) For the purposes of subsection (1) of this section, a variety shall  
2 be deemed to be:

3 (a) distinct, if it is clearly distinguishable by at least one or more  
4 identifiable characteristics from any other plant variety and animal breed,  
5 whose existence is a matter of common knowledge at the time of filing the  
6 application;

7 (b) uniform, if subject to the variation that may be expected from  
8 the particular features of its propagation, it is sufficiently uniform in its  
9 essential characteristics;

10 (c) stable, if its essential characteristics remain unchanged after  
11 propagation or, in the case of a particular cycle of propagation, at the end of  
12 each cycle.

13 **176.-(1)** A new variety or breed shall not be registered under this  
14 Act, if the denomination given to such a variety or breed:

Refusal to register  
new variety or  
breed

15 (a) is not capable of identifying such variety or breed;

16 (b) consists solely of figures;

17 (c) is liable to mislead or to cause confusion concerning the  
18 characteristics, value or identity of the variety or breed or the identity of the  
19 breeder of such variety or breed;

20 (d) is not different from every denomination which designates a  
21 variety or breed of the same botanical species or of a closely related species  
22 registered under this Act;

23 (e) is likely to deceive the public or cause confusion in the public  
24 regarding the identity of such variety or breed;

25 (f) is likely to hurt the religious sentiments of any class or section of  
26 the citizens of Nigeria; or

27 (g) is comprised solely or partly of a geographical name.

28 **177.-(1)** An application for registration under this Act may be made  
29 by:

Persons who  
may make  
application

30 (a) a person claiming to be the breeder of the variety or breed: or

1 (b) a successor of the breeder of the variety or breed;

2 (c) a person being the assignee of the breeder of the variety or breed in  
3 respect of the right to make the application;

4 (d) any farmer or group of farmers or community of farmers claiming  
5 to be the breeder of the variety;

6 (e) any person authorized in the prescribed manner by a person  
7 specified under clause (a) to (d) to make application on his behalf; or

8 (f) any university or publicly funded institution claiming to be the  
9 breeder of the variety or breed.

10 (2) An application under subsection (1) of this section may, be made  
11 by any of the persons referred to in the application, individually or jointly with  
12 any other person.

Compulsory  
Plant Variety  
denomination

13 178.-(1) Every applicant shall, assign a single and distinct  
14 denomination to a variety or breed with respect to which he is seeking  
15 registration under this Act, in accordance with the regulations.

16 (2) The Commission shall, having regard to the provisions of any  
17 international convention or treaty to which Nigeria has become a party, make  
18 regulations governing the assignment of denomination to a plant variety or  
19 breed.

20 (3) Where the denomination assigned to the variety does not satisfy  
21 the requirements specified in the regulations, the Registrar-General may  
22 require the applicant to propose another denomination

23 (4) Notwithstanding anything contained in Part B of this Act, c  
24 denomination assigned to a variety shall not be registered as trademark under  
25 Part B of this Act.

Form of  
application

26 179.-(1) Every application for registration under section 175 of this  
27 Act shall:

28 (a) be with respect to a variety or breed;

29 (b) state the denomination assigned to the variety or breed by the  
30 applicant:

1 (c) be accompanied by an affidavit sworn to by the applicant that  
2 the variety does not contain any genetic use restriction technology;

3 (d) be in such form as may be specified by regulation;

4 (e) contain a complete passport data of the parental lines from  
5 which the variety has been derived, along with the geographical location  
6 from where the genetic material has been taken and all such information  
7 relating to the contribution, if any, of any farmer, village, community,  
8 institution or organization in breeding, evolution or developing the variety  
9 or breed;

10 (f) be accompanied by a statement containing a brief description of  
11 the variety, bringing out its characteristics of distinctiveness, uniformity and  
12 stability as required for registration;

13 (g) be accompanied by such fees as may be prescribed;

14 (h) contain a declaration that the genetic material or parental  
15 material acquired for the breeding, evolving or developing the variety, has  
16 been lawfully acquired; and

17 (i) be accompanied by such other particulars as may be prescribed.

18 (2) Where the application is for the registration of farmers' variety,  
19 nothing contained in paragraphs (b) to (i) of subsection (1) of this section  
20 shall apply in respect of the application and the application shall be in such  
21 form as may be prescribed.

22 (3) Every application referred to in subsection (1) of this section  
23 shall be filed in the office of the Registrar.

24 (4) Where an application is made by virtue of a succession or an  
25 assignment of the right to apply for registration, there shall be furnished at  
26 the time of making the application, or within such period after making the  
27 application as may be prescribed, proof of the right to make the application.

28 **180.-(1)** Every applicant shall, along with the application for  
29 registration under this Act, make available to the Registrar-General or such  
30 other centre as the Registrar-General may designate, such quantities of a

1 variety or breed as sample for which application for registration is made.

2 (2) Upon the receipt of an application for registration, the Registrar  
3 shall, as soon as may be possible, forward the application together with the  
4 sample to the National Crop Varieties and Livestock Breeds Registration and  
5 Release Committee, or such other verification entity, for the purpose of  
6 conducting tests to evaluate whether such variety along with parental material,  
7 conform to the standards specified by regulations made under this Act.

8 (3) The Registrar-General or any person to whom or test centre to  
9 which such sample has been sent for conducting test shall, keep the sample  
10 during his or its possession in such manner and in such condition that its  
11 viability and quality shall remain unaltered.

12 (4) The applicant shall deposit such fee as may be prescribed for  
13 conducting the tests referred to in subsection (2) of this section.

14 (5) The tests under subsection (2) of this section shall be conducted in  
15 such manner and by such method, as may be prescribed by Regulations under  
16 this Act.

Acceptance of  
application or  
amendment  
thereof

17 **181.**-(1) The Registrar may, after considering the report of the  
18 National Crops Varieties and Livestock Breeds Registration and Release  
19 Committee or other relevant body and making such inquiry as he thinks fit with  
20 respect to the particulars contained in the application, accept the application  
21 absolutely or subject to such condition or limitations as he deems fit.

22 (2) Where the Registrar is satisfied that the application does not  
23 comply with the requirements of this Act or any rules or regulations made  
24 under this Act, he may:

25 (a) require the applicant to amend the application to his satisfaction;

26 (b) reject the application.

27 (3) No application under this section shall be rejected unless the  
28 applicant has been given a reasonable opportunity of presenting hi case.

Advertisement  
of application

29 **182.** Where an application for registration of a variety or breed has  
30 been accepted absolutely or subject to conditions or limitations und subsection

1 (1) of section 181, the Registrar shall, as soon as possible after its  
2 acceptance, cause the application together with the conditions of  
3 limitations, if any, subject to which it was accepted and the specifications of  
4 the variety or breed for registration of which such applications made  
5 including its photographs or drawings, to be advertised in the prescribed  
6 manner, calling for objections from persons interested in the matter.

7 **183.**-(1) Any person may, within three months from the date of the  
8 advertisement of an application for registration and on payment of the  
9 prescribed fee, give notice, in writing in the prescribed manner to the  
10 Registrar-General, of his opposition to the registration.

Opposition to  
registration of  
breeders rights

11 (2) An opposition to the registration of breeders rights under  
12 subsection (1) of this section may, be made on the following grounds; that  
13 the:

14 (a) person opposing the application is entitled to the breeder's right  
15 as against the applicant; or

16 (b) variety or breed is not registrable under this Act;

17 (c) grant of certificate of registration may not be in public interest;

18 (d) variety may have adverse effect on the environment.

19 (3) The Registrar-General shall serve a copy of the notice of  
20 opposition on the applicant for registration and, within three (3) months  
21 from the receipt by the applicant of the notice of opposition, the applicant  
22 shall send to the Registrar in the prescribed manner, a counter-statement  
23 containing the grounds on which he relies for his application, and if he does  
24 not do so, he shall be deemed to have abandoned his application.

25 (4) If the applicant sends the counter-statement, the Registrar-  
26 General shall serve a copy of the counter statement to the person who gave  
27 the notice of opposition.

28 (5) Any evidence upon which the opponent and the applicant may  
29 rely shall be submitted, in the manner and within the time prescribed, to the  
30 Registrar-General and the Registrar-General shall give an opportunity to

1 them to be heard, if they so desire.

2 (6) The Registrar-General shall, after hearing the parties, if so  
3 required, and considering the evidence, decide whether and subject to what  
4 conditions or limitations, if any, the registration is to be permitted.

5 (7) Where a person who gave a notice of opposition or the applicant  
6 who sent a counter statement after the receipt of a copy of the notice does not  
7 reside or carry on business in Nigeria, the Registrar-General may require him  
8 to give security for the cost of proceedings before him and in default of such  
9 security being duly given, treat the opposition or application, as the case may  
10 be, as abandoned.

11 (8) The Registrar-General may, on request, permit the correction of  
12 any error in, or any amendment of a notice of opposition or a counter statement  
13 on such terms as he may think fit.

Registered to  
consider grounds  
of opposition

14 **184.-(1)** The Registrar shall, consider all the grounds on which the  
15 application has been opposed and after giving reasons for his decision by order,  
16 uphold or reject the opposition.

17 (2) The decision of the Registrar under subsection (1) of this section  
18 shall be in writing.

Duration of  
Breeders Rights

19 **185.-(1)** Subject to the provisions of this Act, breeders rights in  
20 respect of a plant variety (annual crops) or an animal breed shall be for a period  
21 of 10 years and in the case of trees, vines and other perennials, 15 years,  
22 commencing on the day on which the successful application for breeders rights  
23 was accepted.

24 (2) On the registration of the variety or breed, the Registrar-General  
25 shall, issue to the applicant, a certificate of registration I sealed in the seal of the  
26 Registry.

27 (3) Where registration of a variety or breed is not completed within  
28 twelve months from the date of the application by reason of default on the part  
29 of the applicant, the Registrar may after giving notice to the applicant in the  
30 prescribed manner, treat the application as abandoned, unless, it is completed

1 within the time specified in the notice.

2 (4) The Registrar may, amend the Register or a certificate of  
3 registration, for the purpose of correcting a clerical error or an obvious  
4 mistake.

5 186. Subject to the provisions of this Act, a certificate of  
6 registration for a variety issued under this Act shall, confer an exclusive  
7 right on the breeder or his successor, his agent or licensee, to produce, sell,  
8 market, distribute, import or export the variety or breed.

Rights conferred  
by Registration

9 187.-(1) A breeder may, authorize any person to produce, sell,  
10 market or otherwise deal with a variety or breed registered under this Act,  
11 subject to, such limitations and conditions as may be specified in the  
12 regulations.

Breeder may  
appoint agent or  
licensee

13 (2) Every authorization given under this section shall, be in such  
14 form as may be specified by the regulations.

15 (3) Where an agent or licensee referred to in subsection (1) of this  
16 section becomes entitled to produce, sell, market, distribute, import or  
17 export a variety or breed, he shall apply in the prescribed manner and with  
18 the prescribed fee to the Registrar-General, to register his title or interest and  
19 the Registrar-General shall, on receipt of application and on proof of title to  
20 his satisfaction, register him as an agent or a licensee, as the case may be, in  
21 respect of the variety or breed for which he is entitled to such right, and shall  
22 cause particulars of such entitlement and conditions or restrictions, if any,  
23 subject to which entitlement is made, to be entered in the Register.

24 188. In this Act, unless the context otherwise requires, the  
25 following expressions have the meanings assigned:

Interpretation

26 (a) "Assignment: means assignment by act of the parties  
27 concerned;

28 (b) "collective mark" means a mark used or proposed to be used in  
29 the course of trade or business for the purpose of distinguishing the goods or  
30 services of the members of a particular association, cooperative, union or

1 other collective groups from goods or services of other persons;

2 (c) "Commission" means the Industrial Property Commission of  
3 Nigeria established by Section of the Industrial Property Commission of  
4 Nigeria Act of 2010;

5 (d) "Court" means the Federal High Court;

6 (e) "Journal" in Part B means the Trademark Journal published for  
7 Trademarks; in Part C means Patent and Design Journal published for Patents  
8 and Designs;

9 (f) "Limitations" means any limitations of the exclusive right to the  
10 use of a trademark given by the registration of a person as owner thereof,  
11 including limitations of that right as to manner of use, as to use in relation to  
12 goods to be sold or otherwise traded in any place in Nigeria, or as to use in  
13 relation to goods to be exported to any market outside Nigeria;

14 (g) "Mark" includes a device, brand, heading, label, ticket, name,  
15 signature, word, letter, numeral, or any combination thereof;

16 (h) "Minister" means the Federal Minister charged with responsibility  
17 for Commerce;

18 (i) "Permitted Use" has the meaning assigned by Section of this Act;

19 (j) "Person concerned" in relation to any matter, does not include the  
20 Registrar, Registrar-General, or designees;

21 (k) "Prescribed" means in relation to proceeding before the Court,  
22 prescribed by the rules of Court, and in other cases, prescribed by this Act or the  
23 Regulations;

24 (l) "Register" shall mean the register of Trademarks for Trademarks;  
25 Register of Patents and Designs for Patents and Designs;

26 (m) "Registered Trademark" means a trademark that is actually on the  
27 register;

28 (n) "trade name" means the name or designation identifying and  
29 distinguishing an enterprise;

30 (o) "registered user" means a person who is for the time being

1 registered as such under the Act;

2 (p) "Registrar" means the Registrar of Trademarks, of Patents and  
3 Designs, of Plant Varieties and Animal Breeds in Parts B, C, and D  
4 respectively;

5 (q) "Regulations" means regulations made by the Minister under  
6 the Act;

7 (r) "Service mark" means a mark used or proposed to be used in the  
8 course of business for the purpose of distinguishing the services provided by  
9 one enterprise, from the service of other enterprises;

10 (s) "trademark" means, except in relation to a certification  
11 trademark, a mark used or proposed to be used in relation to goods or  
12 services for the purpose of indicating, or so as to indicate, a connection in the  
13 course of trade between the goods and some person having the right either as  
14 owner or as registered user to use the mark, whether with or without any  
15 indication of the identity of that person, and means, in relation to a  
16 certification trademark, a mark registered or deemed to have been registered  
17 under this Act;

18 (t) "transfer" means transfer by operation of law, devolution on the  
19 personal representative of a deceased person, and any other mode of transfer  
20 not including assignment;

21 189. This Bill may be cited as the Industrial Property Commission Short Title  
22 Bill, 2016.

#### EXPLANATORY MEMORANDUM

This Bill seeks to provide for the establishment of the Industrial Property Commission of Nigeria, Repeal of Trademarks Act Cap 436, LFN 1990 and Patents and Designs Act. Cap 344, LFTN 1990 and make comprehensive provisions for the registration and protection of Trademarks, Patents And Designs, Plant Varieties. Animal Breeders and Farmers right.

