

A BILL

FOR

AN ACT TO REPEAL THE MERCHANDISE MARKS ACT, CAP. M10, LFN 2004,
AMEND THE TRADE MARKS ACT, CAP. T13, LFN 2004 AND MAKE NEW
PROVISIONS WITH RESPECT TO TRADE MARKS IN PLACE THEREOF AND FOR
RELATED MATTERS

Sponsored by Hon. Onawo Mohammed Ogoshi

[] Commencement

ENACTED by the National Assembly of the Federal Republic of
Nigeria-

1 1. The Trade Marks Act, Cap. T13 LFN, 2004 (here-in-after
2 referred to as "the Principal Act") is hereby amended as set out in this Act.

Amendment of
Cap. T13 LFN,
2004

3 Amendment of the Arrangement of Sections. Amendment of Sections 4, 8,
4 37 and 42; insertion of new section 16A Geographical indications of origin;
5 insertion of new section 43A, collective marks; and Insertion of new
6 sections 61 A-P. offences, penalties, procedure and restraint of use of Arms
7 of Nigeria, etc.

8 2. The Arrangement of sections of the Principal Act is amended
9 by-

Amendment of
arrangement of
sections

10 (i) inserting immediately after the words "goods" in sections 4, 8,
11 37 and 42, the words "or services", that is:

12 "4. Registration to be in respect of particular goods or services;

13 8. Saving for use of name, address or description of goods or
14 services;

15 37. Use of trade mark in relation to goods or services for export;

16 and

17 42. Adaptation of register to revised classification of goods or
18 services".

19 (ii) inserting immediately after section 16, the following new

1 section 16A, that is: "Geographical indications of origin 16A. Geographical
2 indications of origin"

3 (iii) inserting immediately after section 43, the following new section
4 43A, that is:

5 "collective marks.

6 43A. Collective marks"

7 (iv) deleting the words "offences and restraint of use of Arms of
8 Nigeria, etc" immediately before section 60 and substituting therefore the
9 following new words, that is:

10 "Offences, penalties, procedure and restraint of use of Arms of
11 Nigeria, etc."

12 (v) Inserting immediately after section 61 the following new sections.
13 that is:

14 "61A. Offences as to trade marks and trade descriptions.

15 61B. Forging Trade Mark.

16 61C Applying mark or description.

17 61D Exemption of certain persons employed in ordinary course of
18 business.

19 61E Application of Act to Watches

20 61F Description of trade mark in pleading

21 61G. Rules as to evidence

22 61H Punishment of accessories.

23 61I Issue of and proceedings on search warrant.

24 61J Cost of defence or prosecution.

25 61K Limitation of prosecution

26 61L Prohibition of importation of goods or services liable to
27 forfeiture under this Act.

28 61M Provisions of the Act as to false description not to apply in
29 certain cases.

1	61N. Implied warranty on sale or provision of marked goods or	
2	services	
3	61O. Savings.	
4	61P False representation as to warrant.	
5	3. Section 3 of the Principal Act is amended by inserting the words	Amendment of
6	"or services" immediately after the words "goods", that is -	Section 3
7	"3. No person shall be entitled to institute any proceeding to	Effect of non-
8	prevent or to recover damages for, the infringement of an unregistered trade	registration
9	mark; but nothing in this Act shall be taken to affect rights of action against	
10	any person for passing off goods or services as the goods or services of	
11	another person or the remedies in respect thereof."	
12	4. Section 4 of the Principal Act is amended by inserting the words	Amendment of
13	"or services" immediately after the words "goods", that is -	Section 4
14	"4. Registration to be in respect of particular goods or services.	Registration to
15	A trade mark must be registered in respect of particular goods or services or	be in respect of
16	classes of goods or services and any question arising as to the class within	particular goods
17	which any goods fall shall be determined by the Registrar, whose decision	
18	shall be final."	
19	5. Section 5 (1) and (2) of the Principal Act is amended by	Amendment of
20	inserting the words "or services" immediately after the word "goods", that	Section 5(1)-(2)
21	is -	
22	"5. (1) Subject to the provisions of this section and of sections 7	Right given by
23	and 8 of this Act, the registration (whether before or after the	registration in
24	commencement of this Act) of a person in Part A of the register as proprietor	Part A
25	of a trade mark (other than a certification trade mark) in respect of any goods	
26	or services shall, if valid, give or be deemed to have given to that person the	
27	exclusive right to the use of that trade mark in relation to those goods or	
28	services.	
29	(2) Without prejudice to the generality of the right to the use of a	
30	trade mark given by such registration as aforesaid, that right shall be deemed	

1 to be infringed by any person who not being the proprietor of the trade mark or
2 a registered user thereof, using it by way of the permitted use, uses a mark
3 identical with it or so nearly resembling it as to be likely to deceive or cause
4 confusion, in the course of trade, in relation to any goods or services in respect
5 of which it is registered, and in such manner as to render the use of the mark
6 likely to be taken either -

7 (a) as being used as a trade mark; or

8 (b) in a case in which the use is use upon the goods or services or in
9 physical relation thereto or in an advertising circular or other advertisement
10 issues to the public, as importing a reference to some person having the right
11 either as proprietor or as registered user to use the trade mark or to goods or
12 services with which such a person as aforesaid is connected in the course of
13 trade."

Amendment of
section 6

14 6. Section 6 (1) and (2) of the Principal Act is amended by inserting
15 the words "or services" immediately after the word "goods", that is -

Right given by
registration Part B

16 "6. (1) Except as provided by subsection (2) of this section, the
17 registration (whether before or after the commencement of this Act) of a person
18 in Part B of the register as proprietor of a trade mark in respect of any goods or
19 services, shall if valid, give or be deemed to have given to that person the like
20 right in relation to those goods or services as if the registration had been in Part
21 A of the register, and section 5(2) to 4 of this Act shall apply in relation to a trade
22 mark registered in Part B accordingly.

23 (2) In any action for infringement of the right to the use of a trade mark
24 given by such registration as aforesaid in Part B of the register, no injunction or
25 other relief shall be granted to the plaintiff if the defendant establishes to the
26 satisfaction of the court that the use of which the plaintiff complains is not
27 likely to deceive or cause confusion or to lead to the belief in connection in the
28 course of trade between the goods or services and some person entitled either as
29 proprietor or as a registered user to use the trade mark."

1	7. Section 7 of the Principal Act is amended by inserting the words	Amendment of Section 7
2	"or services" immediately after the words "goods", that is -	
3	"7. Nothing in this Act shall entitle the proprietor or a registered	Saving for vested rights
4	user of a registered trade mark to interfere with or restrain the use by any	
5	person of a trade mark identical with or nearly resembling it in relation to	
6	goods or services in relation to which that person or a predecessor in title of	
7	his has continuously used that trade mark from a date previous to - (a)	
8	the use of the first-mentioned trade mark in relation to those goods or	
9	services by the proprietor or a predecessor in title of his; or	
10	(b) the registration of the first-mentioned trade mark in respect of	
11	those goods or services in the name of the proprietor or a predecessor in title	
12	of his, whichever first occurred, or (where such use is proved) to object to	
13	that person being put on the register for that identical or nearly resembling	
14	trade mark in respect of those goods or services under section 13 (2) of this	
15	Act."	
16	8. Section 8 (b) of the Principal Act is amended by inserting the	Amendment of Section 8 (b)
17	words "or services immediately after the words "goods" that is -	
18	"8. Saving for use of name, address or description of goods or	Saving for use of name, address or description of goods
19	services;	
20	(c) the use by any person of any bona fide description of the	
21	character or quality of is goods or services, not being a description that	
22	would be likely to be taken as importing any such reference as is mentioned	
23	in section 5 (2) (b) or 43 (4) (b) of this Act."	
24	<i>Registrability and validity of registration</i>	
25	9. Section 9 (2) of the Principal Act is amended by inserting the	Amendment of Section 9 (2)
26	words "or services" immediately after the words "goods", that is -	
27	"9. (2) For the purposes of this section, "distinctive" means	Distinctiveness needed for registration in Part A
28	adapted, in relation to the goods in respect of which a trade mark is	
29	registered or proposed to be registered, to distinguish goods or services with	
30	which the proprietor of the trade mark is or may be connected in the course	

1 of trade, from goods or services in the case of which no such connection
2 subsists, either generally or where the trade mark is registered or proposed to
3 be registered subject to limitations, in relation to use within the extent of the
4 registration".

Amendment of
Section 10 (1)

5 **10.** Section 10 (1) of the Principal Act is amended by inserting the
6 words "or services" immediately after the words "goods", that is -

Capability of
distinguishing
trade mark needed
for registration in
Part B

7 "10. (1) In order for a trade mark to be registrable in Part B of the
8 register, it must be capable, in relation to the goods or services in respect of
9 which it is registered or proposed to be registered, of distinguishing goods or
10 services with which the proprietor of the trade mark is or may be connected in
11 the course of trade from goods or services in the case of which no such
12 connection subsists, either generally or, where the trade mark is registered or
13 proposed to be registered subject to limitations, in relation to use with the
14 extent of the registration."

Amendment of
Section 13

15 **11.** Section 13 of the Principal Act is amended by inserting the words
16 "or services" immediately after the word "goods", that is -

Identical and
resembling trade
mark not to be
registered

17 "13. (1) Subject to the provisions of subsection (2) of this section, no
18 trade mark shall be registered in respect of any goods or services or description
19 of goods or services that is identical with a trade mark belonging to a different
20 proprietor and already on the register in respect of the same goods or services or
21 description of goods or services, or that so nearly resembles such a trade mark
22 as to be likely to deceive or cause confusion

23 (2) In case of honest concurrent use or other special circumstances
24 which, in the opinion of the court or the Registrar, make it proper so to do, the
25 court or the Registrar may permit the registration of trade marks that are
26 identical or nearly resemble each other in respect of the same goods or services
27 or description of goods or services by more than one proprietor subject to such
28 conditions and limitations, if any, as the court or the Registrar, as the case may
29 be, may think it right to impose.

30 (3) Where separate applications are made by different persons to be

1 registered in respect of the same good or services or description of goods or
 2 services as proprietors respectively of trade marks that are identical or
 3 nearly resemble each other, the Registrar may refuse to register any of them
 4 until their rights have been determined by the court or have been settled by
 5 agreement in a manner approved -

6 (a) by the Registrar; or

7 (b) by the court on an appeal from the Registrar."

8 **12.** The Principal Act is amended by inserting immediately after
 9 the existing section 16, the following new section 16A that is:

Amendment of
Section 16A

10 "Geographical indication;

11 16A. Geographical indications:

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

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

20 (3) The Registrar shall on the request of the registered proprietor
 21 of the trademark, refuse or invalidate the registration of a trademark which
 22 contains or consists of in his opinion, a geographical indication with respect
 23 to any good not originating in the territory indicated and is intended to
 24 mislead as to the true place of origin"

25 **13.** Section 25 (1) (a) of the Principal Act is amended by inserting
 26 the words "or services immediately after the words "goods", that is -

Amendment of
Section 25(1)(a)

27 "25 (1) Where a person, claiming to be the proprietor or several
 28 trade marks in respect of the same goods or services or description of goods
 29 or services, which, while resembling each other in the material particulars
 30 thereof, yet differ in respect of-

Registration of
resembling trade
marks as a series

1 (a) statements of the goods or services in relation to which they are
2 respectively used or proposed to be used; or"

Amendment of
Section 26 (2)-(4)

3 14. Section 26 (2), (3) and (4) of the Principal Act is amended by
4 inserting the words " or services" immediately after the words "goods" that is -

Assignability of
trade marks

5 "26. (2) A registered trade mark shall after the commencement of this
6 Act be assignable and transmissible in respect either of all the goods or services
7 in respect of which it is registered or was registered, as the case may be, or of
8 some (but not all) of those goods or services.

9 (3) Subsections (1) and (2) of this section shall apply in regard to an
10 unregistered trade mark used in relation to any goods or services as they apply
11 in regard to a registered trade mark registered in respect of goods or services, if-

12 (c) It is so assigned or transmitted in respect of goods or services all of
13 which are goods or services -

14 (i) in relation to which the unregistered trade mark is used in that
15 business; and

16 (ii) in respect of which the registered trade mark is assigned or
17 transmitted.

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

Amendment of
Section 27 (1)-(2)

24 15. Section 27 (1) and (2) of the Principal Act is amended by inserting
25 the words "or services" immediately after the words "goods", that is -

Power of Registrar
to require, or
dissolve, association
of trade mark

26 "27 (1) Where a trade mark that is registered, or is the subject of an
27 application for registration, in respect of any goods is identical with another
28 trade mark that is registered, or is the subject of an application for registration,
29 in the name of the same proprietor in respect of the same goods or services or
30 description of goods or services or so nearly resembles it as to be likely to

1 deceive or cause confusion if used by a person other than the proprietor, the
 2 Registrar may at any time require that the trade marks shall be entered on the
 3 register as associated trade marks.

4 (2) On application made in the prescribed manner by the registered
 5 proprietor of two or more trade marks registered as associated trade marks,
 6 the Registrar may dissolve the association as respect any of them if he is
 7 satisfied that there would be no likelihood of deception or confusion being
 8 caused if that trade mark were used by another person in relation to any of
 9 the goods or services in respect of which it is registered, and may amend the
 10 register accordingly."

11 16. Section 30 (1) of the Principal Act is amended by inserting the
 12 words "or services" immediately after the word "goods", that is -

Amendment of
 Section 30 (1)

13 "30.(1) Where a person becomes entitled by assignment or
 14 transmission to a registered trade mark, he shall make application to the
 15 Registrar to register his title, and the Registrar shall, on receipt of the
 16 application and on proof of title to his satisfaction, register him as the
 17 proprietor of the trade mark in respect of the goods or services in respect of
 18 which the assignment or transmission has effect, and shall cause particulars
 19 of the assignment or transmission to be entered on the register."

Registration of
 assignments, etc.

20 *Use and non-use*

21 17. Section 31 of the Principal Act is amended by inserting the
 22 words "or services" immediately after the words "goods", that is -

Amendment of
 section 31

23 "31. (1) Subject to this and the next following section, a registered
 24 trade mark may be taken off the register in respect of any of the goods or
 25 services in respect of which it is registered on application made by any
 26 person concerned to the court or at the option of the applicant and subject to
 27 section 56 of this Act, to the Registrar, on either of the grounds set out in
 28 subsection (2) of this section.

Removal from
 register on ground
 of non-use

29 (2) The said grounds are-

30 (a) that the trade mark was registered without any bona fide

1 intention on the part of the applicant for registration that it should be used in
2 relation to those goods or services by him, and that there has in fact been no
3 bonafide use of the trade mark in relation to those goods or services by any
4 proprietor thereof for the time being up to the date one month before the date of
5 the application; or

6 (b) that up to the date one month before the date of the application a
7 continuous period of five years or longer elapsed during which the trade mark
8 was a registered trade mark and during which there was no bonafide use thereof
9 in relation to those goods or services by any proprietor thereof for the time
10 being.

11 (3) The tribunal may refuse an application made under this section on
12 either of the said grounds if it is shown that before the relevant date or during
13 the relevant period, as the case may be, there has been bona fide use of the trade
14 mark, by any proprietor for the time being thereof, in relation to goods or
15 services of the same description as the goods or services to which the
16 application relates, being goods or services in respect of which the trade mark
17 is registered:

18 Provided that where on any such application it is shown as aforesaid the
19 tribunal shall not refuse the application-

20 (a) if the applicant has been permitted under section 13 (2) of this Act
21 to register an identical or nearly resembling trade mark in respect of the goods
22 or services in question; or

23 (b) if the tribunal is of opinion that the applicant might properly be
24 permitted to register such a trade mark

25 (4) An applicant shall not be entitled to rely for the purposes of
26 subsection (2) (b) of this section, on any non-use of a trade mark that is shown
27 to be been due to special circumstances in the trade and not to any intention not
28 to use or to abandon the trade mark in relation to the goods or services to which
29 the application relates.”

1 **18.** Section 32 (1), (2) and (4) of the Principal Act is amended by
2 inserting the words "or services" immediately after the words "goods", that
3 is -

Amendment of
Section 32

4 "32. (1) Where a trade mark consisting of an invented word or
5 invented words has, as respects any goods in respect of which it is registered
6 and in relation to which it has been used (in this subsection referred to as "the
7 familiar goods or services"), become so well known that its use in relation to
8 other goods or services would be likely to be taken as indicating a
9 connection in the course of trade between those goods or services and a
10 person entitled to use the trade mark in relation to the familiar goods or
11 services, the trade mark may, on the application in the prescribed manner of
12 the proprietor registered in respect of the familiar goods or services be
13 registered in his name in respect of those other goods or services, as a
14 defensive trade mark, notwithstanding that the proprietor registered in
15 respect of the familiar goods or services does not use or propose to use the
16 trade mark in relation to those other goods or services and notwithstanding
17 anything in section 31 of this Act; and while so registered, the trade mark
18 shall not be liable to be taken off the register in respect of those goods or
19 services under section 31 of this Act.

Defence
registration of
well-known
invented words

20 (2) The registered proprietor of a trade mark-

21 (a) may apply for its registration in respect of any goods or services
22 as a defensive trade mark notwithstanding that it is already registered in his
23 name in respect of those goods or services otherwise than as a defensive
24 trade mark; or

25 (b) may apply for its registration in respect of any goods or services
26 otherwise than as a defensive trade mark notwithstanding that it is already
27 registered in his name in respect of those goods or services as a defensive
28 trade mark, in place, in either case, of the existing registration.

29 (4) On application by any person concerned to the court or, at the
30 option of the applicant and subject to section 56 of this Act, to the Registrar,

1 the re
 2 (a) may be cancelled on the ground that the requirements of
 3 subsection (1) of this section are no longer satisfied in respect of any goods or
 4 services in respect of which the trade mark is registered in the name of the same
 5 proprietor or otherwise than as a defensive trade mark; or
 6 (b) may be cancelled as respects any goods or services in respect of
 7 which it is registered as a defensive trade mark on the ground that there is no
 8 longer any likelihood that the use of the trade mark in relation to those goods or
 9 services would be taken as giving the indication mentioned in the said
 10 subsection (1)."

Amendment of
 Section 33 (1)-(2)

11 **19.** Section 33 (1) and (2) of the Principal Act is amended by inserting
 12 the words "or services" immediately after the words "goods", that is -

Registered users

13 "33.(1) Subject to the provisions of this and the next following
 14 section, a person other than the proprietor of a trade mark may be registered as a
 15 registered user thereof in respect of all or any of the goods or services in respect
 16 of which it is registered (otherwise than as a defensive trade mark) and either
 17 with or without conditions or restrictions.

18 (2) The use of a trade mark by a registered user thereof in relation to
 19 goods or services" -

Amendment of
 Section 34

20 **20.** Section 34 (1) (b) and (c), (2), (5) (a) and 7 of the principal Act is
 21 amended by inserting the words "or services" immediately after the words
 22 "goods" that is-

Provisions
 supplementary
 to section 33

23 "34 (1) (b) stating the goods or services in respect of which
 24 registration is proposed;

25 (c) stating any conditions or restrictions proposed with respect to the
 26 characteristics of the goods or services, to the mode or place of permitted use,
 27 or to any other matter; and

28 (2) When the requirements of the foregoing subsection have been
 29 complied with, if the Registrar, after considering the information furnished to
 30 him under that subsection, is satisfied that in all the circumstances the use of the

1 trade mark in relation to the proposed goods or services or any of them by the
 2 proposed registered user, subject to any conditions or restrictions which the
 3 Registrar thinks proper, would not be contrary to the public interest, the
 4 Registrar may register the proposed registered user as a registered user in
 5 respect of the goods or services as to which he is so satisfied, subject as
 6 aforesaid.

7 (5) Without prejudice to the provisions of section 38 of this Act, the
 8 registration of a person as a registered user -

9 (a) may be varied by the Registrar as regards the goods or services
 10 in respect of which, or any conditions or restrictions subject to which, it has
 11 effect, on the application in writing in the prescribed manner of the
 12 registered proprietor of the trade mark to which the registration relates;

13 (6) The Registrar may at any time cancel the registration of a
 14 person as a registered user of a trade mark in respect of any goods or services
 15 in respect of which the trade mark is no longer registered."

16 21. Section 35 (1) and (4) of the Principal Act is amended by
 17 inserting the words "or services" immediately after the words "goods", that
 18 is-

19 "35 (1) No application for the registration of a trade mark in respect
 20 of any goods or services shall be refused, nor shall permission for such
 21 registration be withheld, on the ground only that it appears that the applicant
 22 does not use or propose to use the trade mark-

23 (a) if the tribunal is satisfied that a body corporate is about to be
 24 constituted, and that the applicant intends to assign the trade mark to the
 25 body corporate with a view to the use thereof in relation to those goods or
 26 services by the body corporate; or

27 (b) if the application is accompanied by an application for the
 28 registration of a person as a registered user of the trade mark, and the tribunal
 29 is satisfied that the proprietor intends it to be used by that person in relation
 30 to those goods or services and the tribunal is also satisfied that that person

Amendment of
 section 35

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

1 will be registered as a registered user thereof immediately after the registration
2 of the trade mark.

3 (4) Where a trade mark is registered in respect of any goods or
4 services under the power conferred by subsection (1) of this section, in the
5 name of an applicant who relies on intention to assign to a body corporate as
6 aforesaid, then, unless within six months, or within such further period not
7 exceeding two months as the Registrar may on application being made to him
8 in the prescribed manner allow, the body corporate has been registered as the
9 proprietor of the trade mark in respect of those goods or services, the
10 registration shall cease to have effect in respect thereof at the expiration of that
11 period, and the Registrar shall amend the register accordingly."

Amendment of
Section 37

12 22. Section 37 of the Principal Act is amended to provide for services
13 as follows-

Use of trade mark
in relation to goods
for export

14 "37. Use of trade mark in relation to goods or services for export.
15 The application in Nigeria of a trade mark to goods to be exported from Nigeria
16 or in relation to services for use outside Nigeria, and any other act done in
17 Nigeria in relation to goods to be so exported or services so rendered outside
18 Nigeria which, if done in relation to goods to be sold or services provided or
19 otherwise traded in, within Nigeria, would constitute use of a trade mark
20 therein, shall be taken to constitute use of trade mark in relation to those goods
21 or services for any purpose for which such use is material under this Act or at
22 common law."

Amendment of
section 40 (d)

23 23. Section 40 (d) of the Principal Act is amended by inserting the
24 words "or services" immediately after the words "goods", that is-

Correction of
register

25 "40 (d) strike out any goods or services or classes of goods or
26 services from those in respect of which a trade mark is registered; or"

Amendment of
Section 42

27 24. Section 42 (1) and (2) of the Principal Act is amended by inserting
28 the words "or services" immediately after the words "goods", that is-

Adoption of
register to revise
classification of
goods

29 "42. Adaptation of register to revised classification of goods or
30 services:

1 (1) The Minister may make such regulations and prescribe such
2 forms as he thinks expedient, for empowering the Registrar to amend the
3 register, whether by making or striking out of or varying entries therein, so
4 far as may be requisite for the purpose of adapting the designation therein of
5 the goods or services or classes of goods or services in respect of which trade
6 marks are registered to any amended or substituted classification that may
7 be prescribed.

8 (2) The Registrar shall not, in exercise of any power conferred on
9 him for the purpose aforesaid, make any amendment of the register that
10 would have the effect of adding any goods or services or classes of goods or
11 services to those in respect of which a trade mark is registered (whether in
12 one or more classes) immediately before the amendment is to be made, or of
13 antedating the registration of a trade mark in respect of any goods or
14 services:

15 Provided that this subsection shall not have effect in relation to goods or
16 services as to which the Registrar is satisfied that compliance with this
17 subsection in relation thereto would involve undue complexity and that the
18 addition or antedating, as the case may be, would not affect any substantial
19 quantity of goods or services and would not substantially prejudice the
20 rights of any person."

21 25. Section 43 (1), (2), (3), (4) and (7) of the Principal Act is
22 amended to provide for services as follows-

23 "43 (1) A mark adapted in relation to any goods or services to
24 distinguish in the course of trade goods or services certified by any person in
25 respect of origin, material, method of manufacture of goods or performance
26 of services, quality, accuracy or other characteristics, from goods or services
27 not so certified, shall be registrable as a certification trade mark in Part A of
28 the register in respect of those goods or services in the name, as proprietor
29 thereof, of that person:

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

Amendment of
section 43

Certification
trade mark

1 carries on a trade in goods or services of the kind certified.

2 (2) In determining whether a mark is adapted to distinguish as
3 aforesaid, the tribunal may have regard to the extent to which-

4 (a) the mark is inherently adapted to distinguish as aforesaid in
5 relation to the goods or services in question; and

6 (b) by reason of the use of the mark or of any other circumstances, the
7 mark is in fact adapted to distinguish as aforesaid in relation to the goods or
8 services in question.

9 (3) Subject to the provisions of subsection (5) and (6) of this section,
10 and of section 7 and 8 of this Act, the registration of a person as proprietor of a
11 certification trade mark in respect of any goods or services shall, if valid, give
12 to that person the exclusive right to the use of the trade mark in relation to those
13 goods or services.

14 (4) Without prejudice to the generality the right to the use of a
15 certification trade mark given by such registration as afore said, that right shall
16 be taken to be infringed by any person who, not being the proprietor of the trade
17 mark or a person authorised by him under the rules in that behalf using it in
18 accordance therewith, uses a mark identical with it or so nearly resembling it as
19 to be likely to deceive or cause confusion, in the course of trade, in relation to
20 any goods or services in respect of which it is registered, and in such manner as
21 to render the use of the mark likely to be taken either-

22 (a) as being used as a trade mark; or

23 (b) in a case in which the use is use upon the goods or services or in
24 physical relation thereto or in an advertising circular or other advertisement
25 issued to the public, as importing a reference to some person having the right
26 either as proprietor or by his authorisation under the relevant rules to use the
27 trade mark or to goods or services certified by the proprietor.

28 (5) There shall be deposited at the office of the Registrar in respect of
29 every trade mark registered under this section, rules approved by the Minister
30 for governing the use thereof, which shall include provisions as to the cases in

1 which the proprietor is to certify goods or services and to authorise the use of
2 the trade mark, and may contain any other provisions that the Minister may
3 require or permit to be inserted therein (including provisions conferring a
4 right of appeal to the Registrar against any refusal of the proprietor to certify
5 goods or services or to authorise the use of the trade mark in accordance with
6 the rules)".

7 26. The Principal Act is amended by inserting immediately after
8 the existing section 43, the following new section 43A, that is-

Amendment of
Section 43A

9 "collective marks

10 43A. Collective Marks:

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

13 (2) An application for registration of a collective mark shall
14 designate by a copy of the regulations governing the use of the collective
15 mark and where any change is made in respect of the regulation, the
16 registered owner of the collective mark shall notify the registrar of such
17 change.

18 (3) In addition to the grounds provided in sections 35 and 36 of this
19 Act, the registrar shall invalidate the registration of a collective mark if the
20 person requesting the invalidation proves that only the registered owner
21 uses the mark, or that the registered owner uses or permits its use in
22 contravention of the regulation referred to in subsection (2) of this section or
23 that he uses or permits the use in a manner liable to deceive trade circles or
24 the public as to the origin or other common characteristics of the goods or
25 services concerned.

26 (4) The registration of a collective mark or an application for a
27 collective mark may not be the subject of a licence contract"

28 27. Section 45 of the principal Act is amended by-

Amendment of
Section 45

29 (a) inserting the words "or services" immediately after the word
30 "goods" in section 45 (1)(b), that is -

Power to make
regulations

1 "45 (1) (b) for classifying goods or services for the purposes of
2 registration of trade marks;"

3 (b) inserting the following new section 45 (2) (a) - (c), that is -

4 "45(2) For the purposes of section 61L of this Act-

5 (a) The Minister may make regulations respecting the detention and
6 forfeiture of goods or services, the importation of which is prohibited by
7 section 61L and the conditions, if any, to be fulfilled before such detention and
8 forfeiture, and prescribing the information, notices and security to be given,
9 and the evidence requisite for any of the purposes of the section and the mode
10 of verification of such evidence;

11 (b) Such regulations may apply to all goods or services the
12 importation of which is prohibited by section 61L or different regulations may
13 be made respecting different classes of such goods or services or of offences in
14 relation to such goods or services;

15 (c) The regulations may provide for the informant reimbursing the
16 collector of customs and excise all expenses and damages incurred in respect of
17 any detention made on his information, and of any proceedings consequent on
18 such detention."

19 (d) renumbering the existing section 45 (2) as section 45 (3).

Amendment of
Section 60

20 **28.** The Principal Act is amended by inserting the words "penalties
21 and procedure" immediately after the word "offences", in the topical heading
22 before section 60, that is -

23 "Offences, penalties, procedure and restraint of use of Arms of
24 Nigeria, etc."

Amendment of
Section 61

25 **29.** Section 61 of the Principal Act is amended by-

26 (a) inserting the words "or services" immediately after the word
27 "goods" in subsection (1) (c), that is -

Falsely representing
trade mark as
registered

28 "61 (1) (c) to the effect that a registered trade mark is registered in
29 respect of any goods or services in respect of which it is not registered; or"

30 (b) increasing the fine of "not exceeding two hundred naira" to "not

1 exceeding one million naira", that is -
2 "shall be liable on summary conviction to a fine not exceeding one million
3 naira."

4 (c) inserting the words "or services" immediately after the word
5 "goods" in subsection (2) (c), that is -

6 "61 (2) (c) where that word is used in relation to a mark registered
7 as a trade mark under the law of a country other than Nigeria and in relation
8 to goods or services to be exported to that country."

9 **30.** The Principal Act is amended by inserting immediately after
10 the existing section 61, the following new sections 61 A -P, that is-

11 "61 A Offences as to trade marks and trade descriptions

12 (1) every person who-

13 (a) forges any trade mark; or

14 (b) falsely applies to goods or services any trade mark or any marks
15 so nearly resembling a trade mark as to be calculated to deceive; or

16 (c) makes, disposes of, or has in his possession any dye, block,
17 machine or other instrument for the purpose of forging, or of being used for
18 forging, a trade mark:

19 (d) applies any false trade description to goods or services; or

20 (d) causes any of the things above in this section mentioned to be
21 done, shall, subject to the provisions of this Act and unless he proves that he
22 acted without intent to defraud, be guilty of an offence.

23 Selling goods or providing services to which false trade marks or
24 descriptions are applied

25 (2) Every person who sells, lets for hire or exposes for sale or has in
26 his possession for sale, or for any purpose of trade or manufacture, any
27 goods or things or provides or hires services, to which any forged trade mark
28 or false trade description is applied, or to which any trade mark or mark so
29 nearly resembling a trade mark as to be calculated to deceive is falsely
30 applied, as the case may be, shall, unless he proves either-

1 (a) that, having taken all reasonable precautions against committing
2 an offence against this Act, he had, at the time of the commission of the alleged
3 offence, no reason to suspect the genuineness of the trade mark, mark or trade
4 description, and that, on demand made by or on behalf of the prosecutor, he
5 gave all the information in his power with respect to the persons from whom he
6 obtained such goods or things or services or

7 (b) that otherwise he had acted innocently, be guilty of an offence
8 under this Act.

Forging trade
mark

9 (3) Every person who is guilty of an offence under this Act shall be
10 liable-

11 *[L.N. 47 of 1955]*

12 (a) on conviction before a Federal High Court to imprisonment for a
13 term of seven years, or to a fine of one million Naira, or both;

14 (b) in any case, to forfeit every chattel, article, instrument or thing by
15 means of or in relation to which the offence has been committed.

Forging trade
mark

16 61B. A person shall be deemed to forge a trade mark who either-

17 (a) without the assent of the proprietor of the trade mark, makes that
18 trade mark or a mark so nearly resembling that trade mark as to be calculated to
19 deceive; or

20 (b) falsifies any genuine trade mark, whether by alteration, addition,
21 effacement, or otherwise,

22 and any trade mark or mark so made or falsified is in this Act referred to as a
23 forged trade mark;

24 Provided that, in any prosecution for forging a trade mark, the burden of
25 proving the assent of the proprietor shall lie on the defendant.

Applying mark
or description

26 61C (1) A person shall be deemed to apply a trade mark or mark or
27 trade description to goods or services who-

28 (a) applies it to the goods themselves or uses it in relation to services;

29 (b) applies it to any covering, label, reel, or other things in or with
30 which the goods are sold or exposed or had in possession for any purpose of

1 sale, trade, or manufacture; or

2 (c) places, encloses, or annexes any goods which are sold or
3 exposed or had in possession for any purpose of sale, trade, or manufacture,
4 in, with, or to any covering, label, reel, or other thing to which a trade mark
5 or trade description has been applied;

6 (d) uses a trade mark or mark or trade description in any manner
7 calculated to lead to the belief that the goods or services in connection with
8 which it is used are designated or described by that trade mark or trade
9 description; or

10 (e) in relation to the goods or services uses a trade mark or trade
11 description in any sign, advertisement, invoice, catalogue, business letter,
12 business paper, price list or other commercial document and goods are
13 delivered or services are rendered to a person in pursuance of a request or
14 order made by reference to the trade mark or trade description as so used.

15 (2) The expression "covering" includes any stopper, cask, bottle,
16 vessel, box, cover, capsule, case, frame or wrapper, and the expression
17 "label" includes any band or ticket.

18 (3) A trade mark or mark or trade description shall be deemed to be
19 applied whether it is woven, impressed, or otherwise worked into, or
20 annexed, or affixed to the goods or to any covering, label, reel, package or
21 other thing.

22 (4) A person shall be deemed falsely to apply to goods a trade mark
23 or mark who, without the assent of the proprietor of a trade mark, applies
24 such trade mark or a mark so nearly resembling it as to be calculated to
25 deceive, but in any prosecution for falsely applying a trade mark or mark to
26 goods the burden of proving the assent of the proprietor shall lie on the
27 defendant.

28 61D. Where a defendant is charged with making any dye, block,
29 machine or other instrument for the purpose of forging, or being used for
30 forging, a trade mark, or with falsely applying to goods or services any trade

Exemption of
certain persons
employed in
ordinary course
of business

1 mark or any mark so nearly resembling a trade mark as to be calculated to
2 deceive, or with applying to goods or services any false trade description, or
3 causing any of the things mentioned in this section to be done, and proves-

4 (a) that, in the ordinary course of his business, he is employed, on
5 behalf of other persons, to make dyes, blocks, machines or other instruments
6 for making, or being used in making, trade marks, or, as the case may be, to
7 apply marks or descriptions to goods or services and that in the case which is
8 the subject of the charge he was so employed by some person resident in
9 Nigeria, and was not interested in the goods or other things by way of profit or
10 commission dependent on the sale of such goods or providing of services; and

11 (b) that he took reasonable precautions against committing the
12 offence charged;

13 (c) that he had, at the time of the commission of the alleged offence,
14 no reason to suspect the genuineness of the trade mark, mark or trade
15 description; and

16 (d) that he gave to the prosecutor all the information in his power with
17 respect to the persons on whose behalf the trade mark, mark or trade
18 description was applied,
19 he shall be discharged from the prosecution, but shall be liable to pay the costs
20 incurred by the prosecutor unless he has given due notice to him that he will
21 rely on the above defence.

Application of
the Act to watches

22 61E (1) where a watch case has thereon any words or marks which
23 constitute, or are by common repute considered as constituting, a description of
24 the country in which the watch was made, and the watch bears no description of
25 the country where it was made, those words or marks shall prima facie be
26 deemed to be a description of that country within the meaning of this Act, and
27 the provisions of this Act with respect to goods or services to which a false trade
28 description has been applied, and with respect to selling or exposing for or
29 having in possession for sale or hire or any purpose of trade or manufacture,
30 goods or services with a false trade description shall apply accordingly.

2 all that portion of a watch which is not the watch case.

3 61F. In any information, pleading, proceeding
4 which any trade mark
which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.
In this section, the expression "watch" means
all that portion of a watch which is not the watch case.

3 61F. In any information, pleading, proceeding, or document in
4 which any trade mark or forged trade mark is intended to be mentioned, it
5 shall be sufficient, without further description and without any copy or
6 facsimile, to state that trade mark or forged trade mark to be a trade mark or
7 forged trade mark.

Description of trade mark in pleadings

8 61G. In a prosecution under this Act, in the case of imported
9 goods, evidence as to the port of shipment shall be prima facie evidence of
10 the place or country in which the goods were made or produced.

Rules of evidence

11 61H. Every person who, being within Nigeria, procures, counsels,
12 aids, abets, or is accessory to the commission outside Nigeria of any act,
13 which if committed in Nigeria would under this Act be an offence, shall be
14 guilty of that offence as a principal, and be liable to be proceeded against,
15 tried and convicted in Nigeria as if the offence has been there committed.

Punishment of accessories

16 61I (1) Where, on any information or complaint laid for an offence
17 against this Act, a magistrate has issued either a summons requiring the
18 defendant charged by such information or complaint to appear to answer to
19 the same, or has issued a warrant for the arrest of such defendant, and either
20 the said magistrate or any other magistrate, on or after issuing the summons
21 or warrant, is satisfied by information upon oath that there is reasonable
22 cause to suspect that any goods or services or things by means of or in
23 relation to which such offence has been committed are in any house or
24 premises of the defendant, or otherwise in his possession or under his
25 control in any place, such magistrate may issue a warrant, by virtue of which
26 it shall be lawful for any police officer named or referred to in the warrant to
27 enter such houses, premises, or place at any reasonable time by day, and to
28 search there for and seize and take away those goods or services or things;
29 and any goods or services or things seized under any such warrant shall be
30 brought before a magistrate who shall decide whether the same are or are not

Issues of and proceedings on search warrant

1 (2) For the purposes of this section, the expression "watch" means
2 all that portion of a watch which is not the watch case.

3 61F. In any information, pleading, proceeding, or document in
4 which any trade mark or forged trade mark is intended to be mentioned, it
5 shall be sufficient, without further description and without any copy or
6 facsimile, to state that trade mark or forged trade mark to be a trade mark or
7 forged trade mark.

Description of
trade mark in
pleadings

8 61G. In a prosecution under this Act, in the case of imported
9 goods, evidence as to the port of shipment shall be prima facie evidence of
10 the place or country in which the goods were made or produced.

Rules of evidence

11 61H. Every person who, being within Nigeria, procures, counsels,
12 aids, abets, or is accessory to the commission outside Nigeria of any act,
13 which if committed in Nigeria would under this Act be an offence, shall be
14 guilty of that offence as a principal, and be liable to be proceeded against,
15 tried and convicted in Nigeria as if the offence has been there committed.

Punishment of
accessories

16 61I (1) Where, on any information or complaint laid for an offence
17 against this Act, a magistrate has issued either a summons requiring the
18 defendant charged by such information or complaint to appear to answer to
19 the same, or has issued a warrant for the arrest of such defendant, and either
20 the said magistrate or any other magistrate, on or after issuing the summons
21 or warrant, is satisfied by information upon oath that there is reasonable
22 cause to suspect that any goods or services or things by means of or in
23 relation to which such offence has been committed are in any house or
24 premises of the defendant, or otherwise in his possession or under his
25 control in any place, such magistrate may issue a warrant, by virtue of which
26 it shall be lawful for any police officer named or referred to in the warrant to
27 enter such houses, premises, or place at any reasonable time by day, and to
28 search there for and seize and take away those goods or services or things;
29 and any goods or services or things seized under any such warrant shall be
30 brought before a magistrate who shall decide whether the same are or are not

Issues of and
proceedings on
search warrant

	1	liable to forfeiture under this Act.
Forfeiture in absence of defendants	2	(2) If the owner of any goods or services or things which, if the owner
	3	thereof had been convicted, would be liable to forfeiture under this Act is
	4	unknown or cannot be found, an information or complaint may be laid or made
	5	for the purpose only of enforcing such forfeiture, and a magistrate may cause
	6	notice to be advertised stating that, unless cause is shown to the contrary at the
	7	time and place named in the notice, such goods or services or things will be
	8	forfeited; and at such time and place the magistrate, unless the owner or any
	9	person on his behalf, or other person interested in the goods or services or
	10	things, shows cause to the contrary, may order such goods or services or things
	11	or any of them to be forfeited.
Disposal of goods or services forfeited	12	(1) Any goods or services or things forfeited under this section, or
	13	under any other provision of this Act, may be destroyed or otherwise disposed
	14	of (all trade marks and trade descriptions being first obliterated) in such
	15	manner as the court by which the same are forfeited may direct; and the court
	16	may, out of any proceeds which may be realised by the disposition of such
	17	goods or services or things award to any innocent party any loss which he may
	18	have innocently sustained in dealing with such goods or services.
Costs of defence or prosecution	19	61J On any prosecution under this Act, the court may order costs to be
	20	paid to the defendant by the prosecutor or to the prosecutor by the defendant.
	21	having regard to the information given by and the conduct of the defendant and
	22	prosecutor respectively.
Limitation of prosecution	23	61K No prosecution for an offence against this Act shall be
	24	commenced after the expiration of two years after the first discovery of the
	25	commission of the offence by the prosecutor.
Prohibition of importation of goods or services liable to forfeiture under this Act	26	61L (1) It shall be unlawful to import into Nigeria any goods or
	27	services which, if sold or hired, would be liable to forfeiture under this Act, or
	28	any goods of foreign manufacture, bearing any name or trade mark being or
	29	purporting to be the name or trade mark of any manufacturer, dealer or trader in
	30	any other country, unless such name or trade mark is accompanied by a definite

1 indication of the country in which the goods were made or produced.

2 *[L.N. 112 of 1964]*

3 (2) Where there is on any goods or services a name which is
4 identical with or a colourable imitation of the name of a place in any other
5 country that name, unless accompanied by the name of the country in which
6 such place is situate, shall be treated for the purposes of this section as if it
7 were the name of a place in that other country.

8 61M. Where a trade description is lawfully and generally applied
9 to goods or services of a particular class, or manufactured by a particular
10 method, to indicate the particular class or method of manufacture of such
11 goods or the particular class of such services, the provisions of this Act with
12 respect to false description shall not apply to such trade description when so
13 applied:

14 Provided that where such trade description includes the name of a place or
15 country, and is calculated to mislead as to the place or country where the
16 goods or services to which it is applied were actually made or produced or
17 provided from and the goods or services are not actually made or produced
18 in or provided from that place or country, this section shall not apply unless
19 there is added to the trade description, immediately before or after the name
20 of that place or country, in an equally conspicuous manner with that name,
21 the name of the place or country in which the goods or services were actually
22 made or produced or provided from, with a statement that they were made or
23 produced or provided from there.

24 61N. On the sale or providing of services or in the contract for the
25 sale of any goods or in relation to any service to which a trade mark, or mark,
26 or trade description has been applied, the vendor shall be deemed to warrant
27 that the mark is a genuine trade mark and not forged or falsely applied, or
28 that the trade description is not a false trade description within the meaning
29 of this Act, unless the contrary is expressed in some writing signed by or on
30 behalf of the vendor and delivered at the time of the sale or contract to and

Provisions of the
Act as to false
description not
to apply in certain
cases

Implied warrant
on sale or provision
of marked goods
or services

1 accepted by the vendee.

Savings

2 61O. Nothing in this Act shall-

3 (a) exempt any person from any action or proceedings which might,
4 but for its provisions, be brought against him;

5 (b) entitle any person to refuse to make a complete discovery or to
6 answer any question or interrogatory in any action or such, but such discovery
7 or answers shall not be admissible in evidence against such person in any
8 prosecution for an offence against the Act; or

9 (c) be construed so as to render liable to any prosecution or
10 punishment any servant of a master resident in Nigeria who bona fide acts in
11 obedience to the instruction of such master, and who, on demand made by or on
12 behalf of the prosecutor, has given full information as to his master.

False representation
as to warrant

13 61P. Every person who falsely represents that any goods are made or
14 services are provided by a person holding a warrant or other authority, or for the
15 service of the President, or any ministry or department of the Federation, or any
16 Government department or Agency shall be guilty of an offence and on
17 summary conviction, be liable to a fine of five hundred thousand Naira.

18 *[L.N. 112 of 1964]*

Amendment of
Section 62

19 31. Section 62 of the principal Act is amended by-

20 (a) inserting the words "or services" immediately after the word
21 "goods" in subsection (1)(b), that is -

Restraint of use
of Arms of Nigeria
or of a State, etc.

22 " 61 (1)(b) uses any device, emblem or title in any manner calculated
23 to lead to the belief that he is employed by or supplies goods or provides
24 services to the President or the Governor of a State in his official capacity as
25 such."

26 (b) increasing the fine of "not exceeding forty naira" to a fine of "not
27 exceeding five hundred thousand naira", that is -

28 "he shall be guilty of an offence and liable on summary conviction to a fine not
29 exceeding five hundred thousand naira."

30 (c) inserting the words "or provision of services" immediately after

1 the words "goods" in subsection (3) (a) and (b), that is-

2 "62(3) In this section "the appropriate authority"-

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

6 (b) in relation to the Arms of a State and to employment by or the
7 supply of goods or provision of services to the Governor of a State, means
8 the Governor of that State."

9 32. Section 67 of the Principal Act is amended as follows-

Amendment of
Section 67

10 (a) "67 (1) - "collective mark" means a mark used or proposed to
11 be used in the course of trade or business for the purpose of distinguishing
12 the goods or services of the members of a particular association, co-
13 operative, union, or other collective groups from goods or services of other
14 persons;

Interpretation

15 "limitations" means any limitations of the exclusive right to the use of a
16 trade mark given by the registration of a person as proprietor thereof,
17 including limitations of that right as to manner of use, as to use in relation to
18 goods to be sold or services to be provided or otherwise traded in, in any
19 place in Nigeria, or as to use in relation to goods to be exported to any market
20 outside Nigeria or in relation to services for use outside Nigeria;

21 "mark" includes a device, brand, heading, label, ticket, name, signature
22 word, letter, numeral, shape of goods, packaging, colour, combination of
23 colours or any combination thereof;

24 "trade mark" means, except in relation to a certification trade mark, a mark
25 used or proposed to be used in relation to goods or services for the purpose of
26 indicating or so as to indicate a connection in the course of trade between the
27 goods or services and some person having the right either as proprietor or as
28 registered user to use the mark, whether with or without any indication of the
29 identity of that person, and means, in relation to a certification trade mark, a

1 mark registered or deemed to be have been registered under section 43 of this
2 Act;

3 (b) by inserting the following new interpretations -

4 "False trade description" means -

5 (i) a trade description which is untrue or misleading in a material
6 respect as regards the goods or services to which it is applied; or

7 (ii) any alternation of trade description as regards the goods or
8 services to which it is applied, whether by way of addition, effacement or
9 otherwise, where that alteration makes the description untrue or misleading in
10 a material respect; or

11 (iii) any trade description which denotes or implies that there are
12 contained, as regards the goods to which it is applied, more yards or metres than
13 there are contained therein standard yards or standard metres; or

14 (iv) any marks or arrangement or combination thereof when applied-

15 (a) to goods in such a manner as to be likely to lead persons to believe
16 that the goods are the manufacture or merchandise of some person other than
17 the person whose merchandise or manufacture they really are;

18 (b) in relation to services in such a manner as to be likely to lead
19 persons to believe that the services are provided or rendered by some person
20 other than the person whose services they really are; or

21 (v) any false name or initials of a person applied to goods or services
22 in such manner as if such name or initials were a trade description in any case
23 where the name or initials-

24 (a) is or are not a trade mark or part of a trade mark; and

25 (b) is or are identical with or deceptively similar to the name or initials
26 of a person carrying on business in connection with goods or services of the
27 same description or both and who has not authorised the use of such name or
28 initials; and

29 (c) is or are either the name or initials of a fictitious person or some
30 person not bona-fide carrying on business in connection with such goods or

1 services, and the fact that a trade description is a trade mark or part of a trade
2 mark shall not prevent such trade description being a false trade description
3 within the meaning of this Act;

4 "goods" means anything which is the subject of trade, manufacture or
5 merchandise;

6 "name" includes any abbreviation of a name:

7 "person," "manufacturer," "dealer" or "trader" and "proprietor" include any
8 body of persons corporate or unincorporate: "trade description" means any
9 description, statement, or other indication, direct or indirect-

10 (a) as to the number, quantity, measure, gauge, or weight of any
11 goods;

12 (b) as to standard or quality of any goods or services, according to a
13 classification commonly used or recognised in the trade:

14 (c) as to the fitness for purpose, strength, performance or behaviour
15 of any goods;

16 (d) as to the place or country in which or the time at which any
17 goods or services were made or produced or provided;

18 (e) as to the name and address or other indication of the identity of
19 the manufacturer or of the person providing the services or of the person for
20 whom the goods are manufactured or services are provided;

21 (f) as to the mode of manufacturing or producing any goods or
22 providing any services;

23 (g) as to the material of which any goods are composed; or

24 (h) as to any goods being the subject to an existing patent, privilege
25 or copyright, and includes -

26 (i) any description as to the use of any mark which according to
27 the custom of the trade is commonly taken to be an indication of any of the
28 above matters;

29 (ii) the description as to any imported goods contained in any bill of
30 entry or shipping bill;

1 (iii) any other description which is likely to be misunderstood or
2 mistaken for all or any of the above matters.

3 "mark" includes a device, brand, heading, label, ticket, name, signature, word,
4 letter, numeral, shape of goods, packaging, colour or combination of colours or
5 any combination thereof;

6 "package" includes any case, box, container, covering, folder, receptacle,
7 vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid,
8 stopper and cork;

9 "service" means service of any description which is made available to potential
10 users and includes the provision of services in connection with business of any
11 industrial or commercial matters such as banking, communication, education,
12 financing, insurance, chit funds, real estate, transport, storage, material
13 treatment, processing, supply of electrical or other energy, boarding, lodging,
14 entertainment, amusement, construction, repair, conveying of news or
15 information and advertising;"

16 (c) inserting the words "or services" immediately after the words
17 "goods" in section 67 (2), that is-

18 "(2) Reference in this Act to the use of a mark shall be construed as
19 reference to the use of printed or other visual representation of the mark, and
20 references therein to the use of a mark in relation to goods or services shall be
21 construed as references to the use thereof upon, or in physical or other relation
22 to, goods or services."

Amendment of
Section 68
Transitional
provisions, repeal
and savings

23 **33.** Section 68 of the Principal Act is amended by-

24 (a) inserting the following new subsection 1 that is -

25 "(1) The Merchandise Marks Act, Cap. M10 LFN, 2004 is hereby
26 repealed."

27 (b) renumbering the existing subsections (1) - (6) as new subsections
28 (2) - (7) respectively.

Short Title

29 **34.** This Bill may be cited as the Trade Marks Act (Amendment) Bill
30 2016.

1	AMENDMENT OF SCHEDULES	
2	FIRST SCHEDULE	
3		(Section 43 (10).)
4	<i>Certification trade marks</i>	
5	35. Clause 1 (5) (a) of the First Schedule of the Principal Act is	Amendment of
6	amended by inserting the words "or services" immediately after the word	clause 1 (5)(a)
7	"goods", that is-	
8	"1 (5) When authorisation to proceed with an application has been	First schedule
9	given, the Minister shall consider the application with regard to the	
10	following matters, that is to say-	
11	(a) whether the applicant is competent to certify the goods or	
12	services in respect of which the mark is to be registered;"	
13	36. Clause 4 (1) (a) of the First Schedule of the Principal Act is	Amendment of
14	amended by inserting the words "or services" immediately after the words	clause 4 (1)(a)
15	"goods", that is -	
16	"4 (1) The Minister may, on the application in the prescribed	First schedule
17	manner of any person concerned, or on the application of the Registrar,	
18	make such order as he thinks fit for striking out or varying any entry in the	
19	register relating to a certification trade mark, or for varying the deposited	
20	rules, on the ground -	
21	(a) that the proprietor is no longer competent, in the case of any of	
22	the goods or services in respect of which the trade made is registered, to	
23	certify those goods or services;"	
24	37. Clause 5 of the First Schedule of the Principal Act is amended	Amendment of
25	by inserting the words "or services" immediately after the word "goods",	clause 5
26	that is-	
27	"5. Notwithstanding anything in section 47 of this Act, the	First schedule
28	Registrar shall not have any jurisdiction to award costs to or against any	
29	party on application to him against a refusal of the proprietor of a	
30	certification trade mark to certify goods or services or to authorise the use of	

1 the trade mark."

2 SECOND SCHEDULE

3 (Section 68 (1))

4 *Transitional provisions*

5 *Previous use of trade mark by person becoming registered user on*

6 *application made within one year of commencement of Act*

Amendment of
clause 2

7 38. Clause 2 of the Second Schedule of the Principal Act is amended

8 by inserting the words "or services" immediately after the word "goods", that

9 is-

Second Schedule

10 "2 Where a person is registered as a registered user of a trade mark on

11 an application made within one year from the commencement of this Act,

12 section 33 (3) of this Act shall have effect in relation to any previous use

13 (whether before or after the commencement of this Act) of the trade mark by

14 that person, being used in relation to the goods or services in respect of which

15 he is registered and, where he is registered subject to conditions or restrictions,

16 being use such as to comply substantially therewith, as if that previous use had

17 been permitted use."

Amendment of
subhead of
clause 3

18 39. The subheading of clause 3 of the Second Schedule of the

19 Principal Act is amended by inserting the words "or services" immediately

20 after the word "goods", that is-

Second Schedule

21 "Previous use of trade mark in relation to goods or services for

22 export".

23 THIRD SCHEDULE

24 [Section 68 (2).]

25 *Repeals*

Amendment of
Third Schedule

26 40. The Third Schedule of the Principal Act is amended by inserting

27 immediately after the last repeal, the following new repeal, that is -

1	Chapter	Short title	Extent of repeal
2	Cap.MIO LFN 2004,		[23 of 1915.15 of 1956.
3		Merchandise Marks Act	The whole Act"
4			L.N.47 of 1955]

EXPLANATORY MEMORANDUM

This Bill seeks to repeal the Merchandise Marks Act, Cap. M10, LFN 2004, amend the Trade Marks Act, Cap. T13, LFN 2004 and make new provisions with respect to trade marks in place thereof.