

A Legal Appraisal of the Challenges Faced with the Enforcement of Trademarks in Cameroon

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Abstract

Trademark protection plays a vital role in safeguarding intellectual property rights, promoting fair competition, and fostering economic development. In Cameroon, the legal framework for trademark protection is largely influenced by national legislation and the regional system established under the African Intellectual Property Organization (AIPO) known in its French acronym as (OAPI). Despite the existence of these legal mechanisms, the effective enforcement of trademark rights continues to face numerous challenges. This study undertakes a legal appraisal of the challenges associated with the enforcement of trademarks in Cameroon, examining both the substantive and procedural aspects of the law. The research analyzes the institutional, judicial, and administrative obstacles that hinder effective enforcement, including limited public awareness of trademark rights, inadequate enforcement capacity, procedural delays, weak border control measures, and the prevalence of counterfeit goods. It also explores the role of enforcement agencies and the judiciary, highlighting issues such as lack of technical expertise, insufficient coordination, and the inadequacy of sanctions as deterrent measures. In order to achieve same, the study makes use of the qualitative research methodology alongside the doctrinal method which permitted a legal analysis of primary and secondary data. It also makes use of unstructured interviews. The paper concludes by proposing reforms aimed at strengthening trademark enforcement in Cameroon, including legal and institutional reforms, capacity building for enforcement authorities, and increased sensitization of stakeholders. Ultimately, the study underscores the importance of effective trademark enforcement as a means of protecting rights holders, consumers, and the broader economic interests of Cameroon.

Keywords: legal appraisal, challenges, enforcement and trademarks

1. Introduction

Trademarks constitute a core component of intellectual property rights, serving as distinctive signs that identify the origin of goods or services and protect consumers from confusion while safeguarding the goodwill of businesses. In a globalized economy characterized by intense competition and cross-border trade, the effective enforcement of trademark rights has become increasingly significant. Strong trademark enforcement not only promotes innovation and fair competition but also enhances consumer protection and economic development by combating counterfeiting and unfair trade practices¹.

Cameroon, as a developing economy and a member of the African Intellectual Property Organization (AIPO/OAPI),² operates within a harmonized regional intellectual property framework governed primarily by

¹ Cornish, W., Llewelyn, D., & Aplin, T. (2013). *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*. Sweet & Maxwell.

² African Intellectual Property Organization (OAPI). (2015). *Bangui Agreement Relating to the Creation of an African Intellectual Property Organization* (as revised, 2015).

the Bangui Agreement of 1977 (as revised by the Bamako Act of 2015). Annex III of this Agreement provides the substantive and procedural rules for the protection of trademarks across AIPO/OAPI member states, including Cameroon. Additionally, Cameroon is a signatory to several international instruments such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)¹, which sets minimum standards for the enforcement of intellectual property rights at the global level. These legal instruments collectively demonstrate Cameroon's formal commitment to the protection and enforcement of trademark rights².

Despite the existence of this legal framework, the practical enforcement of trademarks in Cameroon remains fraught with challenges. Counterfeit and pirated goods continue to circulate widely in local markets, undermining legitimate businesses and posing risks to public health and safety. Factors such as limited awareness of trademark rights, inadequate institutional capacity, weak border controls, procedural delays within the judicial system, and insufficient deterrent sanctions have significantly constrained effective enforcement.³ Moreover, the gap between law on the books and law in practice raises important questions about the effectiveness of existing enforcement mechanisms.

This paper undertakes a legal appraisal of the challenges faced in the enforcement of trademarks in Cameroon. It critically examines the applicable legal and institutional framework, identifies key obstacles to effective enforcement, and evaluates the extent to which Cameroon's trademark regime complies with regional and international standards. By doing so, the article seeks to contribute to scholarly discourse on intellectual property enforcement in developing countries and to propose recommendations aimed at strengthening trademark protection in Cameroon.

2. Conceptualization of Trademark

A trademark is basically a sign that is used to distinguish the goods or services offered by one undertaking from those offered by another. That's a very simplified definition, but it does explain essentially what a trademark is. There are basically two main characteristics for a trademark: it must be distinctive and it should not be deceptive⁴.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as amended on 23th January 2017 Section 15(1) defines a trademark as any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks⁵.

The 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization, Annex III Article 2 also defines a trademark as any visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise shall be considered a trademark or service mark, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristics form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colors, drawings, reliefs, letters, numbers, devices and pseudonyms⁶.

A trademark can also be defined as any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors. This definition comprises two aspects, which are sometimes referred to as the different functions of the trademark, but which are, however, interdependent and for all practical purposes should always be looked at together⁷.

The requirements which a sign must fulfill in order to serve as a trademark are reasonably standard throughout the world. Generally, two different kinds of requirement are to be distinguished; - The first kind of requirement relates to the basic function of a trademark, namely, its function to distinguish the products or services of one enterprise from the products or services of other enterprises. From that function it follows that a trademark must

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

² WIPO. (2001). *Intellectual Property Handbook: Policy, Law and Use*. WIPO Publication.

³ Kur, A. & Levin, M. (n.d.). *Trademark Law: A Handbook of Contemporary Research*. Edward Elgar Publishing.

⁴ WIPO Academy Distance Learning course 2019, 004TM 101. pp. 02-03.

⁵ Section 15(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as amended on 23th January 2017.

⁶ Article 2 Annex III of the 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

⁷ *Ibid.*

be distinguishable among different products. To be distinctive it must by its very nature be able to distinguish goods and services, a good example would be the word “apple”. While “Apple” is a very distinctive trademark for a computer, because it has absolutely nothing to do with computers, it would not be distinctive for actual apples. In other words, someone who grows and sells apple could not register the word ‘apple’ as a trademark and protect it, because his competitors have to be able to use the word to describe their own goods. So, in general terms a trademark is not distinctive if it is descriptive. It is descriptive if it describes the nature or identity of the goods or services for which it is used. But a trademark can also be deceptive, namely when it claims a quality for the goods that they do not have.

The second kind of requirement relates to the possible harmful effects of a trademark if it has a misleading character for instance a trade mark that says that the goods for which it is used have certain qualities when they don’t. An example would be the trademark “Real Leather” for goods that are not made of genuine leather¹ or if it violates public order or morality. These two kinds of requirement exist in practically all national trademark laws².

A trademark has some rules that must be observed in order to function, firstly it must be distinctive. A sign that is not distinctive cannot help the consumer to identify the goods of his choice. The word “apple” or an apple device cannot be registered for apples, but it is highly distinctive for computers. This shows that distinctive characters must be evaluated in relation to the goods to which the trademark is applied. In the ‘BABY-DRY’ case³ before the European Court of Justice about the registration of ‘BABY-DRY’ as a trademark for baby diapers. OHIM refused the registration of the brand as a community mark saying that ‘BABY-DRY’ wasn’t distinctive, but instead that it was descriptive without a secondary meaning.

The Court ruled that trademarks consisting of certain word combinations not used in a common phraseology may be deemed creations, bestowing distinctive power on the trademark. If the relevant goods or services or their essential characteristics are so formed, then they may be refused registration on the grounds that such marks are solely descriptive and non-distinctive.

The test of whether a trademark is distinctive is bound to depend on the understanding of the consumers, or at least the persons to whom the sign is addressed. A sign is distinctive for the goods to which it is to be applied when it is recognized by those to whom it is addressed as identifying goods from a particular trade source, or is capable of being so recognized⁴.

Descriptive signs are those that serve in trade to designate the kind, quality, intended purpose, value, place of origin, time of production or any other characteristic of the goods for which the sign is intended to be used or is being used⁵.

A second important rule is that trademarks should always be used as true adjectives and never as nouns, in other words the trademark should not be used with an article, and the possessive “s” and the plural form should be avoided. It would be wrong to talk about NESCAFÉ’s flavor or about three NESCAFÉs instead of three varieties of NESCAFÉ. Furthermore, it is advisable always to highlight the trademark, that is, to make it stand out from its surroundings.

Finally, a trademark should be identified as such by a trademark notice⁶, only a few laws provide for such notices, and making their use on goods compulsory, it is prohibited by Article 5D of the Paris Convention. Trademark law in the United States of America allows the use of a long statement (such as “Registered with the United States Patent and Trademark Office”) to be replaced by a short symbol, namely, the circled R, or ®. Over the years this symbol has spread throughout the world and become a widely recognized symbol for a registered trademark. Its use is recommended for registered trademarks as a warning to competitors not to engage in any act that would infringe the mark. Cameroon under AIPO/OAPI is yet to include a provision for a mandatory trademark notice.

To be identical does a mark have to be exactly the same? The answer is no, not in every respect. An identical

¹ WIPO Academy Distance Learning course 2019, 004TM 101. pp. 07-09.

² See Article 6 of the Paris Convention and Article 3 Annex III of the 1999 Agreement revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

³ Procter & Gamble v. Office for Harmonization in the Internal Market (European Court Reports 2001 I-06251).

⁴ WIPO Academy Distance Learning course 2019, 004TM 101. pp. 014-14.

⁵ *Ibid.*

⁶ WIPO. (2004). *Intellectual Property Handbook: Policy, Law and Use*. WIPO Publication No: 489(E) WIPO 2004 Second Edition. pp. 67-139.

mark is one where an average consumer, when thinking about the two marks (they are not expected to have the marks sitting side by side allowing them to make a detailed comparison), would not be aware of any differences in the marks. Identical marks are those where any differences are so insignificant that consumers just would not notice them.

An average consumer would not notice the difference between Origin and Origins or Cannon and Canon. They might not notice that WebSphere and web-sphere were different but they are sure to notice that, although similar, Reed Elsevier and Reed Business Information are not identical marks¹.

To decide if two-word marks are similar one has to consider the initial impact on the average consumer of the look, sound and conceptual similarity of the words. But you must also take into consideration the goods to which the marks are applied. If an expensive purchase is being made the average consumer is unlikely to be confused into buying the wrong good despite a similarity in marks. They are unlikely to buy a Mitsubishi Cordia thinking that it was a Ford Cortina. If, however, a Penguin chocolate biscuit was sitting side by side with a Puffin chocolate biscuit at the checkout of a crowded supermarket, both packaged in a similar style, the average consumer would give the purchase little attention and may well be confused into buying the wrong chocolate biscuit².

3. Regulatory Framework for Trademarks in Cameroon

Amongst the laws that regulate trademarks in Cameroon, we have inter-alia the following.

3.1 The 2015 Bamako Act Revising the Bangui Agreement

The Bangui Agreement was adopted on the 2nd March 1977 in Bangui, Central Africa Republic called the “Bangui Agreement” to form the African Intellectual Property Organization known in its French acronym as OAPI. The Bangui Agreement has witnessed two revisions. It was revised on the 24th February 1999 and came into force on the 28th February 2002, and the recent revision of 14th December 2015 signed at Bamako, which came into effect on the 14th November 2020. The Bamako Act revising the Bangui Agreement has been signed by 17 center African states including Cameroon. The Bamako Act set out ten different categories of IPRs that has to be applied in each member state, including, Patents (Annex I), Utility models (Annex II), Trademarks and Service marks (Annex III), Industrial Designs (Annex IV), Trade Name (Annex V), Geographical Indications (Annex VI), Literary and Artistic Property (Annex VII), Protection against unfair competition (Annex VIII), Layout Designs of integrated circuit (Annex IX) and Plant variety protection (Annex X)³.

The Bamako Act revising the Bangui Agreement established a centralized structure for registration of Trademarks and a uniform filing procedure⁴ for all members that are signatories to the agreement.

3.2 The Cameroon Penal Code

The Cameroon Penal Code also addresses issues of trademark infringement. Section 330 of the Cameroon Penal Code⁵ punishes whoever forges a trademark or uses any trademark so forged with imprisonment for a term of three months to three years, or with a fine of fifty thousand to three hundred thousand francs, or with both such imprisonment and fine. Whoever, without forgery of a registered trademark, imitates it in a manner liable to mislead a purchaser, or uses any such imitation, shall be punished with imprisonment for a term of one month to one year, or with a fine of fifty thousand to one hundred and fifty thousand francs, or with both such imprisonment and fine.⁶ These laws are applied alongside duly rectified treaties as per section 45 of the Cameroon Constitution of 1996.

4. Challenges Faced with the Enforcement of Trademarks in Cameroon

From our study, several challenges were discovered to be encounter in the enforcement of trademarks in Cameroon these challenges ranges from Weak Enforcement Organs and Poor Coordination, Local Protectionism, Non-Deterrent Penalty, and High Cost of Enforcement amongst others, these challenges are treated in turn below.

¹ D Bainbridge & C Howell. (2014). *Intellectual Property Asset Management*. Routledge: Taylor & Francis Group, pp. 12-34.

² *Ibid.*

³ Article 4(1) of the Agreement revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

⁴ Article 6 of the Agreement revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

⁵ Law No 2016/007 of 12th July 2016.

⁶ *Ibid.*

4.1 Weak Enforcement Organs

One of the main reasons for rampant counterfeiting and passing off of trademarks in Cameroon is, of course, the weakness of Trademark enforcement organs. The enforcement of Trademark in particular is problematic because of the inadequacies in the organizational structure of the trademark administrations, namely, the Director General and the High Commission of Appeal of the African Intellectual Property Organization (AIPO/OAPI) and also the Standard and Quality Control Agency known by its French acronym “ANOR”. ANOR was created in the year 2009 by the head of states in Cameroon which has as its mission to promote standard and quality goods in Cameroon. ANOR is an administrative public establishment with a judicial personality and a financial autonomy placed under the technical supervision of the Ministry of Industries and financial guardians of the Ministry of Finance¹.

All these institutions that have been put in place to monitor and enforce trademarks doesn't have the competence to either make orders for seizures and damages against infringers or convict infringers as these orders are within the inherent jurisdiction of the ordinary courts².

Rather than ensuring that trademark infringement cases are dealt with expediently, this lack of jurisdiction by the organs involved to remedy the situation has led to poor cooperation and coordination among the various governmental agencies.

4.2 Local Protectionism

Black's law dictionary³ defines protectionism as the protection of domestic businesses and industries against foreign competition by imposing high tariffs restricting imports.

Local protectionism constitutes a great barrier to trademark protection in Cameroon. Part of the problem stems from certain misconceptions held by local officials that intellectual property infringement, including counterfeiting and passing off, is in fact beneficial to the local economy because it provides employment for otherwise unemployable workers. Some even believe that the imitation and counterfeiting of foreign brands is justifiable in the context of the protection of local industries from international competition⁴. This particular problem is difficult for the government to address because local officials prioritize the protection of local needs before that of national needs, and thus are less inclined to pursue vigorously strict enforcement measures that they perceive as harmful to local economic interests. They therefore assume a negative and uncooperative attitude toward investigations by rights holders against alleged intellectual property infringements. In areas where local protectionism is especially fierce, law enforcement officials will even impede the administrative enforcement of intellectual property rights by taking bribe from infringers and leaking insider information to infringers in advance. In some instances, local officials have been known to return confiscated goods to the infringers.

Such practices are at odds with Cameroon's obligations towards the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement'). Which requires members to ensure that effective enforcement procedures are available in order to remedy the infringement of intellectual property rights, and also stipulates that these procedures shall be 'fair and equitable' and 'not unnecessarily complicated or costly'⁵. Considering the degree of discretion local authorities have in intellectual property rights enforcement, Cameroon does not seem to be holding up its end of the bargain.

4.3 Non-Deterrent Penalty

According to the Cameroon Penal Code, whoever forges a registered trademark or use any trademark so forged shall be punished with imprisonment for from three months to three years or with fine of from fifty thousand to three hundred thousand francs or with both such imprisonment and fine⁶. The Bangui accord sets forth similar provisions which stipulate that the penalty for unlawful exploitation of a registered mark shall be imprisonment from three months to two years and a fine of 5.000.000 to 30.000.000 FCAF or one of the above penalties

¹ www.minfi.cm last visited June 2019.

² Article 51 of Annex III of the 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

³ B Garner. (2014). *Black's Law Dictionary*, 10th Edition. Thomson Reuters, p. 1418.

⁴ P. Torremans, H. Shan and J. Erauw. (2007). *Intellectual Property and TRIPS Compliance in China*. Edward Elgar Publishing Limited, pp. 82-87.

⁵ Article 41(1) of the TRIPS Agreement.

⁶ Section 330 of Law No 2016/007 of 12th July 2016 to institute the Cameroon Penal code.

alone¹.

Despite the fact that the fine of 5.000.000 to 30.000.000 FCFA sounds reasonable, the imprisonment term is so mild that they do not constitute any real disincentive to intellectual property infringement. Since local enforcement officials have great discretion in determining the penalty to be either a fine or imprisonment, the maximum imprisonment term is very rarely imposed and imprisonment is almost unheard of. Lack of clear guidelines or rules with regard to the way fines should be calculated is also one reason why such mild penalties are imposed on infringers. Unfortunately, intellectual property owners have little recourse against these decisions². The TRIPS Agreement stipulates that remedies should constitute a 'deterrent to further infringement' and 'include imprisonment and/or monetary fines sufficient to provide a deterrent'³. Clearly, this is not yet the case in Cameroon.

4.4 High Cost of Enforcement

In Cameroon, intellectual property rights owners are required to bear almost all of the costs for enforcement actions. While the state provides various enforcement authorities with financial support for their law enforcement activities, intellectual property rights owners still incur costs associated with the following: soliciting the services of a lawyer to handle the infringement case on the rights owner's behalf; payment of action fees and locus fees where a visit to the locus is required; execution of a judgment against the infringer; and expenses incurred in the transportation, storage, and disposal of seized infringing or counterfeit goods. Furthermore, for Customs to detain goods suspected of infringement, intellectual property rights owners must bear all costs related to the storage and disposal of such goods, in addition to paying a Customs deposit equal to the value of the detained imported or exported goods.

4.5 Time-Consuming Trial Process

The Cameroon Criminal and Civil Procedure Laws provide no time limits on the trial period of trademark infringement cases. Moreover, in the history of the Cameroon courts, trademark infringement cases have mainly been brought to the attention of the courts in large cities such as Douala and Yaoundé, most of the judges lack the expertise necessary to handle trademark infringement cases, and often require assistance from intellectual property experts and this procedure will prolong the trial unnecessarily. The TRIPS Agreement provides that the procedures concerning the enforcement of intellectual property rights shall not be delayed unnecessarily⁴. The practice in Cameroon is yet to meet this standard.

From the forgoing, one can see that the protection of trademarks in developing countries particularly in Cameroon is lagging behind expectations because most trademark actors (judges, lawyers, customs official or the police, trademark owners and users) are still ignorant about the various institutions that the government has put in place to govern and protect trademarks. This is as a result of the fact that Intellectual Property law is being offered in most Universities in Cameroon as a post graduate elective course or a specialist post graduate program in some universities. Most of the trademark actors (judges, lawyers, customs officials or the police, trademark owners, users) are not armed with intellectual property right knowledge as in the case of Cameroon wherein the prerequisite qualification for the recruitment of these actors is below LL.M except with the case of the judges.

Most industries in developing countries particularly in Cameroon see the cost of registering a trademark as a waste of resource due to the heavy financial cost involved in registering, maintaining and protecting a trademark. Infringers have taken advantage of this fact and are pirating and counterfeiting the trademarks of businesses and services that have established a good will and reputation. The majority of infringing goods in developing countries as in the case of Cameroon are intended for sale to the domestic markets, and most Cameroonian consumers are still ignorant and do not believe that piracy and counterfeiting are serious violations of law. This mindset only exacerbates intellectual property rights infringement.

Although criminal enforcement of intellectual property right is possible in most underdeveloped countries as in the case of Cameroon, in practice very few intellectual property rights infringers receive criminal sanctions moreover the penalties for trademark infringement in most developing countries are lesser that doesn't deter further infringement, for instance in Cameroon whoever forges a registered trademark or use any trademark so forged shall be punished with imprisonment for from three months to three years or with fine of from fifty

¹ Article 57 Annex III of the 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

² *Ibid.*

³ Articles 41 and 61 of the TRIPS Agreement.

⁴ Article 41(2) of the TRIPS Agreement.

thousand to three hundred thousand francs or with both such imprisonment and fine¹ which implies the maximum imprisonment sentence is three years and the maximum amount of fine is three hundred thousand after free riding and making millions on the good will of another person's trademark that he may have taken a lifetime to establish.

5. Conclusion

The effective enforcement of trademarks is a critical component of a functional intellectual property regime, as it safeguards brand identity, promotes fair competition, and encourages economic growth. In Cameroon, despite the existence of legal and institutional frameworks governing trademark protection — particularly under national laws and the AIPO/OAPI system — significant challenges continue to undermine effective enforcement. These challenges range from inadequate awareness of trademark rights among rights holders and enforcement agencies, procedural complexities, and limited judicial specialization, to insufficient administrative capacity and weak border control mechanisms.

Furthermore, the prevalence of counterfeit goods, coupled with slow judicial processes and limited sanctions that often fail to deter infringement, exacerbates the enforcement gap. Practical difficulties such as high litigation costs, lack of technical expertise, and poor coordination among enforcement bodies further weaken the protection afforded to trademark owners. These shortcomings not only discourage investment but also expose consumers to substandard and potentially harmful products.

A comprehensive approach is therefore required to address these challenges. Strengthening institutional capacity, enhancing public and professional awareness, improving inter-agency cooperation, and reforming enforcement procedures are essential steps toward more effective trademark protection in Cameroon. Additionally, aligning enforcement practices with international best standards and ensuring the consistent application of sanctions would significantly improve compliance. Ultimately, robust enforcement of trademark rights is indispensable for fostering innovation, protecting consumers, and supporting sustainable economic development in Cameroon.

6. Recommendations

From the challenges identified to be the made difficulty in the enforcement of trademarks in Cameroon, this study puts forth the following recommendation in a bit to enhance the enforcement of same. Amongst these recommendations, we have as follows.

Firstly, Cameroon should launch a national public awareness campaign on intellectual property rights protection as a whole including trademarks by, introducing television programs, organizing seminars and publishing articles in newspapers to educate the public on the various Intellectual property rights, the advantages of protecting intellectual property rights and the disadvantages of infringing intellectual property rights.

Also, the legal framework of trademarks should be revised (strengthen) and increase the punishment for trademark infringement from a Misdemeanor to a Felony. Although criminal enforcement of trademarks is possible in Cameroon as per the Bangui Accord and the Cameroon Penal Code, in practice very few trademark infringers receive criminal sanctions.

Lastly, the cost of registration of trademarks and the renewal costs should be reduced or, if possible, eliminated to enable small innovative enterprises that are faced with financial challenges to register their trademarks, which are presumed to be their personal property. This would help them protect their goodwill and reputation.

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¹ Law No 2016/007 of 12th July 2016 to institute the Cameroon Penal code.

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