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Trademarks in Ethiopia:

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Awareness, Infringement and Potential
Solutions

*A project report prepared in partial fulfillment of the requirements for
Masters degree in Business Administration*

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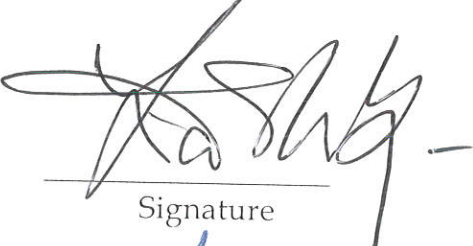
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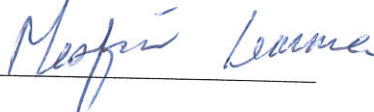
**Project work on
Trademarks in Ethiopia: Awareness, Infringement and
Potential Solutions**

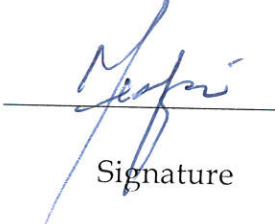
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List of Acronyms

- ECA- Ethiopian Customs Authority
- EIA- Ethiopian Investment Authority
- EIA- Ethiopian Investment Authority
- EIPO- Ethiopian Intellectual Property Organization
- EPRDF- Ethiopian Peoples Revolutionary Democratic Front
- ESQA- Ethiopian Quality and Standards Authority
- FDI: Foreign Direct Investment
- FH- Federal High Court
- INTA- International Trademark Association
- IPR- Intellectual Property Rights
- MNC- Multinational Companies
- MOTI- Ministry of Trade and Industry
- TRIPS- Trade Related Intellectual Property System
- USPTO- United States Patent and Trademark Organization
- WIPO- World Intellectual Property Organization
- WTO- World Trade Organization

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Abstract

In the objective to identify the level of awareness among businesses about trademarks and their infringement, this paper reveals the general overview of trademarks in Ethiopia. It discusses the relevant laws and concerned government bodies with trademark registration and arbitration of infringement cases.

Fifty questionnaires were distributed to assess level of awareness for businesses on purposive sampling method of which 30 were collected and analyzed whereas the rest 20 were not collected. The analysis of the questionnaires reveals that most of the respondent businesses do not have trademarks due to lack of awareness about trademarks in general.

Majority of the respondents have witnessed infringed products which show industry specific characteristics where cosmetics products take the lead. And finally establishment of customers association and provision of trainings were identified as major solutions for trademark infringement in Ethiopia.

CHAPTER ONE

PROJECT OVERVIEW

1.1 Background of the Study

Companies whether multinational or national need to produce and offer a product or a service to their customers to stay in business. According to Peter F. Drucker (1971), there is only one valid definition of a business purpose: "to create a customer". And the way businesses create and manage customers varies from one organization to another within one industry and from industry to another industry. Even the physical boundary of countries plays an important role on how businesses create customers and on the general business framework and environment.

Different businesses choose diversified strategies to attract and maintain customers, for satisfying the customer is the sole *raison d'être* for businesses. One obvious reason as to why customers are always attached to businesses is the provision of goods and services by the businesses. In other words, products and services are the attaching agents between customers and businesses.

There are, however, many companies which provide a single product or service to similar groups of customers with a competitive or even a lower price. When it comes to consumers, most products now meet an adequate standard, and if one product is as good as another, buyer's will often settle for the cheaper. Customers may, however, pay more for a brand- not merely because they trust it but because it seems to represent a way of life or set of ideas (Cairncross, 2002).

A trademark could determine the success or failure of a company in this globalized world (Franklin, 2005). It can give a competitive advantage for the one who uses it properly and it is also a means of reducing unfair competition. Trademark to a manufacturer or a merchant represents something akin to that which the flag of a country represent to a loyal citizen. They are badges of honor, distinguishing marks, emblems to be proud of, to be kept above reproach and with spotless reputation (Geier, 1934:69).

A company's brand or trademark worth as much as the tangible assets of the company (Franklin, 2005). A study for identifying companies whose brand names or trade names and trademarks worth the highest among the world's largest multinational companies indicated that Coca Cola's brand equity is \$67 billion followed by Microsoft's \$61 billion (The Global Brand Scorecard, 2004). This account for the total asset of many large companies summed up and clearly indicates that the trademarks, trade names and goodwill of companies in undertaking business need to be protected from illegal and unfair use.

1.2 Statement of the Problem

Intangible assets that a company possesses have significant value in the creation and maintenance of its customers. Moreover, since the monetary value of these intangibles may worth as high as half of the worth of the whole company, they have to be protected through any means just like the protection given to the tangible assets that the company owns and manages.

Understanding the need to legally protect company's trademarks and names from illegal use, many countries including Ethiopia have enacted regulations on their commercial codes or using various trade related proclamations. But time and again, it has been proved that the mere statement of the codes doesn't seem to protect illegal use of trade related properties in many countries.

Infringement cases involving multimillion dollar lawsuits have been raised. A recent example of this could be iPhone and iPod (www.cnn.com/business, June 23, 2007). Many other examples can be mentioned throughout the world. Governments can also be involved in trademark disputes not as a solving agent but as a plaintiff. A typical example for this is the case of Star Bucks and the Ethiopian government where the Ethiopian government sues Star Bucks for infringement of three coffee products: Yirgacheffee, Sidamo and Harrar.

When it comes to Ethiopia, the problem of trademark infringement is increasing day by day at a steady rate. In a country, where registering trademarks is barely practiced (EIPA, 2006), it is difficult to presume even those registering will have a problem of infringement or illegal use. One can clearly see this fact, if by chance he/she has got an opportunity to look on the database of cases appearing in courts. The number of court cases is increasing slowly (FHC, 2006). The legal statements in Penal Code (Art 673-674), Commercial Code (Art 132-134), Civil Code (Art 2057, 2122) and Public Enterprise Proclamation (No 501/2006) are always subject to interpretation which further aggravates the situation to an even bad shape (Abebe 1997 and Tesfaye, 1998).

Plenty of legal issues related to trademark protection have been raised and were accordingly answered by scholars. However, little so far has been done to explain issues related to trademarks and their illegal use or infringement in relation to the root cause of the infringement and the potential solutions in Ethiopia. It is thus, the aim of this study to identify and answer some legal uncertainties on infringement and try to come up with some potential solutions. In short, the research question of this study is “*what are the potential solutions to trademark infringement in Ethiopia*”.

1.3 Objective of the Study

A. General Objective

The general objective of this study is “*To assess the level of awareness among businesses about trademarks, their infringement and identify potential solutions*”.

B. Specific Objective

In achieving the general objective, the research undertakes different mini-studies and identifies their potential benefit to the main research. These subsidiary studies to be conducted in understanding the essence of the research are the specific objectives and are listed below.

- 1 To assess the trademark registration and litigation practice in Ethiopia
- 2 To assess trademark infringement implications on the overall investment climate
- 3 To assess the impact of trademark infringement with regard to joining World Trade Organization (WTO).
- 4 To assess the role of Ethiopian Customs Authority (ECA), Ethiopian Quality and

Standards Authority (EQSA), Ethiopian Intellectual Property Organization (EIPA), and Ministry of Trade and Industry (MOTI) in protection of trademarks

1.4 Significance of the Study

Properly answering the following questions will lead to a general consensus about the significance of this research.

- 1 What is unfair competition and how can we minimize it?
- 2 Why is trademarks and their improper use an issue this time?
- 3 What are the impacts of trademark infringement on FDI?
- 4 What are the consequences of joining the WTO?
- 5 What are the types and intensity of other researches to be done in the future?

1. Unfair Competition is the passing off, or attempt to pass off the goods or business of one person for the goods or business of another person, and any conduct, the natural or probable effect of which is to deceive the public and to pass off the goods or business of one person for that of another amounts to actionable unfair competition (www.wipo.org, Geier, 1934, and Franklenn, 2005). Thus improper or illegal use of trademarks done to deceive users or customers of one business with or without the knowledge of the existence of the mark in market will create an opportunity for unfair competition. This should be avoided and seriously handled, since customer deception will lead to losing market and sales and ultimately results in delivering poor quality products. Researching trademark related issue as a means of protecting unfair competition is thus advisable and appropriate.

2. Private business involvement in the general economy of Ethiopia is booming

(Melat, 2007 and Asrat, 2003). New businesses are opened in different markets. More incentives are given to further encourage the investment climate

Although various activities are done to facilitate investment activities, there is little amount of work done in properly acknowledging intangible properties and providing the right protection. A recent report by World Bank ranked Ethiopia as one of the most difficult countries for registering property and protecting investors (The World Bank Group, 2005).

Improvement, therefore, is crucial in these particular issues and substantial upgrading starts on a research work. Therefore, this study will be important for those working on shaping and polishing the trademark policies and regulations of the country.

3. Ethiopia is on the process of joining WTO. Joining the WTO has specific requirements that must be fulfilled by all pending countries and thus as a candidate Ethiopia is supposed to meet those expectations of the WTO. One of the requirements put forward by the WTO is the proper protection of trademarks, trade names, patents and copyrights of other member countries (www.wto.org and TRIPS, 1994). But this contradicts with the current practice in Ethiopia (Tesfaye, 1998) and has to be worked out by a research process. The output of this research could be an essential input in this regard.

4. A means of further encouraging private investor's involvement in public and private economic activities is the protection of their tangible and intangible assets. And before it is too late, this is the right time to study the impact of infringement cases on the investment climate of the country.

5. FDI is increasing throughout the country in multiple investment areas (Melat, 2007). Furthermore, the Ethiopian market is proving itself to be one of the best for foreign investors. Consequently, many multinational companies (MNC's) are registering their products and marks through their franchisees and licensees. All require the proper protection of their marks as well as the protection of their agents. To do this lawsuit is not enough since the legal actions are conducted after damage has occurred rather there is an apparent need for identification of the root causes towards fraud on trademarks.

Finally, this research serves as a reference for supplementary studies to be conducted by other scholars since there is little research so far done in this area.

1.5 Scope of the Study

Although, industrial property, which is a member of intellectual property, includes trade names, trade dresses and trademarks, this study is only concerned with trademarks. It involves

- Assessing the trademark registration process
- Assessing the legal statements on the penal code, commercial code and trade related proclamations
- Undertaking data collection and analysis for identifying trademark awareness and infringement

1.6 Limitations of the Study

Legal protection of trademarks, just like all other intellectual property components, is subject to situational interpretation (Tesfaye, 1998). In fact, the increasing number of

infringement cases is the result of lack of strict and all-rounded rules and regulations in Ethiopia (Abebe, 1997). This has its own influence on reduction of unfair competition and to some extent restricts the outputs of this study. Other limitations of the study are listed below.

- 1 The issue being legal, it needs more time to investigate
- 2 Lack of resources related to trademarks in Ethiopia
- 3 Impossibility to talk to businesses involved in trademark infringement

1.7 Methodology

Data Source

Both primary and secondary data sources are used in the project. Primary data is collected through formal and informal interviews with experts from EIPA, and ECA. In addition, questionnaires were prepared and distributed to assess the level of trademark awareness, their infringement and potential solutions.

Secondary data (like official documents, annual reports, journal articles, books and other web related materials) have been used, although information regarding trademarks is limited and hard to find.

Sample Population and Sampling Technique

Questionnaires were distributed to a sample of 50 businesses on convenient or purposive sampling method. Purposive sampling is selected for the following reasons. First and for most, the culture of providing genuine information among business owners is highly condemned and it is helpful to collect information on referral basis. Second, time limitation hampered the distribution of questionnaires randomly. And



lastly, the idea of trademarks is known in certain group of businesses and this can be best represented in purposive sampling.

Sample Size Determination

There exists a broad body of knowledge that is used to determine the sample size for a research or project. But under the apparent conditions described above, it is hard to follow the scientific procedures forcing the use of sample size determinations on personal judgment basis.

Method of Data Analysis

Descriptive analysis will be used where findings will be presented in percentages, weights, averages, graphs and tables.

1.8 Organization of the Paper

The study consists of four chapters. Chapter one starts discussion by indicating the importance of protecting trademarks. Explanation of the statement of the problem, objective, significance and scope of the study will further enhance the knowledge of the reader consecutively.

Chapter two discusses the literature review which shows the nature and findings of related literature to trademark practices. Chapter three converge the idea of the paper to Ethiopia where the core element of the research is conducted. It consists of explanation on the registration of trademarks in Ethiopia identified through secondary data. And finally, chapter four concludes on the basis of the findings on third chapter and states some recommendations to be followed.

CHAPTER TWO

LITERATURE REVIEW

Information age comes with huge opportunities that are impossible to overlook and difficult treats that are unthinkable to ignore. The issue of trademark is one such phenomenon. When it comes to building a trademark the internet makes the task easier in some ways, harder in others (Cairncross, 2002: 53).

Building trademarks involve analysis of three disciplines: economics, law, and management. Just as it is a term tuned in three disciplines, it has many names and it is subject to multiple theories which at times are contradictory but mostly supporting supplementary. For instance, in management a trademark can be a brand whereas in law it is an intellectual property that should be protected. An economic overview of trademarks demonstrates an issue indicating the economic policies of the nations about intellectual property.

This chapter deals with the discussion of some basic concepts about trademarks and consists of five sections. First section provides meanings and definitions of trademarks and its relation to brands and other intellectual property elements. The second section discusses the need for protection of trademarks. International trademark related issues are briefly explained in the third section. The fourth section discusses latest developments concerning trademarks. And finally some legal questions that are difficult to answer in the present legal setting are listed.

2.1 Trademarks: An Overview

2.1.1 Definition of Trademarks

As communication technology advances, words and phrases also change. A single word takes multiple meanings in a single situation and at times a word can have varying interpretations in different cultures. There is multiplicity of adjectives used in an industry in particular, with meanings that often are neither discrete nor clear. At its worst, this reflects widespread confusion in the field; at best, exciting innovation and development (Jevons, 2005:117) .This scenario is exaggerated when it comes to trademarks.

Many authors and scholars give multiple definitions which are most of the time alike but sometimes even tricky to differentiate. It might be difficult for a reader to thoroughly understand trademarks due to some confusion that exists among definitions of the word itself. Most of the definitions, however, have some common elements. The following paragraphs discuss three of the widely accepted definitions.

I. A trademark includes any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods. In short, a trademark is a brand name (www.uspto.gov).

II. A trademark is any word (Poison), name (Giorgio Armani), symbol or device (the Pillsbury Doughboy), slogan (Got Milk?), package design (Coca-Cola bottle) or

combination of these that serves to identify and distinguishes a specific product from others in the market place or in trade. Even a sound (NBC chimes) color combination, smell or hologram can be a trademark under some circumstances. The term trademark is often used interchangeably to identify a trademark or service mark (www.inta.org).

III. 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 colors as well as any combination of such signs, shall be eligible for registration as trademarks, Where signs are not inherently capable of distinguishing the relevant goods or services (TRIPS, 1994).

A trademark is applied or attached either directly on the product, on the paper work, on the packaging, or the prints that make the offer of the products, as well (Abebe, 1997).

2.1.2 Trademarks Versus Brands

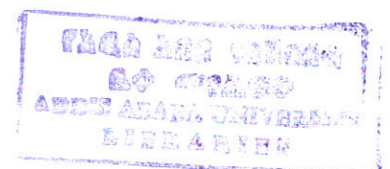
There is a general misconception about the meaning of trademarks and brands. Customers usually mix up brands with trademarks. If, for example, we take marketers and legal personnel in a certain organization, while the marketer is solely concerned about brands in their products, their legal counterparts are debating in courts about their trademarks. Furthermore, the way the marketer understands trademarks is

completely different from the legal personnel. There is a pure confusion in defining brands and trademarks (www.wipo.org).

A trademark, as discussed previously, is any word or slogan that indicates the origin of products separating them from other similar products by other manufacturers. A trademark indicates neither the type nor the quality of a product it is representing. It can be attached to multiple products which are produced and designed in a single company. For instance, the trademark Toyota exists in all brands of the company like Camry, Carrina, Corrola, Prado, Rav4 and others as well.

Brand, on the other hand, is a name, symbol, design, or some combination which identifies the product of a particular organization as having a substantial, differentiated advantage (O'Malley, 1991: 107 in Rooney, 1995). The American Marketing Association defines a brand as a name, term, sign, symbol or design or some combination of them, intended to identify the goods or services of one seller or group of sellers and to differentiate them from those of competitors (Keller and Kotler, 2006). A brand, thus, indicates the type of product rather than the organization. It shows quality than origin. A brand is trustworthy mainly because trust is what secures loyalty. It is a means of differentiating a product and creating an emotional attachment between the consumer and the product.

Sometimes it is possible to have companies with product brands similar to their trademark. A well known example for this is Coca Cola, the soft drink, having the brand of the company's trademark (Xie and Boggs, 2006). Ambo, the mineral water, is a local example sharing this concept.



In all situations, there exists a blurred periphery between what a brand is and what a trademark is. As a result of this and other reasons mentioned below, trademarks and brands are treated alike in definitions as well as interpretations in this study.

A. In Ethiopia, where the core element of this paper is done, legally registering a trademark is not well practiced (EIPA, 2006). Hence, differentiating the words and treating them separately is unimportant when it is possible to give a holistic diagram.

B. We are living in a country where Colgate is used as a generic name for all tooth paste types and thus their manufacturers; Highland Spring Water is used as a common name for all bottled water products irrespective of their producers; and other plenty of examples. So there exists almost no space for differentiation.

C. The whole idea of intellectual property is in its infancy stage now in Ethiopia and needs to be supported by researches and studies emphasizing a holistic approach than individualistic differentiation.

Accordingly when it is used in phrases like “trademarks should be protected” and “trademark registration and arbitration”, it can be equally and interchangeably used as “brands should be protected” and “brand registration and arbitration” respectively as of now.

2.1.3 Objective and Function of Trademarks

It has been recognized that the foundation of a business is built up on the significance and guarantee conveyed to the purchasing public through the medium of particular marks, names or symbols applied by the organization (Geier, 1934: 69). Consequently,

it is safe to say that trademarks are always inseparable with commerce (Abebe, 1997). And a business without appropriately designed mark is doomed to fail in the long run.

Trademarks have manifold advantages and functions when applied properly as the following paragraphs show.

Objectives of Trademark

A trademark can provide two major objectives: Economic and Social; which are both of vital importance to the buyer and seller in the course of commerce (Rahel, 2005, Unpublished).

▪ The Economic Objective

The economic objective of a trademark is reflected from three perspectives: Owner, Consumers and the Economic Policy of the nation.

- ❖ A company's trademark is an asset or equity having a monetary value and like all other tangible assets, it can be sold, bought and franchised.
- ❖ When a product or group of products manufactured by different companies are of the same standard, price become more important variable in purchasing selection. However, customers can make their purchase decisions based on trademarks, since they convey a certain life style or set of ideas.

Hence, a trademark reduces confusion in decision making when the information available is not adequate. Furthermore, it helps in economizing decision making by reducing the time needed.

- A look at the economic ideology of many countries is in favor of private sector involvement. Many developing countries, including Ethiopia, are trying to attract

as many foreign investors as possible (Asrat, 2003). One factor that determines the inflow of foreign investment is the degree of property right protection the host nation provides.

- The Social Objective

The major social objective of a trademark is closely related to that of safeguarding the public from mistake, deception and confusion, which is usually termed as unfair competition (Abebe, 1997, Tesfaye, 1998 and Franklenn, 2005).

Function of Trademarks

Trademarks, in addition to distinguishing products, have multiple other benefits which if applied properly will lead to a competitive advantage. They can be used to show quality and functionality of products indirectly- by associating a certain product to attributes such as after sale service, reliability, timely delivery, technological advancement and other characteristics of the producer- produced and distributed by a single manufacturer. A trademark on a product answers the question “where did this come from” (Franklin, 2005).

In general, trademarks perform four functions (Miller and Davis, 1994), namely

- 1) Product differentiation
- 2) Indication of source
- 3) Standard uniformity
- 4) As a prime instrument in advertising and selling of goods and services

2.1.4 Friends and Families of Trademark

Trademark is misconceived with other related elements which usually come associating it. Some major misconceptions are clarified in the following paragraphs.

A. Trademarks Versus Trade Names

A trade name is the name of a business (Franklin, 2005) through which the business undertakes trade and uses it to communicate with others. A commercial name or trade name- the two expressions mean the same thing-is the name under which a person operates his business and which clearly designates the business (Art 135 of Commercial Code of Ethiopia). A trade name unlike a trademark is not required to be physically attached either to the goods or packages (of products) (Colombia Law Review, 2001). Example of trade names: The Coca Cola Company where the trademark is Coca Cola and Microsoft when the name is Microsoft Corporation, etc.

B. Trademarks Versus Trade Dress

A trade dress is the total image of a business (Rosen and Alpert, 1994). It shows not only the trademark or trade name of the business but also the overall environment including the colors, sounds and arrangements. It is overall graphics and shape of a product or its packaging adopted to distinguish goods and services from those of others (Franklin, 2005). A trade dress is infringed if the total combination of the colors, shapes and graphics can make sense to the consumers of a business and if they are used as a promotional means.

C. Trademarks Versus Copyright and Patent

Trademark, copyright, and patents belong to a large category of industrial properties

which in turn is part of the broader concept of Intellectual Property. The difference lies in the fact that trademark by no means indicates an innovation or exploration of something whereas copyright and patent are always associated with discoveries. An author requests for a copyright for his/her new book where as an inventor needs protection by the law for his/her inventions (www.wipo.org). Copyright uses © as an indicative mark.

D. Trademarks Versus Service Marks

While a trademark as the name implies, is used for trading, service mark is used in service organizations such as Governmental Offices, Non governmental organizations and others. Service marks are used for indicating the source of a service or product in some cases.

™ is used to indicate the trademark of a business which is not registered where as ™ is used for unregistered service marks (Franklin, 2005).

2.2 Need for Protection of Trademarks

Customers neither have the interest nor the courage to look in to the ingredients and company name of a product but they do have the urge to look in to the brand that the product bears. A trademark is widely regarded as the most valuable asset an organization has. An often overlooked fact is that it is also the most vulnerable asset as well (Fan, 2005). A trademark represents every component of a product summed. In short it is the soul of the product. (Geier, 1934)

In today's hotly competitive environment, managers must make optimal use of the



relevant regulations and laws in order to protect their products from being copied (through the effective use of trademarks) (Rosem and Alpert, 1994). This can be attributed to the fact that trademarks represent critical issues for organizations such as the goodwill of the owner in undertaking commerce, the company's corporate structure and overall corporate responsibility. A trademark has the capacity to shift customer buying behavior in favor or against.

Moreover, trademark infringers neither produce a quality product nor sell it with a competitive price. Therefore, the company's existence is challenged by the poor product produced and the lower price charged to customers. And its future will be in great jeopardy unless some action is taken, if possible in a proactive manner or reactively (Rosem and Alpert, 1994)

As the number of imitator brand has risen, so too have legal actions for trademark infringement and passing off, because of consumer confusion, unfair misappropriation of brand owners intellectual property, and lost sales revenue (Mitchell, 2002).

The principles of trademark protection throughout the world make up a complex body of law which differs in many respects among different countries (Mitchell, 2002). No given country objects the need for protection of trademarks and all other intellectual properties (TRIPS, 1994). Conferences have been held, meetings were prepared to come up with a consensus to use some common ground on the protection and regulation of trademarks throughout the world. And as a consequence some common standards have been established which every nation require for the protection of

marks (TRIPS, 1994).

- *Distinctiveness*

A trademark must be one that can uniquely identify a product as originating from one source and thus distinguishing it from those coming from another. What the law everywhere does require is that the mark must be “distinct”. It allows the owner to communicate symbolically with the public in identifying his/her product and in assuring them that the mark appearing there on is a unique product (Gabey, 1981 in Abebe, 1997).

- Acquisition of Rights on Trademark

Exclusive rights on a mark are acquired by registering the mark in a country’s register of marks (Abebe, 1997 and Public Proclamation No. 501/2006 Art4). Exclusive right to use the mark includes restricting others from using the mark even for products and services that are not similar to the products of the mark owner company. Exclusive right gives privilege for the owner to use the name in any possible method in such a way that the mark is always raised in conjunction with the owners’ business. Registration seems to be the most solid basis for constituting the grant of exclusive rights.

- Need for Use

A trademark not used does not have a value in the eyes of the judges and does not have any legal premises. More than registration, marks need to be used so as to appeal for protection against illegal use. Without active selling methods the trademark serves no purpose, for its existence can be bypassed extremely easily through employing another name (something which is generally much more

complicated to do in the case of a patent) (Xie and Boggs, 2006).

Nations widely differ on how they implement and use the registration process. The variation also affects what is a valid trademark and what is not. With all this differences, however, the only way to acknowledge the proper use of a mark by a business is registration. ® is used to signify those trademarks which are registered in their country's register center where as ™ is used for those used but not registered marks (Franklin, 2005).

2.3 International Perspective

Globalization results in boundary-less trading between companies and the existence of multinational firms rely on the underlying concept of globalization. Globalization offers plenty of benefits to both MNC's and developing countries. The consumers in the developing nations will have a better quality option for their needs and the multinational firms will have an opportunity to exploit new markets and tackle the fierce competition that they face in their home lands (Xie and J.Boggs, 2006).

This success story has its own pitfalls particularly in the prevention of unfair competition and reaching the final consumers with the proper and right way. Multinational firms face difficulty when trying to protect the industry related intellectual property components of the product or service that they are selling in the foreign markets. Especially if the products are new to certain nations, there is a great possibility of being imitated by other low priced products.

To tackle such problems, WTO has made it mandatory to state policies in protecting

trademarks and other intellectual properties of all other member countries (TRIPS, 1994). Developing countries particularly face difficulty in enforcing such claims mainly due the fact that the foreign products are highly priced when compared to the purchasing power of the local community. To change this trend both the WTO and WIPO have facilitated training programs for higher policy officials of country representatives to enhance awareness in their home nations.

Moreover, to reduce the administrative obstacles that multinational firms face when dealing with patent and trademarks cases in foreign countries, some actions have been taken in the past 15 years. Consequently, the Madrid System for trademark registration and protection has been crafted to enable MNC's to register their marks once in the Madrid Registration Center and then they will be entitled exclusive rights to use the marks.

The establishment of the WIPO, an institution that handles and coordinates activities related to intellectual property is a major achievement, is also another important achievement through out the word that handles and coordinates activities related to intellectual property. EIPA is working with WIPO to establish standards and codes of action that enhance its operations when dealing with businesses.

2.4 Latest Developments

Trademarks are subject to multiple theories and studies. Unfortunately, the divergence in perspective on trademarks creates confusion among literatures of the different fields (management, law and economics). To make it worse, legal issues

have been entertaining new aspects. The following paragraphs discuss some of the latest developments in the field.

2.4.1 Infringement as a Cultural Element

In positively shaping the attitude of the local community towards the issue of intellectual property theft or Infringement, the local government needs to shape the idea of the local community about Intellectual Property and their benefits to the society in question. Clearly, IPRs have serious economic and political implications (Berrell and Wrathall, 2007) and this is especially the case in both the newly industrialized countries and emerging market economies which are generally characterized by an embryonic legal infrastructure (Komen et al., 1994 in Berrell and Wrathall, 2007). Therefore, it is healthy and manageable to change the attitude of local community about IPR than trying to enforce legal measurements.

For instance, China with a population of more than 1.5 billion is highly condemned for copycatting all intellectual properties (www.wipo.org). Nowhere in the world exists as high infringement cases as in China. The local and regional governments in China have tried to implement some legal measurements which result even in an augmentation on the number of pirates.

2.4.2 Trademarks and Developing Countries

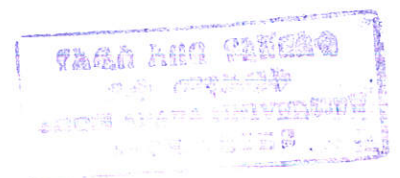
Information and communication technology has enabled MNC's to reach to customers in world wide. The market that MNC's have been capitalizing is no more a motivation to them since companies targeting these customers are expanding. And as a result

MNC's are facing a fierce competition in their home lands from other manufacturers. Moreover, emerging markets are a key factor in the future growth of the world economy, offering tremendous growth opportunities for firms from developed countries such as USA and the members of the EU (Xie and Boggs, 2006). This necessitates the MNC's to go for new markets and target new customer group in emerging markets and developing countries.

Resource abundance does not benefit the developing countries in fulfilling the growing demand of their people. Most developing countries are characterized by the surplus of import commodities. However, importing certain goods with or without local offices for the products manufactured outside creates a possibility of inappropriate use of product related elements, including trademark.

Bitzenis and Ersanja (2005), while discussing the major obstacles to entrepreneurship in businesses environments that are in transition (case of Albania), found out that one of the three major impediments that negatively affect entrepreneurship is unfair competition which is far from being prevented by the largely ineffective legal infrastructure. The probability is high for MNC's to face a vital risk in trademark infringement and in the general protection of the intellectual property while opening businesses in developing countries.

Legal infrastructure has proven to be soft to solve trademark infringement cases particularly in developing nations (Xie and Boggs, 2006). And local government officials have huge responsibility in changing this trend as a means of cheering foreign



investors. Moreover, MNC's need to follow a new brand strategy when initializing a market in developing nations: like following corporate branding than product branding (Xie and Boggs, 2006).

2.4.3 Sources of Infringement or unfair competition

There is an unsettled debate among lawyers and law practitioners on whether to define unfair competition and use it accordingly or to list all those actions that might result in unfair competition (Montague, 1915). On the one hand defining the law and forwarding statements create confusion since most legal actions are subject to interpretation. And on the other hand listing all actions related to unfair methods of competition can not go inline with the ferocity and speediness of the invention of unfair competitors.

Nearly all normal business men can distinguish between "fair competition" and "unfair competition". Efficiency is the generally regarded as the fundamental principle of the fair competition-efficiency in production and selling, while oppression or advantage obtained by the deception or some questionable means is the distinguishing characteristic of "unfair competition" (Cong. Rec, 1915). Accordingly there has been an ongoing practice to identify major activities that might result in unfair competition and sources of imitation.

2.4.4 Ethical Branding and Corporate Reputation

With the continuous advancement of technology, most consumer products have become a kind of commodity, i.e. there are fewer and fewer genuine and tangible

differences between competing offers. This provides brand advertisers with a powerful tool to manipulate the consumer's emotion in order to achieve brand differentiation (Fan, 2005).

A brand simply becomes the easy target or scapegoat for corporate misbehavior. Unethical branding can be prevalent in companies with less corporate responsibility. If marketing is like some researchers believe, the most prone to unethical behavior due to its inherent attributes, then branding must share some of the blame (Fan, 2005).

The above statements indicate that a good brand emanates from a highly reputable company which cares about the future and have a strong corporate responsibility.

2.4.5 Nature and Characteristics of Infringing Companies

In satisfying the needs and wants of the society, businesses follow and take different business ideologies and strategies. For it is the sole definition of a business to satisfy the society (Drucker, 1971), it is necessary for businesses to follow distinct and stylish strategies to cope up with the environmental needs. Time is a witness as to the number and quality of techniques businesses have followed in interacting with customers. Successful and successive innovation is one way as is highly customer orientation in a company (J.Peters and H.Watterman, 1982).

So is true of illegal business processes. Some reasoned their highly priced product and service as a consequence for high quality. Some improperly use other company's products and services pretending if it is their invention. The nature and characteristics of businesses illegally using products, services, marks and trade names of other highly

profitable and successful companies share some common elements (Franklin, 2005).

These are businesses which

- Lack vision related to the business
- Lack strategy to make the vision a reality
- Lack adequate knowledge on managements
- Are highly concerned with high profits
- Lack adequate knowledge of business legal frameworks
- Lack deep urge to work with customers
- Lack corporate responsibility
- Work under customers who in lack of options

Consequently, it can be easily concluded that the products and services from these organizations is of low quality and often highly priced sold and offered for customers which are option less (Source).

2.5 Last words in Literature

Despite the fact that intellectual property is an issue hot for many years, it takes only a glance to understand the highly immersed unfair competition and acts of illegal trade practices in Ethiopia. One way or another the subsequent questions are answered in developed countries but there has been no effort to answer them in the Ethiopian context except in the legal statements. Accordingly, the following list shows questions that are prevalent in Ethiopia regarding brands.

- I. What is the practice of trademark registration and arbitration?
- II. What is the impact of infringement on foreign direct investment?

- III. What is its impact in joining WTO?
- IV. What is the trend in registering the marks and the trade itself among businesses?
- V. What is the value of Ministry of Trade and Industry, Ethiopian Intellectual Property Authority and the Chamber of Commerce?
- VI. The number and trend of infringement cases taken to court?

CHAPTER THREE

DATA ANALYSIS

3.1 Trademarks in Ethiopia: The Law and Practice

In this section, multiplicities of issues related to trademarks in Ethiopia are discussed. It is to be noted that most of the information contained in this chapter are gathered through interviews carried out in EIPA and ECA, questionnaires distributed to businesses and with the help of secondary data sources.

3.1.1 An Overview

Time is a witness for the escalating private sector involvement in the economic activity of Ethiopia. Two decades back economic activities had been dominated by the state ownership of almost all economic sectors. But after the introduction of market led economy by Ethiopian Peoples Revolutionary Democratic Front (EPRDF) and subsequent privatization policies, dramatic growth in private businesses has been noted.

The government is paving the way for foreign investors to invest in Ethiopia through different incentive packages which range from small scale tax exemptions to provision of lands with less or no cost (EIA, Internal Activity Report, 2005). Consequently, the number of foreign investors in Ethiopia is increasing gradually (Melat, 2007). To further encourage foreign direct investment, the government has been spending a lot in the development of basic infrastructure.

This being positive development, the increasing number of small and medium level businesses is creating critical problems as most of trademark imitators are likely to be small and medium enterprises (Dodd and Zaichkwosky, 1999). Furthermore, the present legal structure is neither sufficient nor explained enough to support the current composition and structure of businesses (Tesfaye, 1998).

The fact that Ethiopia is on the process of joining the WTO is also a critical issue that should be considered with respect to trademark registration and arbitration of its infringement. This is vital since WTO requires every member country to explicitly state and implement various policies supporting the protection of foreign trademarks as indicated in chapter one.

Recent actions, however, signify that trademarks and others essential intellectual property elements will have a protection under a government authority. The establishment of EIPA implies the government's commitment towards protecting intellectual property rights, which helps all parties involved in the course of business and increases the confidence of customers on businesses.

3.1.2 Review of Relevant Laws on Trademarks

The Commercial Code

Businesses are ruled and guided by the commercial law. It facilitates the course of trading. The following statements are derived from the commercial code.

Article 133- Cases of Unfair Competition

- *Any act of competition contrary to honest commercial practice shall constitute a fault*
- *The following shall be deemed to acts of unfair competition*
 - *Any acts likely to mislead customers regarding the undertaking products or commercial activities of a competitor;*
 - *Any false statements made in the course of businesses with the view of discrediting the undertaking products or commercial activities of a competitor.*

Article 134- Effects of Unfair Competition

- *The court may, in cases of unfair competition;*
 - *Order the damages be paid by the unfair competitor*
 - *Make such orders as are necessary to put an end to the unfair competition*
- *The court may in particular*
 - *Order the publication, at the cost of the unfair competitor, of notices designed to remove the effect of misleading acts or statements of the unfair competitor, in accordance with Art. 2120 of the Civil Code.*
 - *Order the unfair competitor to cease unlawful acts in accordance with Art. 2122 of the Civil Code.*

Article 140- Definition

- *A distinguishing mark is the name, designation, sign or emblem affixed to the premises where the trade is carried on and which clearly designates the business.*
- *The use of the mark is not compulsory.*

The Civil Code

Article 2057 stipulates that a person commits an offence where, through false publications or by other means contrary to good faith, he comprises the reputation of a product or the credit of a commercial establishment.

Article 2122 is concerned with the mode of compensation. As per the article the court may order abandonment of the dishonest practices used by the defendant.

The Penal Code

Article 674-Infringement Marks

- I. Whoever intentionally*
 - a. Infringes, imitates or passes off, in such a manner as to deceive the public, another's mark or distinctive signs or declarations of origin on any product or goods or their packaging, whether commercial or industrial or agricultural, is punishable up on complaint with simple imprisonment or fine.*
 - b. Sales or offers for sale, imports or export, distributes or places on the market products or goods under a mark which he knew to be infringed or imitated or passed off or improperly affixed; or*

- c. Refuses to decree the origin of products or goods in his possession under such marks is punishable up on complaint with simple imprisonment or fine.*

The penal code provision is self explanatory and there is no need for further explanation. Rather, we can, in short, say once a trademark right is ascertained, it is protected pursuant to the above provision and the offender is punishable up on complaint with simple imprisonment or fine as indicated.

Public Proclamation 501/2006

The latest legal statement governing and managing the use of trademarks in Ethiopia is the public proclamation No. 501/2006. It, not only, defines right and wrong actions of trademarks but also explains the duties and responsibilities of all bodies such as the EIPA, ECA and FHC. It has the following components as shown in appendix D.

Part 1- General Provisions

Part 2- Acquisition of Rights and Registration of Trademark

Part 3- Procedures for Registration of Trademark

Part 4- Collective Trademarks and Well known Marks

Part 5- Duration and Renewal of Registration of Trademarks

Part 6- Rights Conferred by Registration and License Contracts

Part 7- Renunciation, Cancellation and Invalidation of a Right on a Registered Trademark

Part 8- Enforcement of Rights

Part 9- Miscellaneous Provisions



3.1.3 Deposition of Trademarks

In the absence of trademark law, the practice of depositing trademarks and issuance of certificate of deposit has been practiced in MOTI (the then Ministry of Domestic Trade) as of 1978. The proclamation in practice with this regard then was the public proclamation no 4/1978 Article 14.

Currently, registration is carried out in the central trademark registration service in EIPA. The registration process allows the screening of valid marks from invalid and ends in a cautionary notice to notify the public about the trademarks and thereof about the owner of the mark as shown in the figure below.

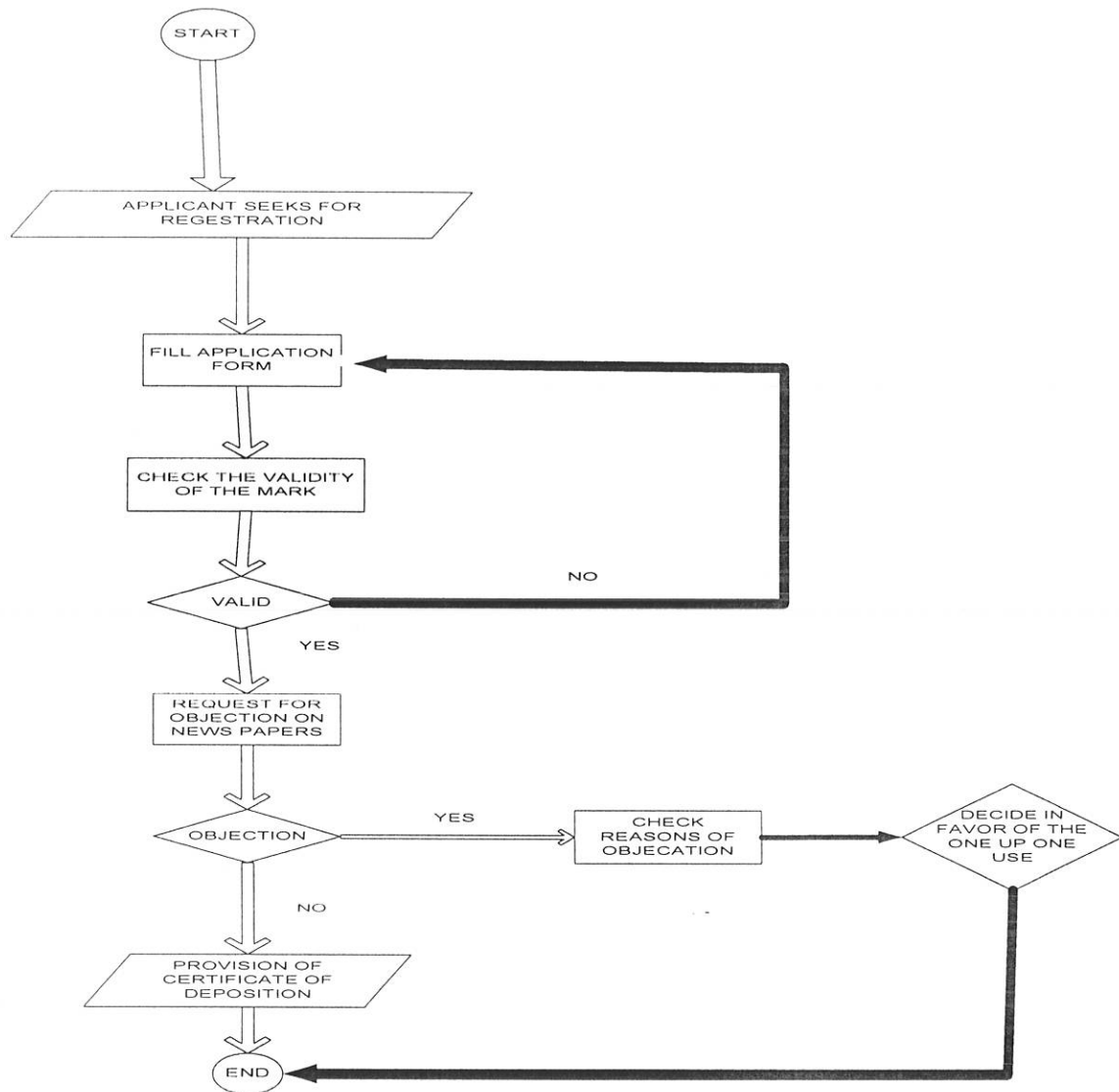


Figure. 3.1 Registration of Marks in Ethiopia

Source: EIPA, Public Proclamation No. 501/2006 Art. 8

Not all of the trademarks for which applications are filed would qualify for deposition. Marks may not qualify for registration either due to objective grounds or relative grounds (Abebe, 1997 and Public Proclamation No. 501/2006 Art. 6 and Art. 7). Marks inadmissible on objective grounds include those which are descriptive by themselves for there are limited words in an industry to monopolize and use. One good example

for this is to use “Soft Cake” as a mark for cakes provided by a cafeteria. A mark is also inadmissible for registration up on objective grounds if it is a generic word or name. Examples include “supermarket”, “computer” and “watches”.

Trademarks are also inadmissible for registration on three relative grounds.

- If it resembles a trademark in use
- If it is confusingly similar to an existing trademark and
- If it resembles a well known trademark although the application is different.

Up on completion of the registration and affirmative process, the owner will be entitled the right to use the mark on the products and services that it offers. To guarantee this, the owner of the trademark will be presented a certificate that will be used under cases of infringement. The owner is protected by the law for the coming seven years without renewal (Public Proclamation No. 501/2006, Art. 24).

3.1.4 Empirical Analysis of Marks Registered in the last 20 Years

The number of registered marks in Ethiopia is bit by bit increasing mainly due to the increasing pressure from the government and by the increasing number of foreign firms in the nation as shown in the following table. Comparison of the number of registered marks from local companies and foreign companies working in Ethiopia clearly shows that the number of foreign registered marks is higher than the local one's. This can be attributed to many reasons of which lack of awareness among local businesses on how to use and register trademarks takes the lion share (EIPA, Internal Activity Report, 2006).

The following table shows the number of firms, both local and foreign, whose trademark applications have been granted or rejected from 1986 to 2005 in MOTI and EIPA.

Table 3.1: Trademarks Granted and Accepted over the last years

Year	Applications Filed		Status			
	Locals	Foreigners	Granted		Rejected	
			Locals	Foreigners	Locals	Foreigners
1986/87	30	113	27	111	3	2
1987/88	31	272	28	270	3	2
1988/89	35	474	31	471	4	3
1989/90	102	301	80	294	22	7
1990/91	125	260	99	252	26	8
1991/95*	200	542	692	500	109	42
1995/96	274	148	242	138	32	10
1996/97	287	220	254	206	33	14
1997/98	498	3473	454	453	44	20
1998/99	324	368	289	353	35	15
1999/00	302	377	266	359	36	18
2000/01	346	313	309	297	37	16
2001/02	283	305	251	291	32	14
2002/03	355	398	321	381	34	17
2003/04	227	293	172	275	55	18
2004/05	321	189	259	174	62	15
Status Total			3508	4825	567	221

Source: EIPA, Internal Activity Reports, 2006

* Due to the political instability from 1991-95, proper collection of data was not carried out and thus only the total of the 4 years is given.

The high number of registered foreign trademarks is due to the high level of awareness among foreign businesses about trademarks and intellectual property. This can be supported by the fact that higher numbers of local trademarks filed trademarks are rejected than the foreign ones'. In general, the practice of registering trademarks, both for local and foreign companies, is increasing steadily.

However, comparison of the above numbers with the number of businesses legally

licensing their business reveals a simple truth: either there is apparent lack of awareness about trademarks and their registration or lack of coordinated effort to stimulate the business owners about trademarks (EIPA, Internal Activity Report, 2006 and MOTI, Internal Activity Report, 2006). The following table shows the number of businesses registered to work from 1987/88-2006/07.

Table 3.2: Number of businesses registered to work

Year	1995/96	96/97	97/98	98/99	2000/01	01/02	02/03	03/04	04/05	05/06
Registered Businesses	4602	5100	6200	7400	10200	12000	13400	16210	17891	21210

Source: MOTI, Internal Activity Report

Note that the above figures are the sum for all type of businesses in plc and sole proprietorship category and for the whole of the country. The numbers are a net registration; that means after renewals and reductions of canceled licenses.

Both MOTI and EIPA provide multiple services concerned with the trademarks as stated on the public proclamation number 501/2006. Among the services offered by MOTI, now by EIPA, registration of new marks and renewal are the major activities as shown in the following table.

Table 3.3: Activity based analysis over a 4 years period

No	Type of Service	Application Origin	Number of Applicants				Total
			2003/04	2004/05	2005/06	2006/07	
1	New Registration	Foreign	231	250	270	320	1071
		Local	200	230	270	290	990
2	Renewals	Foreign	300	320	400	420	1440
		Local	234	256	231	320	1041
3	Assignment	Foreign	100	126	98	178	502
		Local	121	67	149	120	457
4	Voluntary Pre-Examination Searches	Foreign	160	190	220	250	820
		Local	140	200	210	200	750
5	Others	Foreign	123	200	231	249	803
		Local	90	120	150	200	560
Total			1699	1959	2331	2659	

Source: EIPA, Internal Activity Reports, 2006

3.1.5 Establishment of Ethiopian Intellectual Property Authority and its Impact on Trademark Protection

Ministry of Trade and Industry has been carrying out the process of trademark registration since 1978 up on the assignment by public proclamation no. 4/1978. As it is not compulsory to register trademarks as is registering businesses, the process is barely practiced resulting in a few numbers of registered trademarks. On the other hand, the act of unfair competition is increasing and is creating critical problems to local investors (FHC, Internal Activity Report, 2006).

To minimize the adverse effects of stealing intellectual property right on investment, the EPRDF has established a new office, EIPA, for registering, controlling and guiding the use of trademarks and other intellectual property components. EIPA is now exclusively responsible government agent for issues related trademarks.

The major duties of EIPA are

- Registration and Protection of Trademarks
- Registration and Protection of Copyrights
- Registration and Protection of Patents

Each component of intellectual property has its own offices and experts handling its activities. The trademark registration and protection office performs the following activities.

1. New Registration of trademarks
2. Renewal of registered marks
3. Change of Name of the owner of the trademark
4. Merger of companies and thus stopping the use of two marks and starting a new trademark
5. Change of Address of the owner
6. Document Copy for international businesses
7. Substitution of Certificate if lost or damaged
8. Returns if the owner does not want to use the trademark anymore.

Registration and renewal of trademarks are the major activities.

Establishment of the EIPA has its own influence on intellectual property protection legal structure and on the attitude of the public (both individuals and businesses). In addition to the activities mentioned above, the authority organizes a negotiation process to arbitrate an infringement case before going to court. This is helpful since most disagreements on trademarks can be solved on primary negotiation between the

infringer and the mark owner (EIPA, Internal Activity Reports, 2006).

These activities, however, are not without their obstacles. Some of the major challenges that the EIPA faces and has to deal with are listed below (EIPA, Internal Activity Report, 2006).

- Absence of integrated action from concerned government and private bodies
- Lack of properly collected and organized data about businesses
- Absence of trademark attorneys specializing in protection and assessment of trademarks.
- Inadequate information among businesses about the existence of EIPA and its operations
- General lack of public awareness about EIPA

3.1.6 Arbitration of Trademark Infringement in Ethiopia

Nothing has ever transformed the way we do business and we live in general more than Information and Communication Technology (ICT) (Marcus and Watters, 2002). Easy access to information on trademarks around the world increases awareness of trademarks already in use. However, this same information can prompt companies to use trademarks used in other distant countries for two reasons: the lack of knowledge about legal implications and the owner company operates far away.

Consequently, as the table below shows, trademark infringement is steadily increasing in the country.

Table 3.4: Number of Infringement Cases

Year	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
Cases Raised	3	4	4	6	6	8	11	18

Source: FHC, Internal Activity Reports

This coupled with the few number of registered marks can hamper the growth of trademark protection activities and can reduce FDI unless some integrated action is taken.

When trademark infringement cases are arbitrated, the number of government agents involved in solving the disputes can vary from one case to another. The trademark arbitration process, discussed below, can also vary from case to case.

As it is the duty of the owner of a trademark to protect and to forbid illegal use of trademarks, the owner takes the first move by warning the infringers and warns customers to take care when buying its products usually in public advertisements. If the illegal user does not refrain from using the marks, the owner informs EIPA for possible reminders and actions.

Then EIPA facilitates a process of arbitration by negotiation and tries to settle the case between the parties through discussion. If this does not satisfy the plaintiff, the case goes to the FHC to be handled according to public proclamation No. 501/2006.

Decision of the court will be implemented in all other government as well as private business bodies. The court decision could take one or more of the following forms.

- Prohibition of using the mark by both the infringer and the owner

- Import restriction of the infringer
- Imprisonment and fine

3.1.7 List of Some Cases

In recent years, the increasing number of infringed products has alerted the government to work more on intellectual properties registration and protection. Some of the active court cases and others identified by EIPA are presented in tabular summary below.

Table 3.5: List of Infringement Cases

No	Original Mark (plaintiff)	Infringed (Infringer)
1	Fine	Fana, Fina, Fona
2	Sheno Lega	Sheger Lega
3.	Kurtu	Kurat
4	GIV	GIVE
5	Akaki Metals	DH Geda
6	Sinarline	Senarline
7	Head & Shoulders	Hair & Shoulders
8	Marriot	Marriott
9	Star Bucks	Kaldis
10	Vaseline	Wasline
11	Home Depot	Home Depot Addis
12	MyFashion	Fashion
13	Kaldis	Star Bucks
14	Durata	Duraya
15	Moon Light	Moon City
16	Phillips	Phillibs
17	Addidas	Addibas
18*	Yirgachefee	Star Bucks
19	Dove	Dov
20	Nivea	Vivea

Source: Federal High Courts Annual Report, 2006 and Ethiopian Intellectual Authority Annual Report, 2006.

*shows an infringement case raised by Ethiopian government against Star Bucks, the coffee giant, for using trademarks like Yirgachefee and not acknowledging their source.

Note that the above list is not complete.

3.2 Study Findings

In answering the research question and fulfilling the research objectives, a questionnaire has been prepared and distributed to 50 businesses in Addis Ababa. Out of the 50 questionnaires distributed, only 30 were collected and analyzed at a 60% return rate. The small number of questionnaires collected is mainly attributed to inability to have the cooperation of business managers for the provision of their genuine opinions with what they call “sensitive information”. Another reason is the shortage of time allotted to data collection. The following chart shows the composition of questionnaire distribution and collection.

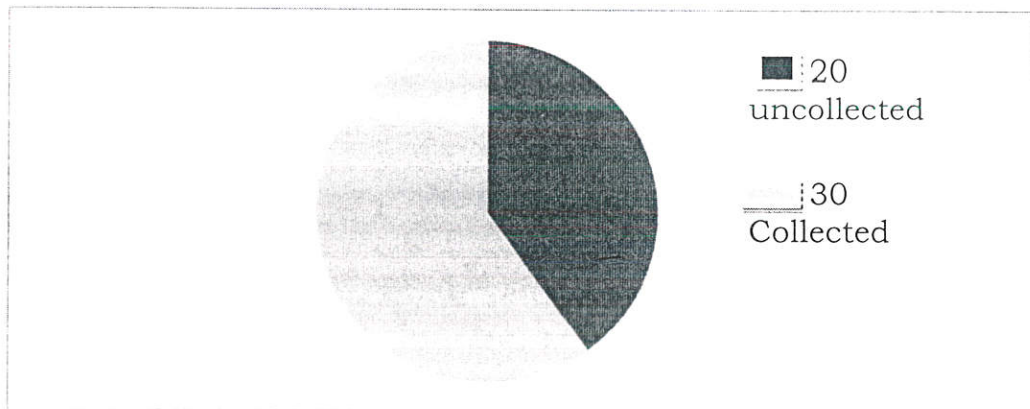


Figure 3.2: Questionnaires Distribution

Source: Primary Data Collected and Analyzed

Each questionnaire consists of four parts with a minimum of 6 questions. The table below shows the content and number of questions in each section.



Table 3.7: Composition of the Questionnaire

Section	Number of Questions	Content
1	10	General Respondent Business Profile
2	9	Awareness about Trademarks
3	10	Infringement of Trademarks
4	7	Potential Solutions to Infringement
Total	36	

Source: Primary Data Collected

The following sections discuss questions which are vital to this study one by one.

3.2.1 Business Profile

In order to make any generalization out of this paper as smooth and healthy as possible, general business information is enquired at the beginning of the questionnaire.

A. Type of Business of the Respondent

Out of the 30 respondents, as the following table shows, 19(63.3%) are involved in import and export activities, followed by General Trading businesses which account for 10 (33.3%) of the total 30. The following table has the details.

Table 3.8: Type of Business

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Import/Export	19	63.3	63.3	63.3
General Trading	10	33.3	33.3	96.7
Retail Shopping	1	3.3	3.3	100.0
Total	30	100.0	100.0	

Source: Primary Data Collected

B. Orientation

The above table further implies that most of the respondents are product oriented since most of them are involved in import/export activities, general trading and retail

shopping. This claim is supported by the analysis of the data collected. The table below shows the business orientation of the respondents.

Table 3.9: Orientation of the business

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Product Oriented	30	100.0	100.0	100.0
Service Oriented	0	0	0	100.0
Hybrid	0	0	0	100.0
Total	30			

Source: Primary Data Collected

As shown above, all informants are businesses which are product oriented.

C. Age of the Organization

Although the age of a respondent organization is not a very important issue to the research under discussion, a question has been included to identify the age of the organization. This has an advantage of having more meaningful opinions from businesses operating for a longer time. Organizational age composition is shown below.

Table 3.10: Age of the Organization

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1-5 Years	4	13.3	13.3	13.3
6-10 Years	4	13.3	13.3	26.7
11-16 Years	16	53.3	53.3	80.0
Above 16 Years	6	20.0	20.0	100.0
Total	30	100.0	100.0	

Source: Primary Data Collected

Out of the 30 companies, 16 or 53.3 % of them have stayed in business 11 to 16 years and 6 or 20% have stayed in business for more than 16 years.

D. Number of Departments

Number of departments in the respondent organization was requested and the responses are shown below.

Table 3.11: Number of Departments

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than 2	21	70.0	70.0	70.0
	Between 3 and 5	9	30.0	30.0	100.0
	Total	30	100.0	100.0	

Source: Primary Data Collected

Most of the respondent organizations, 70%, have less than 2 departments. The rest of respondents have between 3 and 5 departments. The smaller number of departments in companies influences the number of employees those organizations can hire. A total of 46.7% of the respondents have employees below 10 in number and 43.3% of the respondents have between 11 and 30 employees.

Table 3.12: Number of Employees

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Below 10	14	46.7	46.7	46.7
	11-30	13	43.3	43.3	90.0
	31-60	3	10.0	10.0	100.0
	Total	30	100.0	100.0	

Source: Primary Data Collected and Analyzed

E. Average Income

One of the questions with low rate of response is the average income of the organization. Although this questionnaire is purely academic and that this fact has

been communicated well, the number of organizations which preferred to answer this question is only 11 out of 30 questionnaires collected. Of the 11 responses, 7 belong to the less than 50,000 birr a year category whereas the rest have annual income of 50,001- 100,000 birr.

3.2.2 Awareness about Trademarks

Trademarks and all other intellectual property right protection are in their starting days in Ethiopia. Nine questions have been asked with the overall aim of identifying the level of awareness of businesses about trademarks. And the major findings are shown in the following paragraphs.

All 30 informants have legally licensed their businesses in MOTI trade registration center and are working in accordance to the rules and regulations mentioned in the license contracts.

Most of the businesses out of the 30 businesses with trade licenses, however, do not have a trademark. Only 9 businesses have trademarks which they use in conducting their normal daily business operations. The table below shows the responses.

Table 3.13: Businesses with Trademarks

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	9	30	30	30
No	21	70	70	100.0
Total	30	100.0	100.0	

Source: Primary Data Collected

Businesses without trademarks give absence of need to have one as a major reason. And others (15) suggested lack of awareness about trademarks for not having and

using trademarks as the following table shows.

Table 3.14: Reasons for no trademarks

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Lack of awareness	15	50	71.4	71.4
	Absence of need	6	20	28.6	100.0
	Total	21	70	100.0	
Missing		9	30		
Total		30	100.0		

Source: Primary Data Collected

Although the number of businesses licensing their operation is high, the number of businesses registering their trademarks is quite low. This can be attributed to the fact that it is not compulsory to register one's trademark as is licensing the whole business. Out of the 9 businesses with trademarks, only 1 of them has registered it either in the mark registration center of the EIPA or that of MOTI. The following table shows the detail.

Table 3.15: Businesses with Registered Trademark

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	1	3.33	11.11	11.11
	No	8	26.66	88.99	100.0
	Total	9	30.0	100.0	
Missing		21	70.0		
Total		30	100.0	100.0	

Source: Primary Data Collected

It was also found out that even that single business that have registered its trademark complain a lot about the registration process, particularly the time and the cost associated with the registration. This fact might be an additional reason discouraging the registration of trademarks by businesses.

It is hard to disseminate all the information to businesses about trademarks in a country with no competition law and with no or unclear trademark law (Abebe, 1997). Businesses do not have precise information about what a trademark is, what it can do and its relation to the company and to the products and services that the company provides. One of the fundamental concepts about a trademark is that there should be no relation with what the trademark is and what it stands for. A trademark has to be distinctive rather than expressive. It should not show the quality or type of product. Thus companies, answering yes to question 10 shown in appendix B indicate that they do not have correct information about trademarks. Eight of nine responses confirm that their trademarks are closely related to what it stands for as the following table shows.

Table 3.16: Relationship between Trademark and Business Essence

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	8	61.5	72.7	72.7
	No	1	23.1	27.3	100.0
	Total	9	84.6	100	
Missing		21	15.4		
Total		30	100.0		

Source: Primary Data Collected

One of the major reasons businesses state as to why there are few numbers of registered marks in the country is negligence which accounted for 16.66% of all the reasons as the following table discusses. Another major reason is lack of awareness about trademarks which accounted for 67% of the total.

Table 3.17: Reasons for Few Numbers of Registered Marks

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Lack of awareness	20	66.66	66.66	66.66
	Negligence	5	16.66	16.66	83.33
	Lack of educated management in businesses	3	10	10.0	93.33
	Others	2	6.66	6.66	100.0
	Total	30	100.0	100.0	

Source: Primary Data Collected

3.2.3 Infringement of Trademarks

Trademark infringement is a means of encouraging unfair competition and is one of the trade practices highly condemned by the business community. To assess the level of infringement in Ethiopia, 9 questions were included in the questionnaire.

The first question enquires whether the respondent organization's trademark is/was stolen and used illegally or not. The answer is shown below.

Table 3.18: Businesses involved in Infringement Cases

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	7	23.33	23.33	23.33
	No	2	6.66	6.66	100.0
	Total	9	30.0	100.0	
Missing		21	70.0		
Total		30	100.0		

Source: Primary Data Collected

As shown above, out of the 9 business with trademarks, 7 of them have faced trademark infringement case, with most (6 or 85%) of the cases still pending in courts for decision.

In addition, twenty out of 30 respondents (76.7%) have witnessed infringed products with 43.3% (13) of the products of low quality and less priced when compared to their original counterparts. Four infringed products are manufactured or imported by noncompetitive firms and are less priced and of low quality.

Moreover, infringement cases highly vary from one type of product to another or sometimes it is also possible to deduct that industry specificity is observed. This is supported by data collected for this study. As shown below, cosmetics products have a huge history of infringement followed by consumable products.

Table 3.19: Mostly Infringed Product Groups

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Consumable products	11	36.7	36.7	36.7
	Cosmetics products	19	63.3	63.3	100.0
	Total	30	100.0	100.0	

Source: Primary Data Collected

It is impossible to separate law from the conduct of business. However, most business thought that the legal statements protecting trademarks in Ethiopia are not well communicated to the business community. Others say that the legal statements are out of date. The full result is shown below.

Table 3.20: Legal Statements in Protection of Trademarks

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Are not well communicated to the business community	5	16.7	19.2	19.2
	Are out of date	4	13.3	15.4	34.6
	Are not explanatory enough	1	3.3	3.8	38.5
	Can not protect unfair competition	1	3.3	3.8	42.3
	Positive and can reduce unfair competition	2	6.7	7.7	50.0
	All except D	13	43.3	50.0	100.0
	Total	26	86.7	100.0	
Missing		4	13.3		
Total		30	100.0		

Source: Primary Data Collected

Motivated by the lenient or not well developed legal framework and other issues, the number of infringement cases have an increasing trend as most (21 out of 30) of the respondents agree. Five (16.5%) of the 30 respondents, respond that the infringement cases do not show increasing or decreasing trend over some years.

Final important finding of this study in section three is that the major reason as to the increasing number of trademark infringement is low quality and less priced products imported and manufactured, which accounted for 14 (50%) of the responses followed by lack of experience and competency of the infringer to stay in business. This shows the profit motive behind businesses and no or less corporate responsibility. The table below has more on this.

Table 3.21: Major Reasons to Infringement

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Lack of experience and competency of the infringer	9	30.0	32.1	32.1
	Low quality and low priced products	14	46.7	50.0	82.1
	Lack of awareness of customers	4	13.3	14.3	96.4
	Lack of well framed legal structure	1	3.3	3.6	100.0
	Total	28	93.3	100.0	
Missing		2	6.7		
Total		30	100.0		

Source: Primary Data Collected

3.2.4 Potential Solutions to Infringement

Trademark infringement involves many aspects and its solution touches many angles. One way of decreasing the number and intensity of infringement cases in Ethiopia as identified by the data collected is to improve customers' awareness about trademarks and their owners. To increase customers' awareness, providing timely and precise trainings to customers in association with public announcements should be done primarily. Moreover, nine (30%) of the respondents answered that customer awareness can be improved if customer associations are established.

Improving customers' awareness would not result in successful reduction of infringement if it is not supported by other actions. One such action is strengthening the legal statements through communicating them to the business community (21 of 27 or 70%) and facilitating a means of integrating activities among concerned governmental and private parties (6 out of 27 or 30%).

Furthermore, for a transparent registration and arbitration of trademarks, adequate information has to be distributed among customers, businesses or foreign investors. In support of this, preparation of flyers and others materials (56.7%) should be prepared and distributed.

Likewise, trainings should be prepared to businesses starting a new business or for the existing one's about entrepreneurship, brands, and trademarks and generally about better trade practices. Assessing proposals is also seen as potential solution for new businesses. But the question who should be responsible in giving trainings and assessing proposals remains vital. Responses as to who should assess proposals and who should train businesses are given below.

Table 3.22: Government Agents that should assess proposals

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	MOTI	11	36.7	36.7	36.7
	Chamber of Commerce	19	63.3	63.3	100.0
	Total	30	100.0	100.0	

Source: Primary Data Collected

Table 3.23: Government bodies that should give trainings

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Chamber of Commerce	10	33.3	37.0	37.0
	EIPA	14	46.7	51.9	88.9
	MOTI	3	10.0	11.1	100.0
	Total	27	90.0	100.0	
Missing		3	10.0		
Total		30	100.0		

Source: Primary Data Collected

Nineteen respondents give the responsibility of assessing proposals for chamber of commerce while 11 assigns the responsibility to MOTI. Moreover, 14 out of 27 respondents responded that EIPA is responsible for providing trainings.

A list of all questions and their responses were shown in appendix A.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

3.1 Conclusion

Unfair competition is condemned by the whole world irrespective of economic development and culture. As a result, reducing or eliminating it has been one of the hot issues throughout the world in the last two decades. A big stride in this respect came with the introduction of a world wide trademark registration system known as the Madrid System after a conference was held in Uruguay, 1994, entitled “Trade-Related Aspects of Intellectual Property Rights” commonly known as TRIPS Agreement. Furthermore, the introduction of world wide organizations incorporating trademarks as major elements has further accelerated the effort of eradicating unfair trade practices. World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) are two such organizations.

Apart from this, the government of Ethiopia is discouraging unfair trade practices by taking multiple consecutive measures. The enactment of new public proclamation (Public Proclamation No. 501/2006) exclusively concerned with trademarks and their protection is a significant stride. In support of the law, the Ethiopian Intellectual Property Organization (EIPA) has been established with the objective of registering and controlling of intellectual property elements and coordinating efforts related to the protection of intellectual property rights.

Trademark registration and arbitration processes have also been institutionalized in

meeting the standards of the WTO and encouraging investment in the country. Trademarks in Ethiopia can be registered in the trademark deposition center of the EIPA. Upon successful completion of the registration process, a certificate of registration is provided to the owner which can be used as a means of protecting its trademark from infringement for 7 years before renewal. The recent public proclamation coordinates issues concerned with trademarks including the arbitration.

However, these efforts had little impact on the overall fight against unfair competition. This is the result of the combined effect of a multiplicity of factors.

First and foremost, lack of awareness among customers and businesses about trademarks, their value, their proper use and their infringement had immeasurable impact on the issue of trademarks. Furthermore, lack of communication about legal statements in protection of trademarks played a dominant role. Businesses, let alone, customers do not have sufficient knowledge about trademarks and competition law. A third factor in bringing about this negative result was the increased number of infringement year after year some figure that can not be supported and handled by the apparent legal structure.

Lack of integrated effort by government bodies like ECA and EIPA was another significant factor negatively influencing the effort. Moreover, absence of well framed trademark law makes it difficult for Ethiopia to join the WTO which further hampers the investment climate of the country and prevents the adoption of international standards of commuting business.

3.2 Recommendation

Although the number of infringement cases is increasing, the growth can be hampered by the proper implementation of some successive measures of which some are mentioned below

- Establishing customer associations and increasing public awareness on the consequences of trademark infringement among customers. In addition to creating customer awareness, this helps in enhancing customer power or buyer bargaining power.
- Updating the legal statements to meet the current demands of the business environment and communicating them to the business community enables the work of EIPA direct and imperative. Moreover, since legal statements should always go with the current business environment, due upgrade and communication must be carried out.
- Assessing business proposals at the time of licensing a business so as to identify the business knowledge of the promoter of a new business benefits both the promoter, the customers and the government agents by establishing a business which is profitable and environmental friendly.
- Providing trainings which are aimed at raising the awareness level of businesses about trademarks and brands. This not only helps in protecting theft of identity but also enables businesses to have strong brand: one that is in every one's heart.

- The EIPA has to work with other international bodies like the WTO, WIPO and INTA to improve its performance and in designing a new code of conduct for registration and processing of trademarks. Particularly the time lost and effort exhausted in searching for trademarks is extensive since it is done manually. The ultimate use of information technology applications will eliminate this problem.

4.3 Future Researches

Competition law and the law of trademarks can make a great body of knowledge if studied and applied properly. Ethiopia can protect unfair trade practices and unfair competition only through the effective implementation of researches focusing on trade related industrial practices. This not only helps in encouraging investors but also helps the nation to achieve its long term objectives in joining the WTO and other international agencies.

To support these and other crucial actions, industrial property law has to be accompanied by a multiplicity of researches each contributing to the overall aim of shaping and polishing the investment climate. The following list shows some of the areas that should be prioritized to be studied so as to hamper unfair trade practices.

- How to implement successful training programs about trade practices
- What the trademark law states and what the government bodies apply
- Trademarks and Culture in Ethiopia
- Trademark and its impact on FDI
- How to automate the trademark registration process
- How to integrate the actions of the different government agencies

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Annex A: Responses to each Question

FREQUENCIES

Q1. Type of Business

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid IMPORT/EXPORT	19	63.3	63.3	63.3
GENERAL TRADING	10	33.3	33.3	96.7
RETAIL SHOPPING	1	3.3	3.3	100.0
Total	30	100.0	100.0	

Q2. Product or Service Oriented

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid PRODUCT ORIENTED	30	100.0	100.0	100.0

Q3. Age of the Organization

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1-5 YEARS	4	13.3	13.3	13.3
6-10 YEARS	4	13.3	13.3	26.7
11-15 YEARS	16	53.3	53.3	80.0
ABOVE 15 YEARS	6	20.0	20.0	100.0
Total	30	100.0	100.0	

Q4. Number of Departments

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid LESS THAN 2	21	70.0	70.0	70.0
BETWEEN 3 AND 5	9	30.0	30.0	100.0
Total	30	100.0	100.0	



Q5. Number of Employees

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	BELOW 10	14	46.7	46.7	46.7
	11-30	13	43.3	43.3	90.0
	31-60	3	10.0	10.0	100.0
	Total	30	100.0	100.0	

Q6. Average Annual Income

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	BELOW 50, 000 ETB	7	23.3	63.6	63.6
	50,001-100,000 ETB	4	13.3	36.4	100.0
	Total	11	36.7	100.0	
Missing		19	63.3		
Total		30	100.0		

Q7. Type of Customers

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	PRICE SENSITIVE	18	60.0	60.0	60.0
	BRAND SENSITIVE	1	3.3	3.3	63.3
	QUALITY SENSITIVE	11	36.7	36.7	100.0
	Total	30	100.0	100.0	

Q8. Number of Products

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	2	7	23.3	23.3	23.3
	4	5	16.7	16.7	40.0
	5 all imported from china	1	3.3	3.3	43.3
	7	5	16.7	16.7	60.0
	8 all imported from china	1	3.3	3.3	63.3
	Many	11	36.7	36.7	100.0
	Total	30	100.0	100.0	

Q9. Type of Competitors

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STRONG AND CLOSE	9	30.0	30.0	30.0
	STRONG AND DISTANT	8	26.7	26.7	56.7
	WEAK AND CLOSE	7	23.3	23.3	80.0
	WEAK AND DISTANT	1	3.3	3.3	83.3
	I DONT KNOW	5	16.7	16.7	100.0
	Total	30	100.0	100.0	

Q10. General Business Profile

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	CUSTOMERS ALWAYS IN NEED OF SUBSIDIES AND ARE RESTRICTED TO AVAILABLE PRODUCTS	14	46.7	46.7	46.7
	PROVIDE QUALITY PRODUCTS WITH A HIGHER PRICE	2	6.7	6.7	53.3
	PRICE SENSITIVE CUSTOMERS	1	3.3	3.3	56.7
	PROVIDE QUALITY PRODUCTS WITH A HIGHER PRICE	5	16.7	16.7	73.3
	RICE SENSITIVE CUSTOMERS	7	23.3	23.3	96.7
	Total	1	3.3	3.3	100.0
	Total	30	100.0	100.0	

Q11. Trade License

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	YES	30	100.0	100.0	100.0
	NO	0	0.0	0.0	100.0
	Total	30	100.0	100.0	

Q12. Businesses with Trademarks

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid YES	9	30.0	30.0	30.0
NO	21	70.0	70.0	100.0
Total	30	100.0	100.0	

Q13. Business with Registered Trademark

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	1	3.33	11.11	11.11
No	8	26.66	88.99	100.0
Total	9	30.0	100.0	
Missing	21	70.0		
Total	30	100.0	100.0	

Q14. Relationship between Mark and Business

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	8	61.5	72.7	72.7
No	1	23.1	27.3	100.0
Total	9	84.6	100	
Missing	21	15.4		
Total	30	100.0		

Q15. Reasons for not registering Mark

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Lack of awareness	15	50	71.4	71.4
	Absence of need	6	20	28.6	100.0
	Total	21	70	100.0	
Missing		9	30		
Total		30	100.0		

Q. 16 Problems faced when registering

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	TIME and COST	1	3.33	3.33	40.0
	Total	1	3.33	3.33	
Missing		29	96.66		
Total		30	100.0		

Q.17 Challenges of Registration

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	HIGH COST OF REGISTRATION	3	10.0	37.5	37.5
	LOTS OF TIME NEEDED TO REGISTER	4	13.3	50.0	87.5
	HUGE AMOUNT OF BUREOCRACY	1	3.3	12.5	100.0
	Total	8	26.7	100.0	
Missing		22	73.3		
Total		30	100.0		

Q18. Customers Emotional Attachment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	YES	7	23.3	53.8	53.8
	NO	6	20.0	46.2	100.0
	Total	13	43.3	100.0	
Missing		17	56.7		
Total		30	100.0		

Q.19 Reasons for Few Numbers of Registered Marks

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Lack of awareness	20	66.66	66.66	23.3
	Negligence	5	16.66	50.0	73.3
	Lack of educated management in businesses	3	10	20.0	93.3
	Others	2	6.66	6.7	100.0
	Total	30	100.0	100.0	

Q20. Infringement Case

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	7	23.33	23.33	23.33
	No	2	6.66	6.66	100.0
	Total	9	30.0	100.0	
Missing		21	70.0		
Total		30	100.0		

Q24. Witnessed Infringement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	YES	20	66.7	66.7	66.7
	NO	10	33.3	33.3	100.0
	Total	30	100.0	100.0	

Q25. Characteristics of Infringed Products and their Company

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	LESS PRICED AND LOW QUALITY	13	43.3	65.0	65.0
	NON COMPETITIVE FIRMS AND FIRMS WITH NO GOALS	4	13.3	20.0	85.0
	BOTH	3	10.0	15.0	100.0
	Total	20	66.7	100.0	
Missing		10	33.3		
Total		30	100.0		

Q26. Legal Statements in Protection of Trademarks

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	POSITIVE AND CAN REDUCE UNFAIR COMPETITION	2	6.7	7.7	7.7
	ARE OUT OF DATE	4	13.3	15.4	23.1
	ARE NOT EXPLANATORY ENOUGH	1	3.3	3.8	26.9
	CAN NOT PROTECT UNFAIR COMPETITION	1	3.3	3.8	30.8
	ARE NOT WELL COMMUNICATED TO THE BUSINESS COMMUNITY	5	16.7	19.2	50.0
	ALL	13	43.3	50.0	100.0
	Total	26	86.7	100.0	
Missing		4	13.3		
Total		30	100.0		

Q27. Mostly Infringed Product Groups

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	CONSUMABLE PRODUCTS	11	36.7	36.7	36.7
	COSMETICS PRODUCTS	19	63.3	63.3	100.0
	Total	30	100.0	100.0	

Q28. Trend of Infringement in Ethiopia

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	INCREASING	21	70.0	70.0	70.0
	DECREASING	4	13.3	13.3	83.3
	STABLE	5	16.7	16.7	100.0
	Total	30	100.0	100.0	

Q29. Major Reasons to Infringement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	LACK OF COMPETENCY AND EXPERIENCE OF THE INFRINGER	9	30.0	32.1	32.1
	LOW QUALITY AND LOW PRICED PRODUCTS	14	46.7	50.0	82.1
	3	4	13.3	14.3	96.4
	LACK OF AWARENESS OF CUSTOMERS	1	3.3	3.6	100.0
	Total	28	93.3	100.0	
Missing		2	6.7		
Total		30	100.0		

Q30. To improve customers awareness

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	ESTABLISHING CUSTOMERS ASSOCIATION	9	30.0	33.3	33.3
	PROVIDING ADEQUATE TRAININGS AND PUBLIC ANNOUNCEMENTS ABOUT	11	36.7	40.7	74.1
	OWNER CONDUCTING PUBLIC AWARENESS PROGRAMS AND ARRANGING CUS	7	23.3	25.9	100.0
	Total	27	90.0	100.0	
Missing		3	10.0		
Total		30	100.0		

Q31. To improve the legal statements

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	COMMUNICATING INFORMATION ABOUT LEGAL STATEMENTS TO THE BUSI	21	70.0	77.8	77.8
	FACILITATING A MEANS INTEGRATING ACTIONS AMONG GOVERNMENT BO	6	20.0	22.2	100.0
	Total	27	90.0	100.0	
Missing		3	10.0		
Total		30	100.0		

Q32. To diversify information as far and adequately as possible

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	PROVIDING ADEQUATE AND TIMELY TRAININGS	6	20.0	21.4	21.4
	PREPARATION OF FLYERS AND OTHER INFORMATIONAL MATERIALS TO B	17	56.7	60.7	82.1
	PREPARATION OF PUBLIC CONFERENCES AIMED AT CREATING AWARENES	5	16.7	17.9	100.0
	Total	28	93.3	100.0	
Missing		2	6.7		
Total		30	100.0		

Q.33. Government bodies involved

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid		9	30.0	30.0	30.0
	EIPA, MOTI, ECA	8	26.7	26.7	56.7
	EIPA,ECA, FHC	8	26.7	26.7	83.3
	MOTI, EQSA, MOH	5	16.7	16.7	100.0
	Total	30	100.0	100.0	

Q34. To shape the attitude of Infringers

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	INCREASINGLY PUBLICIZING UNFAIR COMPETITION	1	3.3	3.3	3.3
	DISCOURAGING THEM FROM IMPORT ACTIVITIES THROUGH SIEZING LET	21	70.0	70.0	73.3
	PROVIDING ADEQUATE TRAININGS ABOUT ENTREPRENEORSHIP	8	26.7	26.7	100.0
	Total	30	100.0	100.0	

Q35. Responsible for assessing business proposals

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	MINISTRY OF TRADE AND INDUSTRY	11	36.7	36.7	36.7
	CHAMBER OF COMMERCE	19	63.3	63.3	100.0
	Total	30	100.0	100.0	

Q36. Responsible for training provision

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	CHAMBER OF COMMERCE	10	33.3	37.0	37.0
	ETHIOPIAN INTELLECTUAL PROPERTY AUTHORITY	14	46.7	51.9	88.9
	MINISTRY OF TRADE AND INDUSRTY	3	10.0	11.1	100.0
	Total	27	90.0	100.0	
Missing		3	10.0		
Total		30	100.0		

Annex B: Questionnaire

Part One: Business Information

1. What kind of business are you engaged in? (You may circle more than one answer.)

A. Import/Export

B. Manufacturing

C. Logistics Service D.

Health

E. Tour and Travel

F. Advertising

G. General Trading

H. Construction

I. Retail Shopping

J. Distributing

K. Franchisee

L. Others, _____

2. Is your business a service or product oriented?

a. Service Oriented

b. Product Oriented

c. Hybrid

3. How old is your organization?

a. 1-5 Years

b. 6-10 Years

c. 11-16 Years

d. Above 16 Years

4. How many departments do you have?

a. Less than 2

b. Between 3 and 5

c. Above 5

5. How many employees do you have?

a. Below 10

b. 11-30

c. 31-60

d. Above 60

6. What is the average income of your business in a year?

a. Below 50,000 ETB

b. 50,001-100,000 ETB

c. 100,001-200,000 ETB

d. Above 200,000 ETB

7. How do you classify your customers?

a. Price Sensitive

b. Brand Sensitive

c. Quality Sensitive

d. Technology and Fashion Sensitive

e. Do not know

8. How many products do you have? Explain

9. What kind of competitors do you have?(Circle three choices)

- a. Strong and Close
- b. Strong and Distant
- c. Weak and Close
- d. Weak and Distant

10. What can you say about your business in terms of products/services, employees, customers and the industry in general?

Part Two: Trademarks

For the questions below, tick Yes if you agree with the question and no if you do not in the space provided.

	Question	Yes	No
11	Do you have a trade license?		
12	Do you have a trademark?		
13	Have you registered your trademark?		
14	Is there any relation between what your business does and your trademark?		

15. If your answer to question 12 is No, why? (You may circle more than one choice)

- A. Lack of Awareness
- B. Absence of Need
- C. Other, _____

16. If your answer to question 13 is Yes, What kind of problems do you face when registering your marks? (You may circle more than one choice)

- A. Time
- B. Cost
- C. Bureaucracy
- D. Other, _____

17. If your answer to question 13 is no, why not? (You may circle more than one choice)

- C. Both
- D. Others, _____

26. What do you think about the legal statements protecting trademarks? (You may circle more than one choice)

- A. Positive and Can reduce unfair competition
- B. Are out of date
- C. Are not explanatory enough
- D. Can not protect unfair competition
- E. Are not well communicated to the business community
- F. All
- G. Others, _____

27. What kind of products is highly likely to be infringed?

- A. Consumable Products
- B. Cosmetic Products
- C. High Price Products
- D. Others, _____

28. What is the trend for infringement in Ethiopia? Is it increasing or decreasing?

- A. Increasing
- B. Decreasing
- C. Stable

29. What do you think are the major reasons to infringement? (You may circle more than one choice)

- A. Lack of Competency of the Infringer and Lack of experience of the Infringer
- B. Lack of quality and low price products
- C. Lack of awareness among customers
- D. Lack of well framed legal framework
- E. Lack of action by the owner to protect his trademarks
- F. Lack of relevant information at the time of registering marks
- G. Problems with the registration process
- H. Others , _____

Part Four: Solution of Infringement

30. What should be done to improve customers awareness about trademarks(You may circle more than one choice)

- A. Establishing customers association
- B. Providing adequate trainings and public announcement about trademarks and consequences of their illegal use
- C. Owner of the mark conducting public awareness programs and advertisements like customer days
- D. Others, _____

31. What should be done to improve the legal statements? (You may circle more than one choice)

- A. Updating the legal statements to meet the current statements
- B. Communicating information about the legal statements to the business community
- C. Taking direct and up to date actions based on the statements
- D. Facilitating a means of integrating actions among the government bodies
- E. Others, _____

32. What do you think are the solutions to provide adequate information about trademarks and their registration? (You may circle more than one choice)

- A. Providing adequate and timely trainings
- B. Preparation of flyers and other informational materials to be distributed to individuals registering their business
- C. Preparation of public conferences aimed at creating awareness
- D. Others, _____

33. Which government bodies do you think should be involved in the registration and arbitration process?

34. How can we shape the attitude of the infringers? (You may circle more than one choice)

- A. By increasingly publicizing unfair practices
- B. By discouraging them from import activities through seizing Letter of Credits in banks and Customs Clearance at Customs Authority.
- C. By Providing adequate trainings about entrepreneurship and general business
- D. Assessing business proposals at the time of registration
- E. Others, _____

35. If assessing business proposals is helpful in minimizing the scope of the problem, who shall be responsible in doing it? (You may circle more than one choice)

- A. Ministry of Trade and Industry
- B. Chamber of Commerce
- C. Ethiopian Investment Authority
- D. Others, _____

36. If providing timely and relevant trainings to small and medium enterprises about trademarks, brands, trade names, and trade dresses in particular and about entrepreneurship in general is helpful, who do you think is responsible in conducting it? (You may circle more than one choice)

- A. Chamber of Commerce
- B. Ethiopian Intellectual Property Authority
- C. Ministry of Trade and Industry
- D. Others, _____



Annex C: Interview Questions

The following questions are prepared to assess the general practice of trademarks in Ethiopia. As can be seen below, questions about registrations process, governing legal structure and involved state agencies are listed.

- What is the difference between trademark and trade name in the registration process?
- Are all trademarks subject to registration?
- What does the registration process look like?
- When did registering trademarks begin?
- Who is responsible for registering trademarks?
- What is required for registering **trademarks**?
- How much time is needed?
- How much cost does it take?
- What kinds of business register most?
- Why kinds of business register least?
- What kinds of trademarks are valid?
- What kinds of trademark are invalid?
- When do we say a trademark is infringed?
- Who does the checking for infringement?
- What is the immediate action if the trademark is infringed?
- What does your office does about trademarks infringed?
- What kind of trend does exist on the cases of trademarks?

- Where do infringers exist most?
- What kind of market is mostly prone to such actions?
- What are the characteristics of these markets?
- What kinds of customer exist?
- How many cases have been raised so far and how many are in the last 10 years?
- What have you done to reduce the problems?
- What other bodies of the government are involved in these issue?
- What is there value?
- How do you look at it?
- Is there a law governing trademarks?
- Is every company expected to register its trademarks just like registration is done for trade license?
- What about franchisees?
- Do companies from foreign countries need to register their trademarks?
- What about the international law of trademarks?
- What is the impact of trademarks on the joining of World Trade Organization?
- What kind of certification is given to registered trademarks?
- What is the process for trademark arbitration?
- Who is involved in the arbitration process?
- What are the legal actions taken so far to protect infringement cases?
- What do you think is the ultimate cause for the infringers?

- Is trademark arbitration a cause or an effect?
- Is there a negotiation process?
- What is the impact of trademark on foreign direct investment?
- How many registered trademarks exist?
- What is the trend for the registration? Is it increasing over the years or decreasing?
- Are there any industry specific criteria for registration of marks?
- Are there any industry specific criteria for arbitration of marks?
- What actions have been taken to solve the illegal use of marks?
- Was there any involvement from businesses in handling cases of trademarks?
- What is the role of the team in arbitration?
- Who initiate the arbitration process?
- Why is intellectual property an issue this time?
- Which areas are you working at with great attention?
- Do you have an office handling trademark registration and arbitration?
- Can you identify some of the root causes for infringement cases?

APPENDIX D



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

ፌዴራል ነጋሪት ጋዜጣ

FEDERAL NEGARIT GAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

<p>አሥራዕለተኛ ዓመት ቁጥር ፴፯ አዳስ አበባ ሰኔ ፴ ቀን ፲፱፻፺፰</p>	<p>በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የሕዝብ ተወካዮች ምክር ቤት ጠባቂነት የወጣ</p>	<p>12th Year No. 37 ADDIS ABABA 7th July, 2006</p>
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<p>ማውጫ</p> <p>አዋጅ ቁጥር ፳፻፩/፲፱፻፺፰ ዓ.ም</p> <p>የንግድ ምልክት ምዝገባና ጥበቃ አዋጅ ... ገጽ ፫፻፱፻፵፩</p>	<p>CONTENTS</p> <p>Proclamation No. 501/2006</p> <p>TradeMark Registration and Protection Proclamation.... Page 3441</p>
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አዋጅ ቁጥር ፳፻፩/፲፱፻፺፰ ዓ.ም

የንግድ ምልክት ምዝገባና ጥበቃ አዋጅ

ዕቃ በማምረት እና በማከፋፈል ወይም አገልግሎት በመስጠት የንግድ ሥራ ላይ የተሰማሩ ሰዎችን መልካም ስም እና ዝና ለመጠበቅ፣ እንዲሁም በተመሳሳይ ዕቃዎችና አገልግሎቶች መካከል መሳከርን ለማስወገድ የንግድ ምልክት ጥበቃ ማድረግ በማስፈለጉ፤

የንግድ ምልክቶች በነፃ ገበያ ሥርዓት ውስጥ የሽማግሌትን ምርጫ በመምራት እና ጥቅማቸውን በማስጠበቅ ረገድ ከፍተኛ ድርሻ እንዳላቸው የታወቀ በመሆኑ፤

ለንግድ ምልክቶች ጥበቃ ማድረግ ለብሔራዊ ኢኮኖሚ መዳበር በተለይም ለንግድ እና ኢንዱስትሪ ልማት አዎንታዊ አስተዋጽኦ እንዳለው በመታመን፤

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ መንግሥት አንቀጽ ፶፭/፩/ መሠረት ከዚህ የሚከተለው ታውጇል፡፡

ክፍል አንድ
ጠቅላላ ድንጋጌዎች

PROCLAMATION NO. 501/2006.

TRADEMARK REGISTRATION AND PROTECTION PROCLAMATION

WHEREAS, it is necessary to protect the reputation and goodwill of business persons engaged in manufacturing and distribution of goods as well as rendering services by protecting trademarks to avoid confusion between similar goods and services;

WHEREAS, trademarks, in the course of free trade, play an important role in guiding customers' choice and protecting their interests;

WHEREAS, it is believed that protection of trademarks could have positive impact on the national economic advancement and especially on the trade and industrial development of the country;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE
GENERAL PROVISIONS

፩. አጭር ርዕስ

ይህ አዋጅ “የንግድ ምልክት ምዝገባና ጥበቃ አዋጅ ቁጥር ፳፻፩/፲፱፻፺፰” ተብሎ ሊጠቀስ ይችላል፡፡

1. Short Title

This Proclamation may be cited as the “TradeMark Registration and Protection Proclamation No.501 /2006.”

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፪. ትርጓሜ

የቃሉ አገባብ ሌላ ትርጉም ሚያሰጠው ካልሆነ በስተቀር በዚህ አዋጅ ውስጥ፤

፩/ “የወል የንግድ ምልክት” ማለት በባለቤትነት የያዘውን ማህበር አባላት ምርቶች ወይም አገልግሎቶች ከሌሎች ሰዎች ምርቶች ወይም አገልግሎቶች ለመለየት የሚያገለግል የንግድ ምልክት ነው።

፪/ “ፍርድ ቤት” ማለት በዚህ አዋጅ አንቀጽ ፵፱ የተመለከተው ፍርድ ቤት ነው።

፫/ “ቀዳሚ የንግድ ምልክት” ማለት በንግድ ምልክት መዝገብ የተያዘ የንግድ ምልክት ወይም የንግድ ምልክት ምዝገባ ጥያቄ ከቀረበበት ቀን በፊት የምዝገባ ማመልከቻ ቀን ያለው የንግድ ምልክት ነው።

፬/ “የውጭ አገር ሰው” ማለት በኢትዮጵያ ውስጥ ነዋሪ ያልሆነ ወይም በኢትዮጵያ ውስጥ የተመዘገበ የንግድ ሥራ የሌለው ሰው ነው።

፭/ “የጉምሩክ ወደብ” እና “የጉምሩክ ጣቢያ” የጉምሩክ ባለስልጣንን እንደገና ለማቋቋምና አሠራሩን ለመወሰን በወጣው አዋጅ ቁጥር ፳/፲፱፻፹፱ የተሰጣቸው ትርጉም ይኖራቸዋል።

፮/ “ዓለም ዓቀፍ ምደባ” ማለት በኒስ ዲፕሎማቲክ ኮንፈረንስ እ.ኤ.አ. ጁን ፲፮ ቀን ፲፱፻፶፮ በተመሠረተው እና በስቶክሆልም እ.ኤ.አ. በ፲፱፻፷፯፣ በጄኔቫ እ.ኤ.አ. በ፲፱፻፸፯ እንዲሁም ፲፱፻፸፱ በተሻሻለው ለንግድ ምልክት ምዝገባ እንዲያገለግል በወጣው የኒስ የዕቃዎች ወይም አገልግሎቶች ምደባ ስምምነት መሠረት የዕቃዎች ወይም አገልግሎቶች ምደባ ነው።

፯/ “የፈቃድ ውል” ማለት የንግድ ምልክት ባለቤት ማንኛውም ሌላ ሰው የንግድ ምልክቱ ለተመዘገበባቸው ዕቃዎች ወይም አገልግሎቶች በሙሉ ወይም በከፊል በንግድ ምልክቱ እንዲጠቀምበት የሚፈቅድበት ስምምነት ነው።

፰/ “ጽሕት ቤት” ማለት የኢትዮጵያ አእምሯዊ ንብረት ጽ/ቤት ነው።

፱/ “ሰው” ማለት የተፈጥሮ ሰው ወይም የሀገሩ ሰውነት የተሰጠው አካል ነው።

2. Definitions

In this Proclamation, unless the context otherwise requires:

1/ “collective trademark” means a trademark distinguishing the goods or services of members of an association, which is the owner of the trademark, from those of other undertakings;

2/ “court” means the court referred to in Article 49 of this Proclamation;

3/ “earlier trademark” means a trademark which has entered in the register of marks or has a date of application for registration earlier than that of the trademark in question;

4/ “foreigner” means a person who is not domiciled or has no registered business in Ethiopia;

5/ the terms “customs port” and “customs station” shall have the meanings assigned to them under the Re-Establishment and Modernization of Customs Authority Proclamation No. 60/1997;

6/ “international classification” means the classification of goods or services under the Nice Convention of Goods and Services for the purpose of Registration of Trademarks established by an agreement concluded at the Nice Diplomatic Conference, on June 15, 1957, and revised at Stockholm, in 1967, at Geneva, in 1977 and amended in 1979;

7/ “license contract” means a contract whereby the owner grants to any other person to use a trademark for all or part of goods or services in respect of which the trademark is registered;

8/ “Office” means the Ethiopian Intellectual Property Office;

9/ “person” means a physical or juridical person;

፲/ “የቀዳሚነት ቀን” ማለት ለቀዳሚ ባለሙሉ ብትነት መነሻ የሚሆነው ቀዳሚ የምዝገባ ማመልከቻ የገባበት ቀን ነው።

10/ “priority date” means the date of an earlier application that serves as the basis for the right of priority;

፲፩/ “ደንብ” ማለት በዚህ አዋጅ አንቀጽ ፵፯ መሠረት የሚወጣው የሚኒስትሮች ምክር ቤት ደንብ ነው።

11/ “regulations” means Council of Ministers Regulations to be issued pursuant to Article 47 of this Proclamation;

፲፪/ “የንግድ ምልክት” ማለት የአንድን ሰው ዕቃዎች ወይም አገልግሎቶች ከሌሎች ሰዎች ዕቃዎች ወይም አገልግሎቶች ለመለየት የሚያስችል የሚታይ ምስል ነው። ምልክቱ ቃላቶችን፣ ዲዛይኖችን፣ ፊደሎችን፣ ቁጥሮችን፣ ቀለሞችን ወይም የዕቃዎችን ወይም የመያዣዎቻቸውን ቅርፅ ወይም የእነዚህን ቅንጅት ሊይዝ ይችላል።

12/ “trademark” means any visible sign capable of distinguishing goods or services of one person from those of other persons; it includes words, designs, letters, numerals, colours or the shape of goods or their packaging or the combinations thereof;

፲፫/ “የቤተሰብ ስም” ማለት የአንድ ቤተሰብ አባላት በተናጠል ከሚሰጡ ስም በተለይ በወል የሚጠቀሙበት የመለያ ስም ሲሆን የቤተሰብ ስም ወይም የመጨረሻ ስም በመባልም ይታወቃል።

13/ “surname” means a name shared in common to identify the members of a family, as distinguished from each member’s given name. Also called family name, last name.

፫. የተፈጻሚነት ወሰን

3. Scope of Application

በአንካ ለአንካ መርሆ ወይም ኢትዮጵያ አባል በሆነችበት ዓለም አቀፍ ውል ላይ በመመስረት የውጭ አገር ሰዎች በዚህ አዋጅ መሠረት ኢትዮጵያውያን ያሏቸው መብቶችና ግዴታዎች ይኖራቸዋል።

Subject to the principles of reciprocity or in accordance with any treaty that Ethiopia is a party to, foreigners shall have the same rights and obligations as Ethiopians under this Proclamation.

ክፍል ሁለት
የንግድ ምልክት ላይ ባለሙሉትነት ስለማግኘትና ምዝገባ

PART TWO
ACQUISITION OF RIGHTS AND
REGISTRATION OF TRADE MARK

፬. መብቶችን ስለማግኘት

4. Acquisition of Rights

የንግድ ምልክት ባለቤትነት መብት የሚገኘውና በሦስተኛ ወገኖች ላይ ተፈጻሚነት የሚኖረው የንግድ ምልክት የምዝገባ ምስክር ወረቀት ሲሰጥ ይሆናል።

Ownership rights of a trademark shall be acquired and be binding on third parties upon the grant of a trademark registration certificate.

፭. ለምዝገባ ብቁ የሆኑ ንግድ ምልክቶች

5. Trademarks Eligible for Registration

፩/ ማንኛውም የንግድ ምልክት የአንድን ሰው ዕቃዎች ወይም አገልግሎቶች ከሌሎች ሰዎች ዕቃዎች ወይም አገልግሎቶች በግልፅ ለመለየት የሚያስችል ከሆነ ሊመዘገብ ይችላል።

1/ Any trademark that is capable of clearly distinguishing goods or services of a person from those of other persons shall be eligible for registration.

፪/ የንግድ ምልክት በጥቁርና ነጭ ወይም በከለር ቀለም ሊመዘገብ ይችላል። በጥቁርና ነጭ ቀለም የተመዘገበ የንግድ ምልክት በማናቸውም የቀለሞች ቅንጅት ጥበቃ የሚደረግለት ሲሆን የንግድ ምልክቱ የተመዘገበው በከለር ቀለም ከሆነ ጥበቃ የሚደረግለት በተመዘገበው የከለር ቀለም ቅንጅት ብቻ ይሆናል።

፫/ አንድ ሊመዘገብ የሚችል የንግድ ምልክት የምልክቱን ልዩ ባህርይ የሚቀንስ ወይም የሌላ ሰውን መብት የሚጥስ እስካልሆነ ድረስ ጥበቃ ሊደረግላቸው የማይችሉ ክፍሎችን ሊይዝ ይችላል።

፮. ለምዝገባ ብቁ ስለማይሆኑ የንግድ ምልክቶች

፩/ የሚከተሉት በንግድ ምልክትነት አይመዘገቡም፤

ሀ/ የዚህ አዋጅ አንቀጽ ፭ ድንጋጌዎችን የማያሟላ የንግድ ምልክት፤

ለ/ ድምፅ ወይም ሽታን የያዘ የንግድ ምልክት፤

ሐ/ የአንድን ሰው ዕቃዎች ወይም አገልግሎቶች ከሌሎች ሰዎች ዕቃዎችና አገልግሎቶች ለመለየት የማያስችል የንግድ ምልክት፤

መ/ የሕዝብን ሰላም ወይም ሥነ ምግባር የሚጎረር የንግድ ምልክት፤

ሠ/ የዕቃዎችን ወይም የአገልግሎቶችን ዓይነት፣ ጥራት፣ ብዛት፣ ጠቀሜታ፣ ዋጋ፣ ዕቃዎቹ ወይም አገልግሎቶቹ የመነጨ በትን ቦታ፣ የተመረቱበትን ወይም የሚቀርቡበትን ጊዜ ወይም ሌሎች የዕቃዎቹን ወይም የአገልግሎቶቹን ባህርይ ብቻ የሚያንፀባርቁ ምልክቶችን ወይም መለያዎችን ብቻ የያዘ የንግድ ምልክት፤

ረ/ ለምዝገባ የቀረበው የንግድ ምልክት የሚመለከታቸውን ዕቃዎች ወይም አገልግሎቶች በሚመለከት ወይም በኢኮኖሚያዊ ወይም የንግድ እንቅስቃሴዎች ውስጥ የተለመዱና በጋራ መግባቢያ ቋንቋነት የሚያገለግሉ ምልክቶችን ወይም መለያዎችን ብቻ የያዘ የንግድ ምልክት፤

2/ A trademark may be registered in black-and white or color. A trademark, which is registered in black-and-white, shall be protected in all color combinations; a trademark, which is registered in color, shall only be protected in the color combination in which it is registered.

3/ A trademark eligible for registration may include elements which are not subject to protection unless they decrease the distinctive character of the trademark or infringe the rights of other persons.

6. Trademarks Inadmissible for Registration

1/ The following trademarks may not be admissible for registration:

a) a trademark which does not conform to the provisions of Article 5 of this Proclamation;

b) a trademark which consists of sound or smell;

c) a trademark which is incapable of distinguishing the goods or services of one person from those of other persons;

d) a trademark that is contrary to public order or morality;

e) a trademark consisting exclusively of signs or indications which designate the kind, quality, quantity, intended purpose, value, geographical origin of goods or services, the time of production of the goods or rendering of the services, or other characteristics of the goods or services;

f) a trademark consisting exclusively of signs or indications which have become customary in the current language use in relation to such goods or services for which the registration of a trademark is applied for, or which have become customary in economic and business activities;

ሰ/ ከዕቃው ተፈጥሯዊ ሁኔታ የመነጨ ወይም የአንድን ዕቃ ቴክኒካዊ ውጤት ለማግኘት አስፈላጊ የሆነን ወይም ዕቃው ላይ ከፍተኛ ዋጋ የሚጨምርን ቅርፅ ብቻ የያዘ የንግድ ምልክት፤

ሰ/ ዕቃዎች ወይም አገልግሎቶች የመነጨ በትን ቦታ ወይም የእቃዎችን ዓይነትና ባህርይ በተመለከተ ሕዝቡን ወይም የንግዱን ማህበረሰብ ሊያሳስት የሚችል የንግድ ምልክት፤

ቀ/ አግባብ ባለው አካል የተሰጠ ፈቃድ ላይኖር ከማንኛውም ሀገር መንግሥት፣ ከበይነ መንግሥታዊ ድርጅት ወይም በዓለም አቀፍ ስምምነቶች መሠረት ከተቋቋመ ሌላ ድርጅት ወታደራዊ ምልክት፣ ሰንደቅዓላማ ወይም ሌላ አርማ፣ ስም፣ ምህገረ ቃል ወይም የስም አህዕ ሮት ወይም በእነዚህ ከተዘጋጀ አፈሴላዊ ምልክት ወይም የክብር አርማ ጋር አንድ አይነት የሆነ ወይም ተመሳሳይነት ያለው የንግድ ምልክት፤

በ/ የአመልካቹን የቤተዘመድ ስም ብቻ የያዘ የንግድ ምልክት

ተ/ ያለግለሰቡ ፈቃድ የአንድን በህይወት ያለ ግለሰብ ሙሉ ስም የያዘ የንግድ ምልክት፤

፪/ የንግድ ምልክት ምዝገባ ማመልከቻ በቀረበበት ቀን የንግድ ምልክቱ በጥቅም ላይ በመዋሉ ምክንያት በኢትዮጵያ ውስጥ በሚገባ የሚታወቅ መሆኑ ከተረጋገጠ የዚህ አንቀፅ ንዑስ አንቀፅ ፩/ሠ/፣ 1/፣ 2/ እና 3/ ድንጋጌዎች ተፈጻሚ አይሆኑም።

፯. በሦስተኛ ወገን መብት ምክንያት መመዘገብ የማይችሉ የንግድ ምልክቶች

አንድ የንግድ ምልክት በሚከተሉት የሦስተኛ ወገኖች የቅድሚያ መብቶች ምክንያት ሊመዘገብ አይችልም።

፩/ ከአንድ ዓይነት ወይም ተመሳሳይ ዕቃዎች ወይም አገልግሎቶች ጋር የተያያዘ የሌላ ሰው ቀዳሚ የንግድ ምልክት ጋር አንድ ዓይነት የሆነ ወይም መሳከርን ሊያስከትል የሚችል ተመሳሳይነት ያለው፤

g) a trademark consisting exclusively of a shape which results from the nature of the good itself or that is necessary to obtain a technical result of the good or that gives substantial value to the good;

h) a trademark that is likely to mislead the public or the business community, in particular as regards the geographical origin of the goods or services concerned, or their nature or characteristics;

i) unless authorized by a competent authority, a trademark which is identical with or an imitation of or contains an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by any state, intergovernmental organization, or other organization created by international conventions.

j) a trademark that consists exclusively the surname of the applicant,

k) a trademark mark that consists exclusively the full name of an alive individual without his consent.

2/ The provisions of Sub-Article (1), (e), (f) and (j) of this Article do not apply if it is certified that by the date of receipt of an application for registration of a trademark, the trademark has, as a result of its use, become well known in Ethiopia.

7. Refusal of Registration of Trademarks on Grounds of Third Party Rights

A trademark shall not be registered because of the following third party priority rights:

1/ when it is identical with an earlier trademark of another person in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a trademark as to be likely to deceive or cause confusion;

፪/ የንግድ ምልክቱ አንድ ዓይነት ወይም ተመሳሳይ የሆኑ የሌላ ሰው እቃዎችን ወይም አገልግሎቶችን በሚመለከት በሚገባ ከሚታወቅ ወይም ኢትዮጵያ ውስጥ ግልጋሎት ላይ ከዋለ የንግድ ምልክት ጋር አንድ ዓይነት ወይም ሊያሳስት በሚችል ደረጃ ተመሳሳይ ከሆነ ወይም ትርጉሙን ከያዘ፤

፫/ የንግድ ምልክቱ አንድ ዓይነት ወይም ተመሳሳይ ያልሆኑ የሌላ ሰው ዕቃዎችን ወይም አገልግሎቶችን በሚመለከት በኢትዮጵያ ውስጥ ከተመዘገበ የንግድ ምልክት ጋር አንድ ዓይነት ከሆነ ወይም ሊያሳስት በሚችል ደረጃ ተመሳሳይ ከሆነ ወይም ትርጉሙን የያዘ ከሆነና አጠቃቀሙ በዕቃዎቹ ወይም በአገልግሎቶቹ መካከል ግንኙነት እንዳለ በማስመሰል በተመዘገበው የንግድ ምልክት ባለቤት ጥቅም ላይ ጉዳት ሊያደርስ የሚችል ከሆነ፤

፬/ በባለቤቱ በዕቃው የተሰጠ ፈቃድ ሳይኖር የንግድ ምልክት ጥበቃ የሚደረግለትን የሌላ ሰው የሥነ-ጽሑፍ ወይም ኪነ-ጥበባዊ መብት ወይም የሌላ ሰውን የፎቶግራፍ ወይም የዲቫይን መብት የያዘ ነው ተብሎ ሲታመን፡፡

ክፍል ሦስት
የንግድ ምልክት የምዝገባ ሥርዓት

፰. የምዝገባ ማመልከቻ

፩/ የንግድ ምልክት ምዝገባ ማመልከቻ ለዚሁ አላማ በተዘጋጀ የማመልከቻ ቅፅ ተሞልቶ በደንቡ ከተወሰነው ክፍያ ጋር ለጽሕፈት ቤቱ ይቀርባል፤

፪/ አንድ የምዝገባ ማመልከቻ የሚይዘው አንድ የንግድ ምልክት ብቻ ይሆናል፤

፫/ አመልካቹ በደንቡ የተወሰነውን የማመልከቻ ቅፅ በመሙላት የሚከተሉ ትን ሰነዶች አያይዞ ማቅረብ አለበት፡

ሀ/ የንግድ ምልክቱን ናሙና ሦስት ቅጅዎች፤

ለ/ የዓለም አቀፍ ምደባን መሠረት በማድረግ የንግድ ምልክቱ የሚያገለግልባቸውን ዕቃዎች ወይም አገልግሎቶች ዝርዝር እና የምደባ ክፍል ቁጥራቸውን፤

2/ when it is identical with or confusingly similar to, or contains a translation of a trademark, that is well known or established by use in Ethiopia for identical or similar goods or services of another person;

3/ when it is identical with or confusingly similar to, or constitutes translation of, a trademark which is registered in Ethiopia for goods or services which are not identical or similar to those in respect of which the registration is applied for, provided that the use of the trademark in relation to those goods or services would indicate a connection between those goods or services and that the interest of the owner of the registered trademark is likely to be damaged by such use;

4/ when it contains anything which may be understood as the characteristic title of another person's protected literary or artistic rights or another person's right to a photograph or design without his written consent.

PART THREE
PROCEDURES FOR REGISTRATION
OF TRADEMARK

8. Application for Registration

1/ Application for registration of a trademark shall be made in the prescribed form and filed with the Office accompanied by payment of the application fee prescribed by the Regulations.

2/ An application for registration shall cover only one trademark.

3/ The applicant shall, after completing the application form prescribed by the Regulations, submit the following documents:

a) three copies of a reproduction of the trademark;

b) a list of goods and services classified in accordance with the international classification of goods and services for which registration of the mark is requested and the class numbers of the classification;

ሐ/ የምዝገባ ማመልከቻው በወኪል አማካይነት ሲቀርብ ይህንኑ የሚገልጽ የውክልና ሥልጣን ማረጋገጫ፤

መ/ በዚህ አንቀጽ ንዑስ አንቀጽ ፲፩/ የተመለከተውን ክፍያ ማረጋገጫ ሰነድ ወይም ቅጅውን፤

ሠ/ በደንቡ የተወሰኑ ሌሎች ዝርዝሮች።

፬/ የውጭ አገር ሰው የሆነ አመልካች ነዋሪነቱ ኢትዮጵያ ውስጥ የሆነ ወኪል መሰየም ይኖርበታል።

፱. ማመልከቻን ስለመተው

በምዝገባ ማመልከቻው ላይ ውሳኔ ከመስጠቱ በፊት በማንኛውም ወቅት አመልካቹ ጥያቄውን መተው ይችላል።

፲. የቀዳሚነት መብት

፩/ ማንኛውም አመልካች በውጪ አገር የንግድ ምልክቱ እንዲመዘገብ ካመለከተበት ቀን አን ስቶ ባለ-ት ፮ ወራት ውስጥ በኢትዮጵያ የንግድ ምልክቱ ለተመሳሳይ እቃዎች ወይም አገልግሎቶች እንዲውል ማመልከቻ ሲያቀርብና የቀዳሚነት መብት ሲጠይቅ በተመዘገበበት ጽሕፈት ቤት ትክክለኛነቱ የተረጋገጠ የቀዳሚውን ማመልከቻ ቅጅ እና ሌሎች የሚጠየቁ ሰነዶችንና መረጃ በተወሰነው የጊዜ ገደብ ካቀረበ ማመልከቻው በውጪ ሀገር የተመዘገበበት ቀን የምዝገባ ቀን ተብሎ ይወሰዳል።

፪/ ለጽሕፈት ቤቱ የቀረበው መግለጫ በዚህ አንቀጽ ንዑስ አንቀጽ ፲፩/ እና በደንቡ የተወሰነውን መስፈርት የማያሟላ ከሆነ የተባለው መግለጫ እንዳልቀረበ ይቆጠራል።

፲፩. ስለማመልከቻ ምርመራ

ጽሕፈት ቤቱ የንግድ ምልክት ምዝገባ ማመልከቻ ሲቀርብለት፤

፩/ በዚህ አዋጅ አንቀጽ ፰ እና በደንቡ መሠረት የፎርማሊቲ ምርመራ ያደርጋል፤

፪/ በዚህ አዋጅ አንቀጽ ፮ እና ፯ የተመለከቱትን ድንጋጌዎች የሚያሟላ መሆኑን ለማረጋገጥ የሥራ-ነገር ምርመራ ያደርጋል፤

c) when the application for registration is filed through an agent, it shall be accompanied by a duly authenticated power of attorney;

d) a document certifying payment of the fee referred to in Sub-Article (1) of this Article or a copy thereof;

e) other particulars determined by the Regulations.

4/ An applicant who is a foreigner shall appoint an agent who is domiciled in Ethiopia.

9. Withdrawal of Application

The applicant may withdraw the application any time while it is pending.

10. Right of Priority

1/ Where any applicant files his application in Ethiopia within six months from the date on which he first filed in a foreign country an application for the same trademark in respect of same goods or services, the date on which the application was first filed in the foreign country shall be regarded as the date of filing if the applicant claims the right of priority and furnishes within the prescribed time limit a copy of the earlier application certified as correct by the office with which it was filed and other documents and information as prescribed.

2/ Where the Office finds that the declaration submitted does not fulfil the requirements of Sub-Article (1) of this Proclamation and the Regulations, the said declaration shall be considered not to have been made.

11. Examination of Application

The Office shall, when an application for the registration of a trademark is submitted to it:

1/ undertake examination as to form, whether the application fulfils the requirements of Article 8 of this Proclamation and the Regulations;

2/ undertake examination as to substance, to ensure that the trademark complies with the provisions of Articles 6 and 7 of this Proclamation;

፫/ ማመልከቻው በዚህ አዋጅ እና በደንቡ የተጠቀሱትን መስፈርቶች የማያሟላ በመሆኑ ምክንያት ተቀባይነት የሌለው መሆኑ ሲረጋገጥ ማመልከቻውን ውድቅ በማድረግ በደንቡ በተገለጸው የጊዜ ገደብ ውስጥ ማመልከቻውን ያልተቀበለበትን ምክንያት በመግለፅ በጽሑፍ ያሳውቃል።

፬/ በዚህ አንቀጽ ንዑስ አንቀጽ ፫/ መሠረት ጽሕፈት ቤቱ ማመልከቻውን አለመቀበሉን ከመወሰኑ በፊት አመልካቹ አስተያየቱን በጽሑፍ የሚሰጥበት ወይም ስህተቱን የሚያርምበት በቂ ጊዜ ይሰጣል።

፲፪. የተቃውሞ ጥሪ ማስታወቂያ ስለማውጣት

የንግድ ምልክት ማመልከቻው ተቀባይነት ሲያገኝ ጽሕፈት ቤቱ የንግድ ምልክቱን ምዝገባ በተመለከተ በአእምሯዊ ንብረት ጋዜጣ ወይም ሰፊ አገራዊ ስርጭት ባለው ጋዜጣ እንዲሁም እንደ አስፈላጊነቱ በሬድዮና በቴሌቪዥን ተቃውሞ ካለ እንዲቀርብ በአመልካቹ ወጭ የተቃውሞ ጥሪ ማስታወቂያ ያወጣል።

፲፫. ስለተቃውሞ

፩/ ማንኛውም የንግድ ምልክት ምዝገባን የሚቃወም ሰው የሚቃወምበትን ምክንያት በዝርዝር በመጥቀስ በደንቡ በተወሰነው የጊዜ ገደብና የተቃውሞ አቀራረብ ሥርዓት መሠረት ማስረጃዎቹን በማያያዝና በደንቡ የተወሰነውን ክፍያ በመፈፀም ለጽህፈት ቤቱ በዕሁፍ ተቃውሞውን ማቅረብ ይችላል።

፪/ ጽህፈት ቤቱ የተቃውሞውን ማመልከቻና ማስረጃዎች ለንግድ ምልክት ምዝገባ አመልካቹ በደንቡ በተወሰነው ጊዜና ሥርዓት መሠረት እንዲደርሰው ያደርጋል።

፫/ የንግድ ምልክቱ እንዲመዘገብለት ጥያቄ ያቀረበው አመልካችም በማመልከቻው መሠረት ያደረጋቸውን ሁኔታዎች በዝርዝር በመግለጽና በደንቡ በተወሰነው ጊዜና ሥርዓት መሠረት ለተቃውሞው የመከላከያ መልስ ለጽሕፈት ቤቱ ማቅረብ ይችላል። መከላከያ መልስ ካቀረበ ማመልከቻውን እንደተወደቀ ይቆጠራል።

፬/ ጽሕፈት ቤቱ አመልካቹ የሰጠውን መልስ ለተቃውሞ አቅራቢው በደንቡ በተወሰነው ጊዜና ሥርዓት መሠረት እንዲደርሰው በማድረግ የጉዳዩን ፍሬ ነገር ከመረመረ በኋላ ስለንግድ ምልክቱ ምዝገባ ውሳኔ ይሰጣል።

- 3/ reject the application when it ascertains that the application does not fulfil the requirements of this Proclamation and the Regulations and inform the applicant in writing the reasons for the rejection within the time limit provided for in the Regulations;
- 4/ the Office shall, before making a decision of rejection under Sub-Article (3) of this Article, fix a reasonable time for the applicant to submit his opinion in writing or to rectify the defect.

12. Publication of Notice of Invitation for Opposition

When the Office finds that the trademark application is acceptable, it shall publish a notice of invitation for opposition regarding the registration of the trademark in the Intellectual Property Gazette or a newspaper having nationwide circulation at the cost of the applicant. This may be supplemented by a radio or television broadcast or a website notice as deemed necessary.

13. Opposition

- 1/ Any person who objects the registration of the trademark may, within the period and in the manner prescribed by the Regulations and upon payment of the prescribed fee, notify in writing to the Office stating the ground of opposition and attaching the supporting documents.
- 2/ The Office shall send a copy of the opposition together with supporting evidence to the applicant, within the period and in the manner prescribed by the Regulations.
- 3/ The applicant may send to the Office a counter statement of the grounds which would support his application, within the period and in the manner prescribed by the Regulations, if he fails to submit the counter statement, it shall be deemed that he has abandoned the application.
- 4/ The Office shall furnish a copy of the counter statement of the applicant to the person who made opposition and reach a decision within the period and in the manner prescribed by the Regulations, after examining the merits of the case.

፪/ በዚህ አንቀጽ ንዑስ አንቀጽ /፩/ የተመለከተው ቅሬታ ጽሕፈት ቤቱ ውሳኔውን ለባለ ጉዳዩ ካሳወቀበት ቀን ጀምሮ ባለ-ት ጅቆናት ውስጥ ለፍርድ ቤቱ መቅረብ አለበት።

ክፍል አራት
የወል የንግድ ምልክቶች እና ታዋቂ የሆኑ የንግድ ምልክቶች

፲፰. የወል የንግድ ምልክቶች ምዝገባ

፩/ ለወል የንግድ ምልክት ምዝገባ የሚቀርብ ማመልከቻ የንግድ ምልክቱ የወል የንግድ ምልክት መሆኑን መግለጻልና የወል የንግድ ምልክቱን አጠቃቀም ከሚወሰን መተዳደሪያ ደንብ ቅጅ ጋር ተያይዞ መቅረብ ይኖርበታል።

፪/ በዚህ አዋጅ ስለንግድ ምልክት ምዝገባ የሰፈሩት ድንጋጌዎች ለወል የንግድ ምልክት ምዝገባም ተፈፃሚ ይሆናሉ።

፫/ በዚህ አንቀጽ ንዑስ አንቀጽ /፩/ የተጠቀሰው የመተዳደሪያ ደንብ የሚሰጡ ስም፣ ዋና መሥሪያ ቤት፣ አላማዎቹንና ወኪሎቹን መጥቀስ ይኖርበታል። በተጨማሪ በንግድ ምልክቱ የመጠቀም መብት ያላቸውን ሰዎች፣ የአጠቃቀሙን ሁኔታና የመብት መጣስ ሁኔታ ሲያጋጥም የሚመለከታቸው ሰዎች የሚኖራቸውን መብትና ግዴታ መግለፅ ይኖርበታል።

፬/ የተመዘገበው የወል የንግድ ምልክት ባለቤት በዚህ አንቀጽ ንዑስ አንቀጽ /፩/ መሠረት ባቀረበው መተዳደሪያ ደንብ ላይ የሚደረግ ማናቸውንም ለውጥ ለጽሕፈት ቤቱ ማሳወቅ ይኖርበታል።

፲፱. የወል የንግድ ምልክትን ለማስመዝገብ ስለሚችሉ ሰዎች

የሠራተኛ ማህበራት፣ ወይም ፌዴሬሽኖች የአባላቶቻቸውን መብት ለማስጠበቅ የወል የንግድ ምልክቶችን ሊያስመዘገቡ ይችላሉ።

፳. የወል የንግድ ምልክቶች ምዝገባን ስለመሰረዝ

፩/ የወል የንግድ ምልክት ምዝገባ በሚከተሉት ምክንያቶች ይሰረዛል፣

ሀ/ በባለቤትነት የተመዘገበው በህግ ሰውነት የተሰጠው አካል ሲፈርስ፤

2/ An appeal pursuant to Sub-Article (1) of this Article shall be submitted to the court within 60 days from the date of notification of the decision to the person concerned.

PART FOUR
COLLECTIVE TRADEMARKS AND WELL KNOWN MARKS

18. Registration of Collective Trademarks

1/ An application for registration of a collective trademark shall designate the trademark as collective trademark and shall be accompanied by a copy of the statutes governing the use of the collective trademark.

2/ The Provisions of this Proclamation concerning the registration of trademarks shall also apply to the registration of collective trademarks.

3/ The statutes referred to in Sub-Article (1) of this Article shall specify the name, headquarters, objectives and representatives of the association. It shall also indicate the group of persons entitled to use the trademark, the conditions for use and the rights and obligations of the parties concerned in the event of infringement of the trademark.

4/ The owner of the registered collective trademark shall notify the Office of any changes made in respect of the statutes submitted pursuant to Sub-Article (1) of this Article.

19. Persons Eligible to Apply for the Registration of Collective Trademark

Trade unions, trade union federations or associations may, in order to protect the rights of their members, apply for the registration of collective trademarks.

20. Cancellation of Registration of Collective Trademarks

1/ The registration of a collective trademark shall be cancelled:

a) upon dissolution of the registered owner;

ለ/ ተመዝጋቢው ባለቤት የዚህን አዋጅ መስፈርቶች ማሟላት የማይችል ሆኖ ሲገኝ፤

ሐ/ ተመዝጋቢው ባለቤት ራሱ ወይም እያ ወቀ ሌሎች ሰዎች መተዳደሪያ ደንቡ ከሚፈቅደው ውጭ በንግድ ምልክቱ ሲጠቀሙ፤

መ/ መተዳደሪያ ደንቡ ለሕዝብ ሰላም ወይም ሥነ ምግባር ተቃራኒ የሆኑ ድንጋጌዎች ሲይዝ፤

፪/ የወል የንግድ ምልክት ከተሰረዘ ሰባት አመት ከማለፍ በፊት በአዲስ ምዝገባ አማካኝነት ለተ መሳሳይ እቃዎች ወይም አገልግሎቶች በባለቤ ትነት ሊያዝ ወይም በሌላ መልክ ጥቅም ላይ ሊውል አይችልም።

፳፩. የመተዳደሪያ ደንብን ለሕዝብ እይታ ክፍት ስለማድረግ

የወል የንግድ ምልክት አጠቃቀምን የሚገዛው መተዳደሪያ ደንብ ለሕዝብ እይታ ክፍት ይሆናል።

፳፪. የመተዳደሪያ ደንብን ስለማሻሻል

፩/ የተመዘገበን የወል የንግድ ምልክት አጠቃ ቀም በሚገዛ መተዳደሪያ ደንብ ላይ የሚደረግ ማሻሻያ ተፈጻሚ የሚሆነው ማሻሻያው ለጽሕፈት ቤቱ ቀርቦ ሲመዘገብ ነው፤

፪/ ጽሕፈት ቤቱ አስፈላጊ ሆኖ ሲያገኘው የተሻ ሻለውን የመተዳደሪያ ደንብ ከመመዘገቡ በፊት ተቃውሞንና አስተያየትን ለመጋበዝ ታትሞ እንዲወጣ ሊያደርግ ይችላል።

፳፫. ታዋቂ የንግድ ምልክቶች

፩/ ኢትዮጵያ አባል በሆነችበት ዓለም አቀፍ ስምምነት እንደ ታዋቂ የንግድ ምልክት ጥበቃ የሚደረግለት የንግድ ምልክት በዚህ አዋጅ መሠረት ጥበቃ የሚደረግለት በኢትዮጵያ ውስጥ የታወቀ ሲሆንና የምልክቱ ባለቤት በኢትዮጵያ ውስጥ የንግድ ስራ ወይም መልካም ዝና ቢኖረውም ባይኖረውም፤

ሀ/ የስምምነቱ አባል የሆነ አገር ዜጋ ሲሆን፤ ወይም

ለ/ የስምምነቱ አባል በሆነ አገር ውስጥ ቋሚ መኖሪያ ወይም የንግድ ተቋም ሲኖረው ነው።

b) when the registered owner no longer satisfies the requirements of this Proclamation;

c) when the registered owner has used the trademark or knowingly allowed it to be used in conditions other than those prescribed in the statutes;

d) when the statutes contain provisions contrary to public order or morality.

2/ In the event of cancellation of a collective trademark, it may not be appropriated in respect of the same goods or services by a new registration, nor be used in any other way until a period of seven years has lapsed.

21. Statutes to be open for Inspection

The statute governing the use of a registered collective trademark shall be open to public inspection.

22. Amendmennt of statutes

1/ An amendment of the statute governing the use of a registered collective trademark shall not be effective unless the amended statute is filed with the Office and registered.

2/ The Office, before registering any amended statute, may cause its publication, where it finds it necessary, with a view to inviting opposition and observations.

23. Well known Trademarks

1/ A trademark which is entitled to protection, under an international convention to which Ethiopia is a party, as a well-known trademark shall be protected under this Proclamation if it is well know in Ethiopia and is a trademark of a person who is:

a) the national of a state party to the convention; or

b) domiciled in or has a real and effective industrial or commercial establishment in a state party to the convention,

Whether or not such person carries on business or has any good will in Ethiopia.

፪/ በዚህ አንቀጽ ንዑስ አንቀጽ 1፩/ መሠረት አንድ የንግድ ምልክት በኢትዮጵያ ውስጥ ታዋቂ መሆኑንና አለመሆኑን የሚወሰነው አግባብነት ያለው የህብረተሰብ ክፍል ስለን ግድ ምልክቱ ያለውን ዕውቀት እንዲሁም የንግድ ምልክቱን የማስተዋወቅ ሥራ በመስራት ምክንያት የተገኘን ዕውቀት ጭምር ግምት ውስጥ በማስገባት ይሆናል።

ክፍል አምስት
የንግድ ምልክት ምዝገባ ፀንቶ ስለሚቆይት
ዘመንና ስለዕድሳት

፳፬. የንግድ ምልክት ምዝገባ ፀንቶ የሚቆይበት ዘመን

በዚህ አዋጅ ከአንቀጽ ፴፭ እስከ ፴፯ የተደነገገው እንደተጠበቀ ሆኖ የንግድ ምልክት ምዝገባ ፀንቶ የሚቆየው የምዝገባው ማመልከቻ ከቀረበበት ቀን ጀምሮ ለሰባት ዓመታት ይሆናል።

፳፭. የንግድ ምልክት ምዝገባ ዕድሳት

፩/ የንግድ ምልክት ምዝገባ በምልክቱ ባለቤት ጥያቄ በየሰባት ዓመቱ ለሌላ ተከታይ ሰባት ዓመት ሊታደስ ይችላል። የንግድ ምልክቱ ባለቤት ከማመልከቻው ጋር በደንቡ የተወሰነውን የዕድሳት ክፍያ ስለመፈፀሙ ማስረጃ አያይዞ ማቅረብ አለበት።

፪/ በዕድሳት ወቅት በምልክቱ ስር ከተዘረዘሩት ዕቃዎች ወይም አገልግሎቶች የተወሰኑትን ለመቀነስ የሚቻል ከመሆኑ በስተቀር በንግድ ምልክቱ ላይ ለውጥ ማድረግም ሆነ የተጨማሪ ዕቃዎች ወይም አገልግሎቶች ዝርዝር ማካተት አይቻልም።

፫/ የንግድ ምልክት ምዝገባን ማሳደስ የሚቻለው ምዝገባው ፀንቶ የሚቆይበት ጊዜ ካበቃበት ቀን ጀምሮ ባሉት ሦስት ወራት ጊዜ ውስጥ ነው። ሆኖም የሦስት ወራት ጊዜው ካለፈ በኋላ ባሉት ስድስት ወራት ውስጥ ከመደበኛው የዕድሳት ክፍያ በተጨማሪ በደንቡ የተወሰነውን ቅጣት በመክፈል ምዝገባውን ማሳደስ ይቻላል።

፬/ ጽሁፊት ቤቱ እድሳቱን በመዝገብ በማስፈር ይህንን የሚመለከት ማስታወቂያ በአእምሯዊ ንብረት ጋዜጣ ወይም ሰፊ አገራዊ ሥርጭት ባለው ጋዜጣ ወይም በሬድዮ ወይም በቴሌቪዥን ወይም በዌብሳይት በንግድ ምልክቱ ባለቤት ወጪ እንዲወጣ ያደርጋል።

፭/ በዚህ አንቀጽ ንዑስ አንቀጽ 1፫/ በተገለጸው የጊዜ ገደብ ያልታደሰ የንግድ ምልክት እንደተተወ ወይም እንደተሰረዘ ይቆጠራል።

2/ In determining whether a trademark is well-known in Ethiopia, for the purposes of Sub-Article (1) of this Article, due regard shall be given to the knowledge of the trademark in the relevant sector of the public, including knowledge which has been obtained as a result of the promotion of the trademark.

PART FIVE
DURATION AND RENEWAL OF
REGISTRATION OF TRADEMARKS

24. Duration of Registration

Without prejudice to the provisions of Article 35 to 37 of this Proclamation, the registration of a trademark shall remain valid for a period of seven years from the date of submission of the application for registration.

25. Renewal of Registration

1/ Registration of a trademark may, upon request of the owner, be renewed for consecutive periods of seven years. The owner of the trademark shall attach a document showing the payment of renewal fee prescribed by the regulations.

2/ At the time of the renewal, no change may be made in the trademark or in the list of goods or services in respect of which the trademark is registered, except that certain goods or services may be eliminated from the list.

3/ Renewal of the registration of a trademark shall be made within three months after the expiry of the registration period; provided, however, that after the expiry of the three months period, the registration may be renewed within the next six months, by paying in addition to the regular renewal fee, a penalty prescribed by the Regulations.

4/ The Office shall record renewal of the registration and notify same in an intellectual property gazette or in a newspaper having nationwide circulation, or in a radio or television or website at the cost of the owner of the trademark.

5/ A trademark not renewed within the time limit stated in Sub-Article (3) of this Article shall be considered to have been waived or cancelled.

፮/ የንግድ ምልክት ምዝገባ በዚህ አንቀጽ መሠረት ሳይታደስ ሲቀር ጽሕፈት ቤቱ የንግድ ምልክቱን ከምዝገብ ይሰርዛል፤

፯/ የዚህ አንቀጽ ንዑስ አንቀጽ /፮/ እና /፯/ ድንጋጌዎች ማንኛውንም ሰው የቀድሞ ባለቤቱ ንም ጨምሮ የተተወን ወይም የተሰረዘን የንግድ ምልክት እንዲመዘገብ ከመጠየቅ አያግዱትም።

ክፍል ስድስት

መመዘገብ ስለሚያስገኘው መብትና የፈቃድ ውሎች

፳፮. ምዝገባ ስለሚያስገኘው መብት

፩/ የንግድ ምልክት ባለቤት የንግድ መልክቱን ከተመዘገበበት ዕቃ ወይም አገልግሎት ጋር አያይዞ የመጠቀም ወይም ሌላ ሰው እንዲጠቀምበት የመፍቀድ መብት ይኖረዋል፤

፪/ የንግድ ምልክት ምዝገባ የንግድ ምልክቱ ባለቤት ሌሎች ሰዎች፤

ሀ/ የንግድ ምልክቱን ወይም ሕዝብን ሊያሳስት የሚችል ማንኛውንም የንግድ ምልክቱን የሚመስል መለያ የንግድ ምልክቱ ከተመዘገበባቸው ዕቃዎች ወይም አገልግሎቶች ጋር በተያያዘ ወይም ሕዝብን ሊያሳስት በሚችል አኳኝ ከሌሎች ዕቃዎች ወይም አገልግሎቶች ጋር በተያያዘ እንዳይጠቀሙ፤

ለ/ የንግድ ምልክቱን ወይም የንግድ ምልክቱን የሚመስል መለያ ያለበቁ ምክንያቶች ጥቅሙን ሊጎዱ በሚችሉ አኳኝ እንዳይጠቀሙ፤ እና

ሐ/ ሌሎች መስል ድርጊቶች እንዳይፈጽሙ፤ ለማንኛውም የሚያስችል መብት ያስገኝላታል።

፫/ ለዚህ አንቀጽ ንዑስ አንቀጽ /፪/ ድንጋጌዎች ዓላማ አንድ አይነት መለያ ለአንድ ዓይነት ዕቃዎች ወይም አገልግሎቶች ሲውል የመሳከር ሁኔታ እንዳለ ይገመታል፤

፬/ ታዋቂ የንግድ ምልክትን በሕገ ወጥ መንገድ ጥቅም ላይ ማዋልን አስመልክቶ በታዋቂ የንግድ ምልክቱ ባለቤት የሚቀርብ ማናቸውንም ክስ በተመለከተ የዚህ አንቀጽ ንዑስ አንቀጽ /፫/ ድንጋጌዎች እንዳግባቡ ተፈጻሚ ይሆናሉ።

6/ The Office shall remove the trademark from the register when it is not renewed in accordance with the provisions of this Article.

7/ Nothing under Sub-Articles (5) and (6) of this Article may prohibit any person including the former owner from seeking a registration for a trademark that has been waived or cancelled.

**PART SIX
RIGHTS CONFERRED BY REGISTRATION
AND LICENSE CONTRACTS**

26. Rights Conferred by Registration

1/ The owner of a registered trademark shall have the right to use or authorize any other person to use the trademark in relation to any goods or services for which it has been registered.

2/ Registration of a trade mark shall confer upon its owner the right to preclude others from the following:

a) any use of a trademark or a sign resembling it in such a way as to be likely to mislead the public for goods or services in respect of which the trademark is registered, or for other goods or services in connection with which the use of the mark or sign is likely to mislead the public.

b) any use of a trademark, or a sign resembling it, without just cause and in conditions likely to be prejudicial to his interests and;

c) other similar acts

3/ For the purpose of the provisions of Sub Article (2) of this Article, a likelihood of confusion shall be presumed, in case of the use of an identical sign for identical goods or services;

4/ The provisions of Sub-Article 3 of Article 26 shall apply, mutatis mutandis, in any action instituted by the owner of a well-known trademark against any person in respect of the unlawful use of the well known trademark.

፳፮. በምዝገባ የተገኘ መብት ገደቦች

፩/ የንግድ ምልክት ምዝገባ ምልክቱን ይዞ በሀገር መንገድ በማናቸውም አገር ውስጥ የተሸጠ ዕቃን በሚመለከት ምንም ዓይነት ለውጥ እስካተልደረገበት ድረስ ሦስተኛ ወገኖች ዕቃውን በሚሸጡበት ጊዜ በንግድ ምልክቱ እንዳይጠቀሙ የመከላከል መብት ለባለቤቱ አያሰጠውም።

፪/ የንግድ ምልክቱ መመዝገብ ለተመዘገበው የምልክቱ ባለቤት ሦስተኛ ወገኖች በቅን ልቦና ስማቸውን፣ አድራሻቸውን፣ የማስ መሰያ ስሞችን፣ የአካባቢ ስምን ወይም የራሳቸውን ዕቃዎች ወይም አገልግሎቶች ዓይነት፣ ጥራት፣ ብዛት፣ መድረሻ ቦታ፣ ዋጋ፣ መነሻ ቦታ፣ የምርት ወይም አቅርቦት ጊዜ ለማመልከት ቢጠቀሙ አጠቃቀሙ የተጠቀሱትን ጉዳዮች ለማሳወቅና ለመረጃ ዓላማ ብቻ የተወሰነና ሕዝቡን ስለዕቃዎቹ ወይም ስለአገልግሎቶቹ ምንጭ የማያሳስት እስኪሆን ድረስ ምልክቱን ከመጠቀም ለማገድ የሚያስችል መብት አያስገኝለትም።

፳፩. መብት ስለማስተላለፍ

፩/ በተመዘገበ የንግድ ምልክት ወይም በንግድ ምልክት ምዝገባ ማመልከቻ ላይ ያለን መብት ሙሉ በሙሉ ወይም በከፊል ማስተላለፍ ወይም በፈቃድ መስጠት ይቻላል።

፪/ በተመዘገበ የንግድ ምልክት ወይም ለምዝገባ በቀረበ ማመልከቻ ላይ ያለ መብትን ለማስተላለፍ የሚቀርብ ጥያቄ ለጽሕፈት ቤቱ በጽሁፍ መቅረብ አለበት። ማመልከቻው መብትን ለማስተላለፍ ከተደረገው ስምምነት ጋር ተያይዞ መቅረብ አለበት።

፫/ በጋራ ባለቤትነት በተያዘ የንግድ ምልክት ላይ ያለ ድርሻ ያለ ባለሙብቶቹ የጋራ ፈቃድ አይተላለፍም።

፬/ በንግድ ምልክት ላይ ያለ መብት ጥቅም ላይ ከሚውልበት የንግድ ሥራ ጋር አብሮ ወይም ተነጠሎ ሊተላለፍ ይችላል። ሆኖም የንግድ ሥራው በተላለፈ ጊዜ ተቃራኒ ስምምነት ከሌለ በስተቀር የንግድ ምልክቱ መብት አብሮ ይተላለፋል።

፭/ በዚህ አንቀጽ ንዑስ አንቀጽ ፬/ መሠረት ጽሕፈት ቤቱ የንግድ ምልክቱ ጥቅም ላይ ከሚውልበት የንግድ ሥራ ተነጥሎ መተላለፍ ሕዝቡን ሊያሳስት ይችላል ብሎ ሲገምት የንግድ ምልክቱን የማስተላለፍ ጥያቄን ውድቅ ሊያደርገው ይችላል።

27. Limitation of Rights Conferred by Registration

1/ Registration of the mark shall not confer upon the owner the right to preclude third parties from using the trademark in relation to the goods lawfully sold in any country under that trademark, provided that these goods have not undergone any change.

2/ Registration of a trademark shall not confer upon its owner the right to preclude third parties from bona fide use of their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, time of production or supply of their goods or services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

28. Transfer of Right

1/ A right on a registered trademark or an application for registration of a trademark may be assigned, or licensed in whole or in part.

2/ A request for transfer of rights on a registered trademark or an application for registration of a trademark shall be submitted in writing to the office. The application shall be accompanied with the agreement of transfer of right.

3/ Shares in a trademark, which is a subject of co-ownership, may not be transferred without the consent of all the co-owners.

4/ The right to a trademark can be transferred in or without connection with the business in which it is used. In case where there is a transfer of the business, the right to the trademark that is attached to the business passes over to the new owner, unless otherwise agreed.

5/ The Office may, refuse to effect the transfer, under Sub-Article (4) of this Article, of a trademark separately from the business where it finds that use of the trademark by the new owner may mislead the public.

፮/ ጽሕፈት ቤቱ መብትን የማስተላለፍ ጥያቄን ተቀባይነት ከመረመረና በደንቡ የተወሰነው ክፍያ ከተፈፀመ በኋላ የመብቱን መተላለፍ ይመዘግባል፤ የመብት መተላለፉ በጋዜጣ ታትሞ እንዲወጣ ይደረጋል።

፳፱. የፈቃድ ውሎች

፩/ የተመዘገበ ወይም ለምዝገባ የቀረበ የንግድ ምልክት ባለቤት ማንኛውም ሌላ ሰው በፈቃድ ውል መሠረት በምልክቱ እንዲጠቀም ሊፈቅድ ይችላል፤

፪/ በተመዘገበ የንግድ ምልክት ወይም ለምዝገባ በቀረበ ማመልከቻ ላይ የሚደረግ ማናቸውም የፈቃድ ውል እንዲሁም በፈቃድ ውል ድንጋጌዎች ላይ የሚደረግ ማሻሻያና የውል መቋረጥ ማስታወቂያ ለጽሕፈት ቤቱ መቅረብ አለበት። ጽሕፈት ቤቱም ውሉ በመዝገብ እንዲገባ በማድረግና ዝርዝር ጉዳዮችን በምስጢር በመያዝ ይህንን የሚመለከት ማስታወቂያ በአእምሯዊ ንብረት ጋዜጣ ወይም ሰፊ አገራዊ ሥርጭት ባለው ጋዜጣ ታትሞ እንዲወጣ ያደርጋል። የፈቃድ ውሉ በመዝገብ ከመግባቱ በፊት በሦስተኛ ወገኖች ላይ ውጤት አይኖረውም፤

፫/ የተመዘገበ የውል የንግድ ምልክት ወይም ማመልከቻ በፈቃድ ውል አማካይነት አይተላለፍም።

፴. ፈራሽ የሆኑ የፈቃድ ውሎች

በተመዘገበ የንግድ ምልክት ወይም ለምዝገባ በቀረበ ማመልከቻ ላይ የሚደረግ ማናቸውም የፈቃድ ውል የንግድ ምልክቱ ጥቅም ላይ የሚውልባቸውን ዕቃዎች ወይም አገልግሎቶች ጥራት በሚመለከት የንግድ ምልክቱ ባለቤት ተገቢ የሆነ ቁጥጥር ያለው ስለመሆኑ የሚያመለክት ድንጋጌ ከሌለው ፈራሽ ይሆናል።

፴፩. ዋጋ የማይኖራቸው የፈቃድ ውል ድንጋጌዎች

፩/ በምዝገባ ከተገኘው መብት ያልመነጨ ወይም መብቱን ለመጠበቅ አስፈላጊ ያልሆኑ ግዴታዎችን በፈቃድ ተቀባዩ ላይ የሚጥሉ የፈቃድ ውሉ ድንጋጌዎች ፈራሽ ይሆናሉ፤

፪/ የዚህ አንቀጽ ንዑስ አንቀጽ 1፩/ ድንጋጌ ቢኖርም ቀጥሎ የተዘረዘሩት እንደ ገደብ አይቆጠሩም፤

6/ The Office, after examining the request for the transfer of right and upon payment of the fee prescribed by the Regulations, shall register and cause publication of the transfer.

29. License contracts

1/ The owner of a registered trademark or of an application for registration of a trademark may, by contract, grant to any other person a license to use the trademark. The contract shall be made in writing and shall indicate whether it is for all or part of the goods or services in respect of which the trademark is registered or an application is filed for.

2/ A license contract on a registered trademark or an application for registration of a trademark, as well as modification or termination of the license contract shall be submitted to the Office. The Office shall register the contract as well as its modification and termination and, by keeping the details as confidential, cause its publication in an intellectual property gazette or a newspaper having nationwide circulation. The license contract shall have no effect against third parties until so registered.

3/ A registered collective trademark or an application for the registration of a collective trademark may not be the subject of a license contract.

30. Nullity of license contracts

Any license contract on a registered trademark or an application for registration of a trademark, shall be null and void when it does not contain a provision for an effective control, by the licensor, of the quality of the goods or the services in connection with which the trademark may be used.

31. Invalid Clauses of License Contracts

1/ Clauses in a license contract shall be null and void in so far as they impose upon the licensee restriction not deriving from the rights conferred by the registration of the trademark or unnecessary for the safeguarding of these right.

2/ Notwithstanding the provisions of Sub-Article (1) of this Article, the following shall not be deemed to constitute such restriction:

ሀ/ የንግድ ምልክቱን ወሰን፣ የቦታ ክልል፣ የመገልገያ ዘመን ወይም ምልክቱ ጥቅም ላይ የሚውልባቸውን ዕቃዎችና አገልግሎቶችን ጥራት የሚመለከቱ ገደቦች፤

ለ/ በዚህ አዋጅ መሠረት በንግድ ምልክቱ ባለቤት የሚደረግ ተገቢ ቁጥጥር፤

ሐ/ የንግድ ምልክቱን ምዝገባ ዋጋ ሊያሳጣ ከሚችል ድርጊት እንዲቆጠብ በፈቃድ ተቀባይ ላይ የሚጣል ግዴታ።

፴፪. ተጨማሪ ፈቃድ የመስጠት መብት

፩/ በፈቃድ ውሉ ተቃራኒ ድንጋጌ ከሌለ በስተቀር፣ ፈቃድ መስጠቱ የተመዘገበው የንግድ ምልክት ባለቤት ለሦስተኛ ወገኖች ተጨማሪ ፈቃድ ከመስጠት ወይም ራሱ በንግድ ምልክቱ ከመጠቀም አያግደውም፤

፪/ ለፈቃድ ተቀባዩ የብቸኛ ተጠቃሚነት ፈቃድ በተሰጠ ጊዜ፣ የንግድ ምልክቱ ባለቤት ከሌለ ሦስተኛ ወገን ጋር ሌላ የፈቃድ ውል ማድረግ ወይም ተቃራኒ ድንጋጌ በውሉ ከሌለ በስተቀር በምልክቱ መጠቀም አይችልም።

፴፫. የፈቃድ ተቀባዩ መብት

በፈቃድ ውል ላይ ተቃራኒ ድንጋጌ ከሌለ በስተቀር፣ ፈቃድ ተቀባዩ የንግድ ምልክቱ ምዝገባ ዐንቶ በሚቆይበት እና በሚታደስበት ጊዜ የንግድ ምልክቱ ከተመዘገበባቸው ዕቃዎችና አገልግሎቶች ጋር በተያያዘ የንግድ ምልክቱን የመጠቀም መብት ይኖረዋል።

ክፍል ሰባት

በተመዘገበ የንግድ ምልክት ላይ ያለን መብት ስለመተውጥ ስለ መብት መሰረዝ እና ፈራሽ መሆን

፴፬. መብትን ስለመተው

፩/ አንድ የተመዘገበ የንግድ ምልክት ባለቤት የንግድ ምልክቱ ምዝገባ በሙሉ ወይም የንግድ ምልክቱ የተመዘገበባቸውን የተወሰኑ ዕቃዎች ወይም አገልግሎቶች በሚመለከት የባለቤትነት መብቱን ለመተው ከፈለገ የንግድ ምልክት ምዝገባው እንዲሰረዝ ለጽሕፈት ቤቱ ማመልከቻ ሊያቀርብ ይችላል፤

፪/ የተመዘገበ የንግድ ምልክት በፈቃድ ውል የተሰጠ ሲሆን መብትን የመተው ጥያቄ ተቀባይነት የሚያገኘው ፈቃድ ተቀባዩ በጉዳዩ የተስማማ ስለመሆኑ መግለጫ ሲቀርብ ብቻ ነው።

- a) limitation concerning the scope, territory or duration of use of the trademark or the quality of goods or services in connection with which the trademark may be used;
- b) justified control by the owner of the trademark under this Proclamation;
- c) the obligation imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the trademark.

32. Right to Grant Further Licenses

- 1/ In the absence of any provision to the contrary in the license contract, the grant of a license shall not prevent the owner of a registered trademark from granting further licenses to third parties or from using the trademark himself.
- 2/ When an exclusive license has been granted to a licensee, the owner of the trademark may not grant further licenses to third parties and, in the absence of any provision to the contrary in the license contract, may not use the trademark himself.

33. Right of licensee

In the absence of any provision to the contrary in a license contract, the licensee shall be entitled to use a trademark during the duration of the registration, including renewals, in respect of all the goods or services for which the trademark is registered.

**PART SEVEN
RENUNCIATION, CANCELLATION AND
INVALIDATION OF A RIGHT ON A
REGISTERED TRADEMARK**

34. Renunciation of Right

- 1/ The owner of a registered trademark, who wishes to renounce the registration either wholly or in respect of part of the goods or services for which the trademark is registered, may submit his application to the Office for the cancellation of the registration of the trademark.
- 2/ When a registered trademark has been subject to a license contract, the request for the renunciation of the right shall be accepted only upon submission of a written declaration by which the licensee consents to the renunciation.

፫/ ጽሕፈት ቤቱ በዚህ አንቀጽ ንዑስ አንቀጽ /፩/ መሠረት የቀረበውን ማመልከቻ እንደተቀበለ ስለመብቱ መተው በአእምሯዊ ንብረት ጋዜጣ ወይም ሰፊ አገራዊ ስርጭት ባለው ጋዜጣ ያሳውቃል። የመብት መተው የሚፀናው ምዝገባውን የመሰረዙ ውሳኔ በመዝገብ ከሰፈረ በኋላ ይሆናል።

፴፮. ጥቅም ላይ ያልዋሉ የንግድ ምልክቶችን ስለመሰረዝ

፩/ ጉዳዩ የሚመለከተው ማንኛውም ሰው የንግድ ምልክቱ ጥቅም ላይ አልዋለም ማለት ምዝገባው እንዲሰረዝ ለጽሕፈት ቤቱ በጽሁፍ ሊያመለክት ይችላል።

፪/ አንድ የንግድ ምልክት ጥቅም ላይ አልዋለም የሚባለው የሰረዘ ጥያቄው ከቀረበበት ቀን በፊት ቢያንስ ለተከታታይ ሦስት ዓመታት የተመዘገበው የምልክቱ ባለቤት ወይም ፈቃድ ተቀባዩ የንግድ ምልክቱን ለተመዘገበበቸው ዕቃዎች ወይም አገልግሎቶች ያለ በቂ ምክንያት በኢትዮጵያ ውስጥ አገልግሎት ላይ ያላዋለው መሆኑ ሲረጋገጥ ነው።

፫/ ጽሕፈት ቤቱ ምዝገባውን የሚሰርዘው በዚህ አንቀጽ ንዑስ አንቀጽ /፪/ የተጠቀሱት ሁኔታዎች የተሟሉ መሆናቸውን ሲያረጋግጥ ነው። የንግድ ምልክቱ ባለቤት ምልክቱ አገልግሎት ላይ ያልዋለው ከተመዘገቡት ዕቃዎች ወይም አገልግሎቶች መካከል በተወሰኑት ላይ ብቻ መሆኑን ሲያረጋግጥ ጽሕፈት ቤቱ የንግድ ምልክቱን በከፊል ይሰርዛል።

፬/ ባለቤቱ ወይም ፈቃድ ተቀባዩ የንግድ ምልክቱን ያልተጠቀመው ከአቅም በላይ በሆነ ምክንያት መሆኑን ካስረዳ ምዝገባው አይሰረዝም።

፭/ አንድን የንግድ ምልክት የተመዘገበበትን የመለየት ባህርይ በማይቀይር ሁኔታ በተለየ መልኩ መጠቀም የንግድ ምልክቱን ለመሰረዝ ምክንያት አይሆንም።

፴፯. የንግድ ምልክት ምዝገባን ፈራሽ ስለማድረግ

፩/ ማንኛውም የሚመለከተው ሰው በጽሁፍ በሚያቀርበው ጥያቄ ወይም በጽሕፈት ቤቱ ተነሳሽነት የንግድ ምልክት ምዝገባ በዚህ አዋጅ የተጠቀሱትን ሁኔታዎች ከመሠረቱ ያላሟላ መሆኑ ሲረጋገጥ ፈራሽ ሊደረግ ይችላል።

3/ The Office upon receiving the application submitted pursuant to Sub-Article (1) of this Article shall cause the publication of such renunciation in an intellectual property gazette or a newspaper having nationwide circulation. Renunciation shall be effective only after the decision for cancellation has been entered into the register.

35. Cancellation of trademark for Non use

1/ Any interested person may submit a request in writing for the cancellation of the registration of a trademark to the Office on the ground that the trademark has not been in use.

2/ A trademark shall be considered of non use, where it is proved that the trademark has not, without legitimate reason, been used in Ethiopia during a continuous period of at least three years preceding the date of the request for the cancellation of the trademark, by the registered owner or a licensee in respect of any of the goods or services for which it was registered.

3/ The Office shall cancel the registration of the trademark upon ascertaining the fulfillment of the conditions specified under Sub-Article (2) of this Article. Where the owner can prove the non-use of the trademark only for some of the registered goods, the Office shall make partial cancellation.

4/ The registration may not be cancelled when the owner or a licensee proves that the non-use of the trademark was due to force majeure.

5/ The use of a trademark in a form differing in elements, which do not alter its distinctive character in which it was registered, shall not be a ground for cancellation of the trademark.

36. Invalidation of Registration

1/ The registration of a trademark may be invalidated, by a written request of any interested person or by the initiative of the Office itself, when it is proved not to have initially fulfilled the conditions laid down under this Proclamation.

፪/ ጽሁፊት ቤቱ የንግድ ምልክት ምዝገባን ፈራሽ ከማድረግ በፊት ፈራሽ እንዲሆን የሚያደርጉትን ምክንያቶች ለባለቤቱ በጽሁፍ ማሳወቅ አለበት።

፫/ ምዝገባው ፈራሽ የተደረገው የንግድ ምልክቱ ከተመዘገበባቸው ዕቃዎች ወይም አገልግሎቶች መካከል ከፊሎቶ፣ በሚመለከት የሆነ እንደሆነ የምዝገባው ፈራሽነት ተፈጻሚ የሚሆነው እነዚህን ዕቃዎችና አገልግሎቶች በሚመለከት ብቻ ይሆናል።

፴፯. የምዝገባ ፈራሽ መሆን ውጤት

፩/ የንግድ ምልክት ምዝገባ ፈራሽ መሆኑን የሚገልፀው ውሳኔ ተፈጻሚነት የሚኖረው ከምዝገባው ቀን ጀምሮ ይሆናል። ጽሁፊት ቤቱ ምዝገባው ፈራሽ ስለመሆኑ በአእምሯዊ ንብረት ጋዜጣ ወይም ሰፊ አገራዊ ስርጭት ባለው ጋዜጣ በማውጣት ያሳውቃል።

፪/ የዚህ አንቀጽ ንዑስ አንቀጽ 1፩/ ቢኖረም የንግድ ምልክቱ በፈቃድ ውል የተሰጠ ሲሆንና ፈቃድ ሰጪው ከፈቃድ ውሉ ጥቅም ያገኘበት ከሆነ የምዝገባው ፈራሽ መሆን ባለፈቃዱ የከፈለው ገንዘብ እንዲመለስለት ለመጠየቅ አያስችለውም።

፴፰. የጊዜ መራዘም

ጽሁፊት ቤቱ በጽሁፍ ሲጠየቅና በሁኔታው ሲያምን በዚህ አዋጅና በደንቡ መሠረት ለሚፈጸሙ ድርጊቶች የተመለከተው የጊዜ ገደብ የሚመለከታቸውን ወገኖች በማሳወቅና ተገቢውን መመሪያ በመስጠት እንዲራዘም ሊያደርግ ይችላል። የጊዜ ማራዘሚያው ውሳኔ ድርጊቱ የሚፈፀምበት የጊዜ ገደብ ካለፈ በኋላም ሊሰጥ ይችላል።

**ክፍል ስምንት
ስለመብቶች ተፈጻሚነት**

፴፱. በጊዜያዊነት ስለሚወሰዱ እርምጃዎች

፩/ ሥልጣን የተሰጠው ፍርድ ቤት፣
ሀ/ የመብት ገሰሳን ለመከላከል በተለይም ገቢ ወይም ወጪ ዕቃዎች የጉምሩክ ሥነ-ሥርዓት አጠናቀው ወደ ንግድ እንዳይገቡ ለማድረግ፣ ወይም
ለ/ ተፈፀመ የተባለን የመብት ሃሰሳ የሚያስረዳ አግባብነት ያለውን ማስረጃ ለመጠበቅ ፈጣንና ውጤታማ የጊዜያዊ እርምጃ ትእዛዝ መስጠት አለበት።

2/ The Office, prior to the invalidation, shall inform the owner, in writing, the ground for invalidation of the registration of a trademark.

3/ When the invalidation is made in respect of parts of the goods or services for which a trademark is registered, such invalidation shall affect those parts only.

37. Effects of Invalidation

1/ The decision declaring the invalidation of registration of a trademark shall be effective as of the date of such registration. The Office shall publish the invalidation of the registration in an intellectual property gazette or a newspaper having nationwide circulation.

2/ Notwithstanding Sub-Article (1) of this Article, when the trademark has been subject to a license and if the licensor has benefited from the license contract, the invalidation of the registration shall not enable the licensee to claim the repayment of money.

38. Extension of Time

The Office may, when it is satisfied that the circumstance so justifies upon receiving a written request and upon notice to the parties concerned and upon such terms as it may direct, extend the time limit prescribed for the execution of any act under this Proclamation and the Regulations. The extension may be granted though the time for doing the act has already expired.

**PART EIGHT
ENFORCEMENT OF RIGHTS**

39. Provisional measures

1/ The competent court shall order prompt and effective provisional measures to:
a) prevent an infringement of a right from occurring, in particular to prevent the entry into the channels of commerce of import and export goods after completing customs formalities; or
b) preserve relevant evidence in regard to an alleged infringement of a right.

፪/ ፍርድ ቤቱ አግባብ ሆኖ ሲያገኘው በተለይም የእርምጃው መዘግየት በከላሽ ላይ ሊካስ የማይችል ጉዳት ሊያደርስ የሚችል ከሆነ ወይም ማስረጃ እንደሚጠፋ በግልፅ የሚታይ አደጋ ካለ ተከላሽ ሳይጠራ ጊዜያዊ እርምጃውን የመውሰድ ሥልጣን ይኖረዋል፤

፫/ ተከላሽ መብት ከመጣስ እንዲታቀብ በቀረበ ክስ ላይ ውሳኔ እስከሚሰጥ ድረስ ከላሽ የመብት ገሰሳን ለማስቆም ጊዜያዊ የእግዳ ትእዛዝ እንዲሰጥ ፍርድ ቤቱን መጠየቅ ይችላል፤

፬/ ፍርድ ቤቱ በዚህ አንቀፅ ንዑስ አንቀፅ 1፫/ መሠረት በቀረበለት የእግዳ ትእዛዝ ጥያቄ ላይ ሲወስን፤

ሀ/ አደጋ ላይ የወደቀው ጥቅም በካሳ ሊሸፈን የማይችል መሆኑን፤ አደጋው የማይቀር መሆኑን፤ የክሱን ጥንካሬና ውሳኔ መስጠት በእያንዳንዱ ተከራካሪ ወገን ላይ የሚያስከትለውን ጉዳት መመርመር አለበት፤

ለ/ እግዳ የሚቆይበትን ጊዜና እንደአስፈላጊ ጊዜ ከላሽ የሚያስይዘውን ገንዘብ ወይም የሚያቀርበውን ሌላ ዋስትና ሊያመለክት ይችላል፤

ሐ/ በዚህ ንዑስ አንቀፅ ተራ ፊደል 1፱/ በተመለከተው መመዘኛ ተከራካሪዎች ሲመዘኑ በእኩል ደረጃ በሆኑ ጊዜ ጊዜ ያዊ እግዳ ከመስጠቱ በፊት በአንጻራዊ ጥንካሬያቸው ላይ ጥልቅ ምርመራ ማድረግ ይችላል፤

፭/ በዚህ አዋጅ ጥበቃ ያገኘን መብት የሚጥስ ተግባር በተፈፀመ ጊዜ ፍተሻና ዕቃ መያዝን የሚመለከቱ የፍትህ-ብሔር ሥነ ሥርዓትና የወንጀል ሥነ-ሥርዓት ሕጎች ድንጋጌዎች ተፈጻሚነት ይኖራቸዋል፤

፮/ ተከላሽ ሳይጠራ ጊዜያዊ እርምጃዎች በተወሰዱ ጊዜ እርምጃዎቹ ተፈጻሚ እንደሆኑ ወዲያውኑ እንዲያውቀው መደረግ አለበት። እርምጃው ከተገለፀ በኋላ ተከላሽ ጥያቄ ባቀረበ ጊዜ የተወሰደውን እርምጃ ለማሻሻል፣ ለመሻር ወይም ለመለወጥ የሚያስችል ውሳኔ ለመስጠት የተከላሹን የመደመጥ መብት ጨምሮ በቂ ጊዜ በመስጠት ጉዳዩ እንደገና መታየት አለበት፤

2/ The court shall, without summoning the defendant, have the power to adopt provisional measures where it finds it appropriate, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed.

3/ In a suit for restraining the defendant from committing an infringement, the plaintiff may apply to the court for a temporary injunction to restrain the infringements until the suit is disposed of;

4/ The court, in deciding on an application of injunction submitted under Sub-Article (3) of this Article,

a) shall consider if the threatened interest cannot be redressed by awarding damages, whether the threat is imminent, the prima facie strength of the action and the gravity of the prejudices a decision for or against may cause to either of the parties;

b) may determine the duration of the injunction and the amount of money to be deposited or other security to be furnished by the applicant, as it thinks fit;

c) may make a deeper investigation of the relative strength of the parties before granting the temporary injunction where the application of the criteria under paragraph (a) of this Sub-Article put the parties on equal position.

5/ Where an act that infringes the rights protected under this Proclamation is committed, the provisions of the Civil Procedure Code and the Criminal Procedure Code on search and seizure shall be applicable.

6/ Where provisional measures have been adopted without summoning the defendant, he shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measure, whether these measures shall be modified, revoked or confirmed.

፯/ ጊዜያዊ እርምጃው አመልካቹ በፈፀመው ወይም ሳይፈፀመው በቀረ ድርጊት ምክንያት ወይም ውሳኔው ከተሰጠ በኋላ የተጣሰ ወይም የመጣሰ አደጋ ያጋጠመው መብት የሌለ መሆኑ በመታወቁ የተሻረ ከሆነ በተከሰሱ ጠያቂነት ለደረሰበት ጉዳት በቂ ካሳ በከሰሱ እንዲከፈለው ያዛል።

፱. የፍትሐብሔር መፍትሄዎች

፩/ የንግድ ምልክት መብት መጣሰን በሚመለከት ክስ የቀረበለት ፍርድ ቤት፣

ሀ/ ተከሰሱ የመብት መጣሱን ድርጊት እንዲያቆም፣ እና

ለ/ በመብቱ መጣሰ ምክንያት በከሰሱ ላይ ደረሰውን ጉዳት እንዲክስ፣ ሊወስን ይችላል።

፪/ በዚህ አንቀፅ ንዑስ አንቀፅ ፩/ለ/ መሠረት ሊወስን የሚችለው ካሳ መጠን ተከሰሱ በንግድ ምልክቱ በመጠቀም ካገኘው የተጣራ ትርፍና በንግድ ምልክቱ እንዲጠቀም ተፈቅዶለት ቢሆን ኖሮ ሊጠየቅ ይችላል ከነበረው የሮያሊቲ ክፍያ መካከል የሚበልጠውን የሚያህል እና ከሳሹ ከክሱ ጋር ተያይዞ ያወጣውን ወጭ የሚሸፍን መሆን አለበት።

፫/ ተከሰሱ የንግድ ምልክቱን በመጠቀም ከሸጣቸው እቃዎች ወይም አገልግሎቶች ያገኘው ትርፍ በከፊል በሌሎች የገበያ ሁኔታዎች ምክንያት የተገኘ መሆኑን ለማስረዳት ካልቻለ በስተቀር ትርፉ በሙሉ በንግድ ምልክቱ ከመጠቀም የተገኘ እንደሆነ ይቆጠራል።

፴፩. የወንጀል ቅጣት

፩/ የወንጀል ሕግ የበለጠ ቅጣት የሚያስቀጣ ካልሆነ በቀር በዚህ አዋጅ ጥበቃ ያገኘ መብትን ሆነ ብሎ የጣሰ ማንኛውም ሰው ከ፩ ዓመት በማያንስ እና ከ፲ ዓመት በማይልጥ ዕኑ እሥራት ይቀጣል።

፪/ የወንጀል ሕግ የበለጠ ቅጣት የሚያስቀጣ ካልሆነ በቀር በዚህ አዋጅ ጥበቃ ያገኘ መብትን በጎሳ ቸልተኝነት የጣሰ ማንኛውም ሰው ከ፩ ዓመት በማያንስ እና ከ፩ ዓመት በማይበልጥ ዕኑ እሥራት ይቀጣል።

፫/ አግባብነት ባለው ጊዜ ቅጣቱ ወንጀሉን ለመፈፀም ያገለገሉ ቁሳቁሶች ወይም መሳሪያዎች እና መብት የተጣሰባቸው ዕቃዎችን መያዝ፣ መውረስ እና ማስወገድን ይጨምራል።

7/ where provisionall measures are revoked due to any act or omission by the applicant or upon subsequently ascertaining that there has been no infringement or threat of infringement of a trademark right, the court shall order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by such measures.

40. Civil Remedies

1/ The court hearing a case of infringement of a trademark owner's right may:

- a) pass an injunction to stop the defendant from continuing the act of infringement; and
- b) order the defendant to compensate the damage inflicted to the claimant due to the infringement.

2/ The amount of compensation to be awarded pursuant to Sub-Article 1 (b) of this Article shall be equal to the net profit derived by the defendant from the use of the trademark or the amount of royalty the defendant could have been charged had he used the trademark under the terms of a license contract, whichever is higher, plus an amount that shall cover the expenses incurred by the claimant in connection with the suit.

3/ The whole of the net profit derived from the sale of the defendant's goods or services in connection with the use of the trademark shall be attributed to the use of the trademark unless the defendant proves that part of the profit is attributive to other market factors.

41. Criminal Sanctions

1/ Unless heavier penalty is provided for under the Criminal Code, whoever intentionally violates a right protected under this Proclamation shall be punished with rigorous imprisonment of a term of not less than 5 years and not more than 10 years.

2/ Unless heavier penalty is provided for under the Criminal Code, whoever by gross negligence violates a right protected under this Proclamation shall be punished with rigorous imprisonment of a term not less than 1 year and not more than 5 years.

3/ The penalty, where appropriate, shall include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements used in the commission of the offense.

፵፪. በጉምሩክ ወደቦች እና ጣቢያዎች ላይ ስለሚወሰዱ እርምጃዎች

፩/ የጉምሩክ ባለሥልጣን የመብቱ ባለቤት የንግድ ምልክት ምዝገባ የምስክር ወረቀትና ሌሎች አግባብነት ያላቸው ማስረጃዎች አያይዞ በሚያቀርበው ማመልከቻ መሠረት በቂ ዋስትና እንዲቀርብለት በማድረግ አመልካቹ መብቱ የተጣሰባቸው ናቸው ብሎ ያመለክታቸውን ዕቃዎች ይዞ በቁጥጥሩ ሥር ሊያቆይ ይችላል፤

፪/ የጉምሩክ ባለስልጣን ዕቃውን ለመያዝ የወሰደውን እርምጃ በተመለከተ ለአመልካቹ እና ለዕቃው ባለቤት ወዲያውኑ ያሳውቃል፤

፫/ አመልካቹ ዕቃው ከተያዘበት ቀን ጀምሮ በአሥር የሰራ ቀናት ውስጥ የፍርድ ቤት የዕ ግድ ትዕዛዝ ካላቀረበ የጉምሩክ ባለሥልጣን የያዘውን ዋስትና ገቢ በማድረግ ዕቃውን ይለቃል።

**ክፍል ዘጠኝ
ልዩ ልዩ ድንጋጌዎች**

፵፫. የንግድ ምልክት መጽሔት

በዚህ አዋጅ ለሕዝብ መገለጫ ያለባቸውን ጉዳዮች ጽሕፈት ቤቱ በአእምሯዊ ንብረት ጋዜጣ ወይም ሰፊ አገራዊ ስርጭት ባለው ጋዜጣ ማውጣቱ እንደተጠበቀ ሆኖ የንግድ ምልክቶችን ለማስተዋወቅ የሚረዳ የንግድ ምልክት መጽሔት ማውጣት ይችላል።

፵፬. የንግድ ምልክት ወኪሎች ምዝገባ

፩/ የንግድ ምልክት ወኪሎች በጽ/ቤቱ መመዘኑ ገብ አለባቸው፤

፪/ የንግድ ምልክት ወኪሎቹ የአመዘጋገብ ሁኔታ በደንቡ ይወሰናል፤

፵፭. መረጃ ስለመጠየቅና ስለማግኘት

፩/ ማንኛውም ሰው በደንቡ የተመለከተውን ክፍያ በመፈፀም የንግድ ምልክት ፍለጋና ማጣሪያ ተደርጎ የንግድ ምልክት ሪፖርት እንዲሰጠው ሊጠይቅ ይችላል፤

፪/ ጽህፈት ቤቱ በደንቡ የተመለከተውን ክፍያ የፈፀመ ማንኛውም ሰው መዛግብቱን እንዲመረምር መፍቀድና የመረጃዎች ቅጅ እንዲሰጠው ማድረግ አለበት።

42. Measures at customs port and stations

1/ The Customs Authority may, on the basis of a written application accompanied with a certificate of trademark registration and other relevant evidence made by the right holder, and upon sufficient guarantee provided by the applicant, seize and detain goods which are subject to the alleged infringement of the applicant's right.

2/ The Customs Authority shall forthwith inform the applicant and the owner of the goods of the measure taken to seize the said goods.

3/ The Customs Authority shall release the seized and detained goods after crediting the gurantee furnished unless the applicant brings court injunction within ten working days.

**PART NINE
MISCELLANEOUS PROVISIONS**

43. Trade Marks Bulletin

Without prejudice to matters to be published, pursuant to this Proclamation, in an intellectual property gazette or a newspaper having nationwide circulation, the Office may publish a trademarks bulletin to publicize trademarks.

44. Registration of Trademark Agents

1/ Trademark agents shall be registered with the Office.

2/ The conditions for registration of agents shall be determined by the Regulations.

45. Access to Information

1/ Any person may request for search of a trademark and obtain search report upon payment of fee prescribed in the Regulations.

2/ The Office shall, upon payment of the fee prescribed in the regulations, give permit to any person to inspect the Register and give a copy of extracts thereof.

፵፮. የመሸጋገሪያ ድንጋጌዎች

- ፩/ ይህ አዋጅ ከመውጣቱ በፊት የተቀመጡ የንግድ ምልክቶች ይህ አዋጅ ከወጣበት ጊዜ ጀምሮ በ፲፰ ወራት ጊዜ ውስጥ መመዝገብ ይኖርባቸዋል፤
- ፪/ ጽህፈት ቤቱ የንግድ ምልክቶቹን በመመር መር በዚህ አዋጅ መሠረት እንዲመዘገቡ ይወስናል፤
- ፫/ ይህ አዋጅ ከመፅናቱ በፊት በተለያዩ ፍርድ ቤቶች በክርክር ላይ ያሉ ጉዳዮች በዚህ አዋጅ አንቀፅ ፵፱ ሥልጣን በተሰጠው ፍርድ ቤት ይታያሉ።

፵፯. ደንብ የማውጣት ሥልጣን

የሚኒስትሮች ምክር ቤት ይህን አዋጅ ለማስፈፀም የሚያስፈልጉ ደንቦችን ሊያወጣ ይችላል።

፵፰. ተፈጻሚነት ስለማይኖራቸው ሕጎችና አሠራሮች

ከዚህ አዋጅ ጋር የሚቃረን ማንኛውም ሕግ ወይም ልማዳዊ አሠራር በዚህ አዋጅ በተካተቱ ጉዳዮች ላይ ተፈጻሚነት አይኖረውም።

፵፱. ሥልጣን ያለው ፍርድ ቤት

በዚህ አዋጅና በደንቡ የተመለከቱ ጉዳዮችን በሚመለከት የሚኒሱ ክርክሮችና ተዛማጅ ጉዳዮችን የማየት ሥልጣን የሚኖራቸው የፌዴራል ፍርድ ቤቶች ይሆናሉ።

፶. አዋጁ የሚፀናበት ጊዜ

ይህ አዋጅ በፌዴራል ነጋሪት ጋዜጣ ታትሞ ከወጣበት ቀን ጀምሮ የፀና ይሆናል።

አዲስ አበባ ሰኔ ፱ ቀን ፲፱፻፺፰ ዓ.ም.

ግርማ ወልደጊዮርጊስ

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ፕሬዚዳንት

46. Transitory Provisions

- 1/ Trademarks deposited before the entry into force of this Proclamation shall be submitted for registration within eighteen months beginning from the entry in to force of this Proclamation.
- 2/ The Office shall examine and decide to or not to register deposited trade marks based on the requirements of this Proclamation.
- 3/ The competent court in accordance with Article 49 of this Proclamation shall have jurisdiction over cases pending in different court prior to the coming in to force of this proclamation.

47. Power to Issue Regulations

The Council of Ministers shall have the power to issue Regulations necessary for the implementation of this Proclamation.

48. Inapplicable Laws and Practices

Any law or practice which is inconsistent with this Proclamation shall not be applicable with respect to matters provided for in this Proclamation.

49. Competent Court

The Federal Courts shall have jurisdiction over disputes and related matters that are governed by this Proclamation and the Regulations.

50. Effective Date

This Proclamation shall enter into force on the date of its publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 7th day of July, 2006

GIRMA WOLDEGIORGIS

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Declaration

I hereby declare that the project entitled "Trademarks in Ethiopia: Awareness, Infringement and Potential Solutions" is my original work and has not been presented (submitted) to any body for any degree or diploma in any university and all the materials used for the project work have been dully acknowledged.

Name **Sintayehu Mitiku**

Signature _____

Date **July 23, 2007**

This is to certify that Sintayehu Mitiku has completed his project work entitled "Trademarks in Ethiopia: Awareness, Infringement and Potential Solutions" under my supervision. In my opinion this study is suitable for submission in partial fulfillment of the requirements for the award of Degree of Masters in Business Administration

Name **Zewdie Shibre (Ph. D.)**

Signature _____

Date _____