

Chapter1: General introduction

Trade mark rights afford a privileged monopoly to the proprietor. As a direct consequence of this monopoly, trade mark owners are able to restrict others from dealing with a trade-marked product and thereby affect the freedom of movement of goods which legal systems of regional blocs such as the European Union (EU) or the East African Community (EAC) guarantee. In most cases, a trade mark proprietor derives the ability to circumvent the free movement principle from the national systems of trade mark protection. By their nature, national trade mark systems are established to serve national markets. This holds true even where the national markets are integrated to form a single market. To play a meaningful role in a single market of a given regional bloc, national trade mark systems of the Member States may necessarily be supplemented with a regional trade mark system. The regional trade mark system would thus integrate the national trade mark systems into the common market by linking trade mark rights with principles governing the common market. In the EU the task of integrating trade mark rights into the common market was accomplished through the Community Trade Mark Regulation (CTMR)¹ which introduced a regional trade mark regime.

Rules underlying the EU's regional trade mark system may guide authorities in other regional blocs, such as the East African Community (EAC), to regulate their common markets. The East African Community, established in 1999, comprises five Partner States, namely, Burundi, Kenya, Rwanda, Tanzania and Uganda. Apparently, the Community has an operational common market in which several freedoms, including the free movement of goods are guaranteed.² National trade mark systems operational in the Partner States have not yet been integrated into the Community regulatory framework. There is thus a potential danger that national trade mark rights may be invoked to circumvent the principle of free movement of goods underlying the EAC common market.

The principal aim of this dissertation is to investigate the effects of trade mark rights on the EAC common market and to provide a solution thereto. The dissertation identifies and scrutinises various scenarios under which the national

1 i.e. Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. This Regulation was repealed and replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version).

2 Further information on the EAC is available at <<http://www.eac.int>>.

trade mark systems of the EAC Partner States are likely to affect the proper functioning of the EAC common market. In this regard, chapter 2 analyses the national trade mark laws of the EAC Partner States and depicts the absence of a uniform trade mark regime in the EAC. Absence of uniformity of trade mark regulation is clear evidence that the national trade mark systems are still independent of each other and hence, the systems provide a platform for trade mark proprietors to impair the proper functioning of the EAC common market. Additionally, the regulation of the principle of free movement of goods governing the EAC common market is closely scrutinised in chapter 3 to find out whether and how the principle, as enshrined in the relevant EAC legal instruments, facilitates the free movement of branded goods. In this respect, the dissertation makes it clear that the general principle of the free movement of goods underlying the EAC common market does not have sufficient legal force to guarantee the free movement of branded goods across the entire EAC area. Thus, chapter 3 attempts to develop an alternative regulation of the free movement of trade-marked goods on the basis of principal functions of trade marks and on the basis of international rules enshrined in the agreement on the Trade-related Aspects of Intellectual Property (TRIPS agreement) and the General Agreement on Tariffs and Trade (GATT). However, in the light of the findings contained in the chapter, a free movement regime regulated on the basis of principles of trade mark law such as where restriction on the movement of trade-marked goods is permitted only if such a restriction is necessary to allow a trade mark to perform its functions, is not a better approach, for it is undertaken on a case-by-case basis and does not curb every scenario in which trade mark rights are disguisedly invoked to hamper free movement of goods. This case-by-case regulation of the free movement of branded goods may be avoided if a Community trade mark system is established to integrate the national trade mark systems of the EAC Partner States into the EAC common market.

A proposal for a Community trade mark regime that could possibly suit the EAC common market is presented in chapter 7. The proposal is, by and large, modelled on the EU trade mark system. To pave a way for this proposal, chapter 4 outlines the EU trade mark system, by setting out substantive and procedural principles governing creation, protection and termination of EU's regional trade mark rights. In the same vein, chapter 5 of the dissertation offers, in a specific context, a discourse on how the interplay between the national trade mark regimes of the EU Member States and the Community trade mark regime is achieved. This is followed by an examination, in chapter 6, of the free movement regime of branded goods in the EU common market.

Although the EAC has five Partner States, only the laws of three States, namely, Kenya, Tanzania and Uganda are examined in this dissertation. The fact

that these countries are the EAC founder States and that they share similarity of legal systems inherited from the British colonial master³ has motivated the author to delimit the analysis in the dissertation accordingly. However, the findings contained in this thesis are generalised to benefit the EAC as a whole.

3 Cf. Footnote No 98, in: JACONIAH, J., “The Requirement for Registration and Protection of Non-Traditional Marks in the European Union and in Tanzania”, 40(7) IIC 756, 773 (2009).

