

Chapter 2: The Absence of Common Trade Mark Regime in the East African Community

A. Introduction

Are the substantive provisions of the national trade mark legislations of the Partner States of the East African Community (EAC) similar? The positive response to this question would negate a central thesis of this chapter. The chapter takes the view that unless the substantive differences inherent in the national trade mark laws of the EAC Partner States are streamlined and harmonised, a common EAC trade mark regime would be impossible.⁴ As a step leading to the foregoing conclusion, the Chapter addresses the subject matter of trade mark registration, and the grounds that the national trade mark offices of the EAC Partner States may invoke to refuse registration of a trade mark. This is followed by an outline of trade mark opposition and cancelation procedure. Issues pertaining to trade mark infringement and the system of international trade mark registration are depicted in the chapter as well. Preliminary considerations are directed to the institutional set up of the national trade mark regimes of the EAC Partner States.

B. Institutions responsible for trade mark registration

Trade and service marks Act of 1986⁵ (henceforth T.) governs trade mark administration in Tanzania. Trade mark rights in Kenya and Uganda are respectively created and protected based on the Trade Marks Act (Chapter 506 of the laws of Kenya) of 1957 (henceforth, K.) as amended and the Trademarks Act⁶ of Uganda of 2010 (henceforth, U.). These legislations establish an office of

4 The substantive differences depicted in this chapter are only exemplary. It is not the aim of the chapter to go into extensive discussion insofar as the differences are concerned, but just to highlight the key differences that are essential for the attainment of a common EAC trade mark regime.

5 Act No. 12/86 of the Laws of Tanzania.

6 Act No 17 of 2010. This Act, which is published in *the Uganda Gazette No. 53 Volume CIII dated 3rd September 2010*, repeals the Trademarks Act (Chapter 217 of the laws of Uganda) of 1953 (cf. S. 99 of the Act).