

Tanzania and Uganda ratified the Banjul Protocol on Marks and hence are fully bound by it. Kenya has not yet ratified the Protocol but enshrined a provision in the Trade Mark Act implementing the Protocol. According to the implementing provision, the normative order enshrined in the Kenyan Act is superior to the stipulations in the Banjul Protocol.⁹⁷

Kenya has ratified both the Madrid Agreement and the Protocol thereto (hence fully bound by them),⁹⁸ while Tanzania and Uganda have not. Whereas applicants for international trade mark registrations may only designate Kenya, such designation may have impact on the internal market in case a regional trade mark regime is established in the EAC.

G. Concluding remarks

The discussion in the Chapter has brought to light a number of discrepancies and/or some weaknesses inherent in the national trade mark laws of the EAC Partner States. In connection with the absolute grounds for trade mark refusal, the concept of distinctiveness under the Kenyan and Ugandan laws is addressed differently from the stipulation under the Tanzanian law, the root cause being the partition of the Kenyan and Ugandan trade mark register into two parts (i.e., part A and part B). While a generic trade mark cannot be legally registered under the Kenyan and Ugandan laws, the Tanzanian trade mark legislation does not contain any stipulation in this respect. Regarding the relative grounds for trade mark refusal, unregistered rights may be invoked to oppose registration of a trade mark in Tanzania and in Uganda, but such rights cannot constitute a ground for refusing or opposing a trade mark application in Kenya, notwithstanding the fact that infringement of such rights may be redressed under the tort of passing off.

Some other notable substantive differences are the terms of trade mark registration and the renewal of the registration. Important as well is the difference in the time limit with respect to putting a registered trade mark to genuine use.

Finally, the chapter has revealed that the differences exist with respect to systems of international trade mark registrations with effect in the EAC Partner States.

As a condition for attaining a common EAC trade mark regime, the differences and weaknesses of the national trademark systems of the EAC Partner States identified in this chapter must be addressed.

97 See S. 40D (3), K.

98 See S. 40B, K.

