



## NON-TRADITIONAL TRADEMARKS IN TANZANIA AND ZANZIBAR

Traditionally, trademarks have been associated with the logo, slogan and Trade name of a company. When you peruse through the different aisles in the supermarket it's your eyes that associate that soda bottle with a red and white label as Coca Cola even before you've had a closer look. That's how companies have over the years distinguished themselves from their competitors.

Non-traditional trademarks, on the other hand, allow the public to not only perceive a trademark by sight, but also by using their other senses, for example, taste, hearing and smell. Therefore, non-traditional trademarks include sound, smell and colour, just to name a few.

### **OVERVIEW OF NON-TRADITIONAL TRADEMARKS**

#### **Sound Trademarks**

In some cases a company may use a unique sound to associate its product or service with their brand. The sound should be distinctive in order for it to be recognizable. Protection of a sound trade mark requires it be reproducible graphically, for example, using notes. However, this is not usually the case as we've seen the MGM lion roar being trademarked as a sound trademark.

#### **Olfactory Trademarks**

Unlike other forms of trademarks, olfactory trademarks are more challenging to register as they're said to be subjective. In most jurisdictions, the criteria to register a trademark off of smell is that you have to show that the fragrance serves no important practical function other than to aid in identifying a particular brand.

Therefore, a product whose purpose is only smell-oriented, for example, perfumes or air fresheners, will not be able to receive protection of an olfactory trademark. An example of this is the failed application of Chanel to register its fragrance named 'Chanel no. 5' as a trademark. The application failed as the smell of the perfume is the good itself and can therefore not be successfully registered as an olfactory trademark.

#### **Colour Trademarks**

Such trademarks allow a company to use a particular colour to uniquely identify its goods or services from those of its competitors. In cases of a single colour it is harder to meet the test. The view is that other people would have genuine and good faith to use that colour in



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connection with the same or similar goods.

**Single colour cases will most likely require the trademark applicant to prove that because of how they've used/promoted that seemingly generic colour that it does or can distinguish their products in the marketplace.**

It should be noted that, once a company decides to trademark a colour in relation to its products or services, it doesn't mean that they can prevent someone from painting their house the colour of their brand. Colour trade mark is only limited to the goods of that particular company. Therefore, if one company uses a colour to identify with chocolate, then another company can use that same colour to identify with a make-up brand.

### NON-TRADITIONAL TRADEMARKS IN TANZANIA

In Tanzania, trademarks are governed by the Trade and Service Marks Act (CAP 326 RE: 2002). In the interpretation section of the Act it defines a trade or service mark as,

*"... any visible sign used or proposed to be used upon, in connection with or in relation to goods or services for the purpose of distinguishing in the course of trade or business the goods or services of a person from those of another."*

Non-traditional trademarks can therefore not be registered in Tanzania as the Act only provides for signs or marks that one can see in order to enable them to distinguish the goods of one business from the goods of another business.

### NON-TRADITIONAL TRADEMARKS IN ZANZIBAR

Non-traditional trademarks in Zanzibar have been made possible with the enactment of The Zanzibar Industrial Property Act of 2008 which defines a mark to mean,

*"...any sign capable of being represented graphically and which can distinguish goods or service of one undertaking from other undertakings. A mark may consist of words, designs, letters, slogans, colours or a combination of colours, numerals, the shape of goods or their packaging, holograms, sounds or scents."*

Although the Act paves way for non-traditional marks, it still limits the use of those marks by stating that a mark may, among other things, consist of, "colours or a combination of colours, shape of goods or their packaging, holograms, sounds or scents." However, the spectrum for non-traditional trademarks is rather wide and may also include touch, motion and taste.



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It should be noted that if you've registered your trademark in Zanzibar, non-traditional marks will not be protected in mainland Tanzania as registration of trademarks is done separately. Therefore, if you had registered non-traditional trademarks in Zanzibar they will not be protected or recognised in Tanzania.