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TIPS FOR INTERNATIONAL REGISTRATION OF TRADEMARKS IN AFRICA - IP GUIDE





Introduction

In today's increasingly globalized economy, trademark registration is a vital component for businesses looking to establish and protect their brand identity in any jurisdiction where they operate. The importance of trademark registration cannot be overstated especially in Africa as the continent continues to experience rapid economic growth, increasing foreign investment and also faces huge issues with counterfeiting. Securing trademark rights in Africa therefore becomes crucial for businesses aiming to expand, successfully compete and maintain their goodwill in the African market.

Why should I register trademark in Africa?

Securing Legal protection for your Trademark in Africa: Registering a trademark in Africa ensures that a brand secures legal protection against unauthorized use, counterfeiting, and infringement. This is because trademark right in most African countries trademark is territorial and operates on the first to file principle. Therefore, without seeking registration for your brand in their jurisdiction a brand cannot obtain protection for their trademark in many African countries. Therefore, for a trademark owner to obtain exclusive rights to use the mark in connection with the goods and services in an African jurisdiction it has to be registered.

Facilitates smooth expansion into African markets: Trademark registration in Africa is also crucial for businesses eyeing expansion into African markets. It facilitates smoother entry into the markets, ensures regulatory compliance, and enhances the brand's visibility and recognition across the continent.

It provides your business with a competitive edge: Registration of trademark in Africa further provides a competitive edge by distinguishing a business's products and services from those of competitors a critical tool for long-term success in a competitive market like Africa.

Given these benefits, understanding the trademark registration process in Africa, and navigating its unique legal landscape is crucial for businesses aiming to protect their intellectual property and capitalize on the continent's growing opportunities.





Understanding the African Trademark Landscape

Africa is a large continent consisting of 54 countries therefore for companies interested in expanding their business into Africa it is essential to understand the landscape for trademark registration in order to obtain protection in their countries of interest. The best way to navigate this process is to understand the international, regional and the national filing system available. Applicants seeking trademark protection in Africa have three primary options: the international route via the World Intellectual Property Organization (WIPO) Madrid System, the regional route, or the national filing system. Please note that there are two regional IP organisations in Africa: OAPI and ARIPO. ARIPO stands for African Regional Intellectual Property Organization while OAPI is Organisation Africaine de la Propriété Intellectuelle” (African Intellectual Property Organization). All other African countries that are not members of these regional filing system will require national filing and protection of trademark in their respective trademark registries.

International Trademark Registration in Africa

Applicants can apply for the protection of their trade mark through WIPO's Madrid System, this system allows applicants to file one international trademark application to seek protection of trademark in all or any of its Members.

The [Madrid System](#) for the International Registration of Marks is governed by the [Madrid Agreement](#) of 1891 and the Madrid Protocol of 1989. The system provides a streamlined filing system through which Applicants can file one international application through the Madrid System and pay a single set of fees to seek trademark protection in all member countries. This eliminates the need for separate filings in each jurisdiction, significantly reducing administrative and financial burdens. Each country has the discretion to grant the application. Once the trademark authority of a designated country grants protection, the mark is protected in that jurisdiction just as if that office had registered it.

As of May 3, 2024, the Madrid System includes 22 African countries and the African Intellectual Property Organization (OAPI) as members¹. Applicants can designate any of these countries or OAPI in their international trademark application. OAPI itself

¹ [Members of the Madrid Union](#)





represents 17 African countries, meaning a single designation of OAPI covers all its member states.

For African businesses or global companies targeting multiple African markets, the Madrid System offers an efficient route to securing trademark protection across its member jurisdictions. However, for comprehensive protection across Africa, separate filings in non-Madrid member countries such as Nigeria, South Africa, Ethiopia, etc will be necessary. This can be done through the regional filing system or national filing system all broken down below. You can access further details on the Madrid filing system [here](#).

While many African countries have acceded to the Madrid Protocol, this does not automatically guarantee the smooth enforceability of international registrations. For the rights arising from a Madrid registration to be fully recognized and enforceable: National trademark or IP laws must explicitly acknowledge the validity and enforceability of international registrations. National IP offices must also have systems to efficiently process, examine, and publish all Madrid designations, adhering to the timelines of **12-18 months** stipulated by the protocol. Applicants should therefore carefully evaluate the readiness of each designated country to implement Madrid registrations effectively.

The designation of OAPI under the Madrid System initially faced controversy due to uncertainty about the enforceability of International Registrations (IRs) in its member states. This was because OAPI joined the Madrid Protocol through a resolution by its Administrative Council, which did not legally bind member states, as OAPI lacks the authority to ratify international treaties on their behalf. This issue was resolved with the 2015 amendment to the Bangui Agreement, which explicitly incorporated provisions recognizing IRs and their enforceability across OAPI member states. The amendments became binding in 2019 after ratification by two-thirds of the member states, ensuring IRs designating OAPI are treated as national registrations within its jurisdiction².

² [The Madrid system in OAPI member states](#) | by Juletha-Marie Dercksen and Adré Pretorius published 30 May 2023.





Overview of African Regional Intellectual Property Organizations (ARIPO and OAPI)

OAPI

OAPI, the African Intellectual Property Organization, is a centralized intellectual property organization that serves 17 member states in Africa, primarily Francophone countries. Established by the Bangui Agreement of 1977, OAPI provides a unified system for the protection of intellectual property rights, including trademarks, patents, industrial designs, utility model, Geographical Indication, etc.

A single application filed in OAPI give automatic protection in the 17 member countries: **Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Republic of Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Mauritania, Niger, Senegal, Togo, and Comoros Island.**

ARIPO

ARIPO (Africa Regional Intellectual Property Organization) is an organization for the protection of Intellectual Property consisting of mostly English-speaking African countries. ARIPO was established by the Lusaka Agreement of 1976, the organization was established with common Intellectual Property laws and a single Intellectual Property office situated in Harare, Zimbabwe.

ARIPO is administered several laws including the Harare Protocol on Patents and Designs and the Banjul Protocol on Trademarks. Although there are currently 22 member states in the ARIPO namely; (Botswana; Gambia; Ghana; Kenya; Lesotho; Liberia; Malawi; Mozambique; Namibia; Rwanda; Sierra Leone; Somalia; Sudan; Eswatini (Swaziland); Tanzania (Tanganyika and Zanzibar); Uganda; Zambia; Zimbabwe; Sao Tome; Mauritius; Seychelles; Cape Verde), a trademark application may be designated in 13 countries namely **Botswana, Sao Tome, Lesotho, Liberia, Malawi, Namibia, Swaziland, Tanzania, Uganda, Zimbabwe, Mozambique, Gambia and Cape Verde** which are signatories to the Banjul Protocol.





Key differences between ARIPO and OAPI

S/N	OAPI	ARIPO
1.	Primarily serves Francophone African countries. It has 17 member states,	primarily serves Anglophone African countries. It has 22 member states
2.	a trademark registered with OAPI automatically applies to all member states without needing individual national registrations.	While ARIPO facilitates regional cooperation, trademarks registered via ARIPO must designate specific member states where protection is sought.
3.	Utilizes a centralized registration system. A single application results in protection across all 17 member states, making the process straightforward and cost-effective.	Uses a regional registration system where applicants can choose specific member states for trademark protection. This requires applicants to understand and navigate the individual legal requirements of each chosen state.
4.	Enforcement is harmonized across member states, with OAPI having a more significant role in overseeing compliance and handling disputes.	Enforcement and legal proceedings are primarily managed by the individual member states where the trademark is registered.
5.	OAPI's centralized system is generally quicker as it involves a single application process and immediate protection across all member states.	ARIPO's system, which requires designating specific states and may involve varying national processes, can be slower
6.	OAPI is often more cost-effective due to its single application covering multiple countries	ARIPO's designated states approach can incur higher costs, particularly if many countries are chosen.

National trademark filing

For trademark registration, certain African countries are not members of either ARIPO or OAPI trademark filing system, and therefore require national filings. These countries include Algeria, Angola, Burundi, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Libya, Madagascar, Morocco, South Africa, South Sudan, Nigeria, Ghana, Tunisia.





Trademarks must be registered directly with each country's national intellectual property office based on their trademark laws and regulations, which can vary significantly. It is often beneficial to engage local legal representatives or agents who are familiar with the specific requirements and procedures of the national IP offices especially as a foreigner. The language of the application and legal documents may vary depending on the official language(s) of the country. Registration processes, timelines, and costs also differ from one country to another, requiring careful planning and budgeting.

Preliminary Steps Before Registration of Trademark in Africa

- **Conducting a trademark search:** conducting a thorough trademark search is essential. This involves checking the databases of regional (ARIPO, OAPI) and national IP offices to verify that the proposed trademark is not already in use or registered by another entity. This step helps avoid legal disputes, infringement issues, and potential rejection of the application due to existing similar marks.
- **Importance of choosing a unique and distinctive mark:** Trademark laws generally require that a mark be distinctive and not merely descriptive of the goods or services.
- **Understanding local cultural and linguistic nuances:** Ensuring that the trademark does not have negative connotations or offensive meanings in the local culture is important for market acceptance in many African countries.





The Registration Process: simplified guide to trademark registration in Africa

S/N	OAPI	ARIPO	National Trademark Offices
1.	<p>Availability Search: Conduct a trademark search in the OAPI's registry to ensure the mark is available.</p> <p>Not a compulsory step but highly recommended.</p>	<p>Availability Search: Conduct a trademark search in the ARIPO's registry to ensure the mark is available.</p> <p>Not a compulsory step but highly recommended.</p>	<p>Availability Search: Conduct a trademark search in the country's registry to ensure the mark is available.</p> <p>Not a compulsory step but highly recommended in some countries while it is compulsory in some jurisdictions such as Sierra Leone.</p>
2.	<p>Submit the application to OAPI with all supporting documents [Details of mark, details of applicant, Power of attorney, required forms and payment of prescribed fees]</p>	<p>Submit the application to ARIPO, designating the member states where protection is sought with all supporting documents [Details of mark, details of applicant, Power of attorney, required forms and payment of prescribed fees]</p>	<p>Submit the application to the national office with all supporting documents [Details of mark, details of applicant, Power of attorney, required forms and payment of prescribed fees]</p>
3.	<p>OAPI conducts a formal and substantive examination to ensure compliance with OAPI laws and decides to accept or refuse the trademark.</p>	<p>ARIPO conducts formal examination. upon applicant satisfying all formality requirements, ARIPO sends application to designated states documents comprising the applications and at the same time requests them to conduct substantive</p>	<p>National office conducts a formal and substantive examination to ensure compliance with National laws and decides to accept or refuse the trademark.</p>





		<p>examination within nine months from date of its issuance.</p> <p>Notice of acceptance is to be issued by a designated state. The protocol provides for registration of the marks if members do not issue a notice after 9 months.</p>	
4.	Trademark is published for opposition for three months.	Trademark is published for opposition for three months.	Trademark is published for opposition for two or three months depending on local law.
5.	If no opposition is raised, the trademark proceeds to registration, and a certificate of registration is issued.	If no opposition is raised, the trademark proceeds to registration, and a certificate of registration is issued. The trademark must be validated in each designated member state according to their national laws.	If no opposition is raised, the trademark proceeds to registration, and a certificate of registration is issued.

Key Considerations/common challenges for International Applicants

- **Engaging Local Agents and Attorneys:** This is a fundamental step in international registration of trademark as most countries require non-nationals to engage the services of an agent or attorney to represent them at their trademark registries. local experts are familiar with national laws and procedures and will help navigate the registration process effectively.
- **Differences in Legal Frameworks and Procedural Requirements:** it is crucial to Understand and comply with varying trademark laws and procedures in each country or regional organization this can be done with the help of your local agent.
- **Translation and Interpretation Issues:** it is also crucial to submit accurate translation of trademark applications and related documents to avoid mistakes and legal challenges in filing.





- **Navigating Bureaucratic Hurdles:** it is important to anticipate delays and complexities in many African countries this is due to the fact that many IP registries in African countries are still operating their processes manually, lack enough personnels and infrastructural resources to deal with the volume of application received at their registry. It is therefore important to work with an experienced agent/attorney, follow up regularly and ensure all documentation is accurate and complete to reduce the delay experienced at the registry.
- **Registration ahead of product launch:** flowing from the point above, it essential that brands begin registration well ahead of product launch date in African countries because the process of obtaining registration tends to be slow. This will ensure that significant process has been made regards the registration of the mark before launch.
- **Addressing Legal Disputes and Oppositions:** it is also vital to proactively manage potential conflicts by monitoring published trademarks and responding promptly to oppositions. You can engage the services of local agent for watch service to notify you of infringing marks when new marks are published for opposition.
- **Leveraging Regional Cooperation Agreements:** regional agreements like ARIPO and OAPI can help brands to streamline their processes and gain broader protection through centralized systems. Brands should also leverage this in case they are focusing on a particular market in Africa.

Monitoring/ Enforcement Tips for International applicants

- **Trademark Watch service:** Implementing an IP watch service in Africa can be particularly valuable given the diverse and growing economies across the continent. Africa also faces significant challenges related to counterfeit goods. This can be achieved through various mediums such as: Monitoring IP Registers at local registries for Trademark, Patent Claim, etc., Marketplace Surveillance [Monitoring e-commerce platforms and marketplaces to identify counterfeit products], Customs and Border Monitoring, Domain Name Monitoring, etc.

Upon discovering potential or infringing marks trademark owners can instruct their local attorney to send a cease-and-desist letter to the infringer. If the matter deals with a published mark they can also file an opposition action to prevent the mark from proceeding to registration local attorneys will be able to provide guidance on the locus standi required to file an opposition in the intended jurisdiction and the steps to be taken.





- **Custom Recordals of Trademark:** In addition to registering their intellectual property (IP), brand owners should consider recording their IP rights with customs authorities in the countries where their products are sold. This approach facilitates prompt detection and enforcement against IP infringements at various border points.

Customs recordation of IP rights is a practice in some African countries, including Kenya and Morocco. In Kenya, customs recordation is available for all types of intellectual property rights, such as copyrights, patents, trademarks, and plant breeders' rights. It is mandatory for IP owners when importing goods into Kenya. The recordation is valid for one year, or for the duration of the current IP registration period if shorter and can be renewed annually.

In Morocco, owners of trademarks that are either locally registered or internationally registered designating Morocco can file a suspension application with the customs authorities. This application requests the seizure or suspension of counterfeit products bearing their trademark, as stipulated by law No. 31/05. Once a suspension application is successfully filed, all customs offices at Moroccan ports of entry are notified to suspend and seize any counterfeit products associated with the recorded trademark. Suspension applications are valid for twelve months and can be renewed annually.

- **Enforcement mechanisms for Trademarks in Africa:** There are several enforcement mechanisms an intellectual property right holder can employ in enforcing an intellectual property right. These mechanisms include Alternative Dispute Resolution, Criminal Complaint and Civil Action via the courts. ADR methods such as mediation and arbitration provide a less formal and often quicker way to resolve trademark disputes especially for big brands. IP right holders can also file a criminal complaint with local law enforcement agencies if trademark infringement constitutes a criminal offense under national laws. This will attract criminal penalties such as fines, imprisonment, and seizure of counterfeit goods. This measure has proven to act as a strong deterrent against infringement in many cases.





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Further, trademark owners can file civil lawsuits against alleged infringers in national courts. Civil actions seek remedies such as injunctions (court orders to stop the infringing activity), damages (compensation for losses suffered), and account of profits (recovery of profits made by the infringer).

Resources for further assistance

- [WIPO Madrid System – International Trademark Protection](#)
- <https://www.aripo.org/>
- [OAPI - African Intellectual Property Organization](#)
- <https://www.aca.go.ke/commencement-of-recording-of-ipr>

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