



**TO** : The Acting Director, Commercial Law Department, Federal Ministry of Industry, Trade and Investment

**THROUGH** : The Registrar of Trade Marks

**FROM** : Intellectual Property Law Association of Nigeria

**SUBJECT** : Publication of Trademark Journals and issues Arising there from

**DATE:** : 20 March, 2018

## 1. INTRODUCTION

This memo is intended to provide an overview of the possible legal and other issues arising from the publication of the Trademarks Journals by the Trademarks Registry, Commercial Law Department, Federal Ministry of Industry, Trade and Investment, Abuja (“TMR”).

## 2. EFFECTIVE DATE OF THE TRADEMARK JOURNALS

- 2.1. The TMR published a series of online Trademarks Journals on the 30<sup>th</sup> of January, 2018. Based on the information contained on their cover page, the Journals are dated the 30<sup>th</sup> of January, 2018. However, the Journals were endorsed with a stamp of the Registrar (on the first page) stating as follows: that “*notwithstanding the date cited on this Journal, know ye that this Journal is officially unveiled on the 12<sup>th</sup> of February, 2018*”.
- 2.2. IPLAN is mindful of the differences in the dates contained on the cover pages of the Journals and the stamped endorsement of the Registrar. IPLAN is also cognizant of the possible legal implications that may arise from the inclusion of separate and distinct dates in the same Journals viz-a-viz the provisions of the Nigerian Trademarks Act, 1965, the Trademarks Regulations, 1967 and the legal rights and interests of brand owners in Nigeria.
- 2.3. In order to determine whether any such legal issues arise, we shall undertake a careful consideration of the meaning of the term “officially unveil” as stated by the stamp of the Registrar and the relevant provisions of the Nigerian Trademarks Act and Regulations for publication of Trademarks Journals.

### The Meaning of the term “Officially Unveil”

- 2.4. The literal meaning of the word “officially” is “formally”, “legitimately”, “publicly”, etc. while, the literal meaning of the word “unveil” is to “reveal”, “expose”, “disclose”, etc. Thus, the term “officially unveiled” can be taken to mean “formally revealed or disclosed”.



- 2.5. In applying the foregoing meaning of the term “officially unveil” to the general purport of the stamp of the Registrar, it would appear that the stamp means: “notwithstanding the date cited on this Journal, know ye that this Journal is **formally revealed or disclosed** (emphasis ours) on the 12<sup>th</sup> of February, 2018”.

*The Trademarks Act and Regulations*

- 2.6. The relevant provisions of the Trademarks Act and Regulations in respect of the publication or advertisement of applications in the Journal are reproduced hereunder:
- 2.6.1. Section 19(1) of the Act, provides that subject to the provisions of this section, when an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause notice of the application as accepted to be published in the Journal; and the notice shall set out all conditions and limitations subject to which the application has been accepted.
- 2.6.2. Section 20(1) of the Act further provides that any person may within two months from the date of the publication under Section 19 of this Act of notice of an application give notice to the Registrar of opposition to the registration.
- 2.6.3. Section 44(1) of the Regulations, provides that an application for the registration of a trade mark required or permitted to be advertised by section 19(1) of the Act or sub-paragraph (1) of paragraph 2 of the First Schedule of the Act, shall be advertised in the Journal during such times and in such manner as the Registrar may direct.
- 2.6.4. Section 48 of the Regulations, provides that any person may within two months from the date of any advertisement in the Journal of an application for registration of a trade mark give notice on Form 6 to the Registrar of opposition to the registration.

*IPLAN's Position*

- 2.7. It is clear from the provisions of the Trademarks Act and Regulations, that the date of advertisement or publication, as the case may be, of an application in the Journal is critical to computing the two month period for giving notice of opposition to the Registrar.
- 2.8. It is also clear that the stamp that was endorsed in the Journals, purports to establish the 12<sup>th</sup> of February, 2018, as the date of formal disclosure of the said Journals, notwithstanding the date expressed on the front page thereof i.e. the 30<sup>th</sup> of January, 2018. In other words, the 12<sup>th</sup> of February, 2018, is expressed to supersede the 30<sup>th</sup> of January, 2018.



- 2.9. It is also important to note that the difference between the 30<sup>th</sup> of January, 2018 and the 12<sup>th</sup> of February, 2018, is a period of 2 (Two) weeks or 14 (Fourteen) days.
- 2.10. Whilst Section 44(1) of the Regulations confers a discretion on the Registrar as to the time and manner in which a trademark application may be published or advertised, there are no express or implied provisions in the Trademark Act or Regulations, that permit the Registrar, to alter or adjust the effective date of a Journal, once published.
- 2.11. It is unclear to IPLAN, what may have informed the decision of the TMR to indicate separate and distinct dates on the same Journals. However, it is the firm position of IPLAN, that the practice of indicating separate and distinct dates on the same Journals, as the date of the Journals on the one hand and the date of their formal disclosure on the other, is likely to cause confusion and or give room for error, in the computation of time for filing notices of oppositions, to the detriment of brand owners and those claiming legal rights through them. Indeed, it could give rise to litigation where one party insists on the earlier date and another party finds the later date more favorable to his cause.
- 2.12. In view of the primary purpose of the Trademarks Act and Regulations, which is to protect and safeguard the legal rights and interests of brand owners, any step taken by the TMR in the administration of the Trademarks Act and Regulations, that will adversely affect the legal rights and interests of brand owners, should be discouraged.
- 2.13. It is therefore the final position of IPLAN on this matter, that the TMR should discontinue the use or adoption of multiple dates in the same Journals and revert to the use of a single date going forward, in the interest of brand owners and those claiming legal rights through them.
- 3. POSSIBLE CHALLENGES IN THE CONDUCT OF OPPOSITION PROCEEDINGS**

- 3.1. The TMR has achieved an incredible feat in publishing a total of 10 Trademark Journals within a period of less than 6 months. The achievement is certainly a welcome development, particularly when the volume of trademark applications that were awaiting advertisement in Trademark Journals is considered.
- 3.2. However, IPLAN is concerned about the administrative and personnel constraints of the opposition unit of the TMR and its ability to manage the volume of opposition proceedings that have arisen or will arise from the Journals that were published between November, 2017 and January, 2018.

#### *IPLAN's Position*

- 3.3. It is the position of IPLAN that, subject to the provisions of the Federal Civil Services Rules, a special panel should be established to hear and determine opposition matters on an ad-hoc basis. The panel should comprise of legal practitioners with knowledge



and expertise in industrial property matters, including lawyers in Academia. IPLAN is fully prepared and committed to collaborating with the TMR and establishing such an ad-hoc opposition panel.

#### 4. CONCLUSION

This concludes our position paper on the two issues outlined above. IPLAN is happy to meet with the leadership of the TMR at a date and time that is convenient, to discuss in detail. We are also happy to respond to any questions that the TMR may have.

**FEMI OLUBANWO**  
President

**OTU UKOYEN**  
General Secretary

**INTELLECTUAL PROPERTY LAW ASSOCIATION OF NIGERIA**  
20<sup>th</sup> March, 2018.