

The Missing Timeline: Trademark Registration and Administrative Delays in Tanzania

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Abstract

This article examines the legal and institutional framework governing trademark registration in Tanzania. It analyses the role of trademarks in protecting commercial identity under the Trade and Service Mark Act¹ of 1986 and the Trade and Service Marks Regulations² of 2002, as administered by the Business Registration and Licensing Agency (BRELA). The article outlines the trademark registration process, from the filing of an application to the issuance of a certificate of registration, and identifies a significant challenge within the existing legal framework: the absence of statutory timelines governing the performance of the Registrar's functions. It argues that the absence of prescribed timelines grants broad administrative discretion to the Registrar, resulting in delays, uncertainty, and inefficiency in trademark administration. Although the introduction of the Online Registration System (ORS) has improved accessibility and convenience for applicants, it has not addressed the underlying legislative gap relating to the timely discharge of the Registrar's duties. The article further contends that delays in trademark registration undermine the effective protection of proprietary rights, expose businesses to the risks of infringement and unfair competition, and weaken commercial certainty. It concludes that legislative reform is necessary to introduce enforceable timelines, enhance administrative efficiency, and strengthen accountability within Tanzania's trademark registration system.

Introduction:

Trademarks constitute an essential component of modern commerce. They enable businesses to distinguish their goods and services from those of competitors, protect commercial identity, and foster consumer confidence. An effective trademark registration system is therefore necessary to ensure legal certainty, promote fair competition, and safeguard business interests. In Tanzania, trademark registration is governed by the Trade and Service Mark Act of 1986³ and the Trade and Service Marks Regulations⁴ of 2002. The administration of trademark registration is vested in the Business Registration and Licensing Agency (BRELA)⁵ through the Registrar of Trade and Service Marks. The legal framework establishes procedures for the registration, protection, renewal, assignment, and cancellation of trademarks.

¹ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

² GN No. 40 of 2002

³ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁴ GN No. 40 of 2002

⁵ The Business Registration and Licensing Agency (BRELA) is an Executive Agency under the Ministry of Investment, Industry and Trade responsible for business administration and regulation of the laws namely; the Companies Act, Cap 212, Business Names Act, Cap 213 R.E. 2023, the Trade and Service Marks Act, Cap 326 R.E. 2023, the Patent Registration Act, Cap 217 R.E. 2023, the Business Licensing Act, Cap 208 R.E. 2023 and the National Industries (Licensing and Registration)

Despite the existence of a structured legal framework, practical challenges continue to affect the registration process. Delays are frequently encountered during examination, publication, opposition proceedings, and the issuance of registration certificates. A significant contributing factor is the absence of statutory timelines governing the performance of the Registrar of trademark's functions. While the law imposes specific timelines upon applicants and opponents at various stages of the registration process, it does not prescribe corresponding timelines within which the Registrar of trademark must discharge his statutory duties.

This article examines the legal framework governing trademark registration in Tanzania and outlines the procedural stages involved in obtaining trademark protection. It further analyses the delays encountered and argues that the absence of statutory timelines for the performance of the Registrar of trademark's functions contributes to uncertainty and inefficiency in trademark administration. The article concludes by recommending legislative reforms aimed at improving the effectiveness, predictability, and accountability of the trademark registration process.

Concept and Importance of Trademarks

A trademark refers to any distinctive word, phrase, symbol, logo, design, or combination thereof that is used in commerce to identify and distinguish the goods or services of one enterprise from those of others. Its primary function is to serve as an indicator of origin, thereby allowing consumers to recognize the source of a particular product or service. Examples of well-known trademarks include Ford (automobiles), IBM (computing technology), and Microsoft (software and operating systems). These trademarks not only symbolize corporate identity but also embody the goodwill and reputation associated with the respective brands.

In the legal context, the term "distinctive" is central. It denotes the capacity of a mark to uniquely identify the origin of a product in the marketplace. A mark must be sufficiently unique or capable of acquiring distinctiveness to qualify for trademark protection. This distinctiveness ensures that consumers are not confused or misled as to the source of goods or services and underpins the legal enforceability of trademark rights.⁶

In addition to statutory and conventional definitions, various scholars have also contributed to the understanding of the concept of trademarks. For instance, Peter⁷ defines a trademark as "anything that is adopted and used to identify the source or origin of goods and is capable of distinguishing them from goods emanating from a competitor." According to this view, a trademark functions not only as a legal identifier but also as a commercial signifier, capable of exclusive appropriation by the rights holder. In essence, a trademark creates a limited form of legal monopoly, protecting the owner's market identity and reputation. Peter⁸ further emphasizes that a trademark serves as a symbolic representation of a product's origin and, by extension, of the quality, reputation, and goodwill associated with it. As such, a trademark is not merely a legal right but also a merchandising tool, closely tied to the marketing and economic

Act, Cap 46 R.E. 2023. It was established under the Government Executive Agencies Act No. 30 of 1997 and formally launched on 3rd December, 1999 accessed from www.brela.go.tz on 15th June, 2026 at 12.33pm

⁶Trademark FAQ's, Trademark Center accessed from www.tmcenr.com accessed on 25/06/2026 at 7.19pm

⁷See D.R. Peter, Patent Law Fundamentals, Matthew Bender, New York, 1989 cited by Kihwelo P.F., in his dissertation titled: "Implication of Trade Related Aspects of IP Rights (TRIPs) Agreement in Law and Administration of Industrial Property in Tanzania" for Master of Laws Degree at UDSM at Pg. 5

⁸ Ibid

strategy of a business. This interpretation underscores the dual role of trademarks as both legal instruments and commercial assets.

Similarly, Duncan defines a trademark as "a symbol that is applied or attached to goods offered for sale in the market, so as to distinguish them from similar goods and to identify them with a particular business." According to this definition, a trademark serves a dual function: it acts as a means of differentiation in the marketplace and as an indicator of source or origin. Duncan further explains that a trademark distinguishes goods that are manufactured, processed, imported, selected, certified, or sold by a particular entity. By affixing a trademark to a product, the trader communicates the origin of the goods to the public namely, the consumers thereby promoting consumer awareness, trust, and accountability. This interpretation emphasizes the identificatory and communicative function of trademarks in facilitating informed consumer choices and maintaining market.⁹

In a more formal and comprehensive legal sense, Bouchoux E. Deborah¹⁰ defines a trademark as "a word, name, symbol, or device, or a combination thereof, used by a person (including a business entity), or that a person has a *bona fide* intention to use in commerce, to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source of those goods." This definition underscores both the identification function and the source-indicating purpose of a trademark. Notably, Bouchoux also highlights the intention to use a mark in commerce as a legal basis for trademark protection suggesting that the mere intent to distinguish one's goods in the marketplace can establish grounds for acquiring trademark rights under certain jurisdictions. This approach reflects the principle that a trademark does not merely denote current commercial activity, but also protects future business plans where there is a *bona fide* intention to enter the market. In this way, Bouchoux's definition integrates both legal theory and practical application, offering a robust understanding of how trademarks function in commercial and regulatory contexts.¹¹

Drawing from the definitions offered by various prominent authors, it is evident that trademarks serve multiple but interrelated functions identifying the origin of goods, distinguishing one trader's products from another's, and protecting commercial goodwill. These scholarly perspectives align closely with the statutory understanding provided under Tanzanian law. According to the Trade and Service Marks Act,¹² a trademark is defined 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." This definition reflects a functional approach, emphasizing both actual use and intended use in the marketplace. It incorporates the essential element of distinctiveness, as highlighted by Peter, Duncan, and Bouchoux, and confirms that the legal recognition of a trademark in Tanzania hinges on its ability to visibly differentiate goods or services in the course of commercial activity. Thus, both academic interpretations and statutory language converge on the view that a trademark is a critical instrument of commercial identity, source attribution, and consumer protection.¹³

From the above account, it is evident that a trademark constitutes a distinctive word, phrase, logo, graphic symbol, or other visible sign used to identify the source of a product or service and to distinguish one manufacturers or merchant's goods from those of others. Trademarks function as commercial identifiers,

⁹ Blanco White, T.A., Kerly's Law of Trademarks and Trade Names, 9th Ed London, Sweet & Maxwell, 1966, at Pg. 18

¹⁰ Bouchoux E. Deborah: The Law of Trademarks, Copyright, Patent and Trade Secrets, 4th Ed, Delmar Cengage Learning, USA, 2012 at Pg 20

¹¹ Ibid

¹² Act No. 12 of 1986 R.E.2023 as amended in the year 2026 of the Laws of Tanzania

¹³ See at Section 2 of Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

enabling consumers to associate specific goods or services with a particular producer or business entity. This identification role not only facilitates market recognition and brand loyalty but also forms the foundation for legal protection under both domestic and international intellectual property regimes. Having examined the concept and legal nature of trademarks, it is important to consider their significance in commerce, consumer protection, and the broader intellectual property framework

Importance of Trademark

Trademarks are vital instruments for market regulation and the promotion of economic efficiency. In principle, trademarks serve two fundamental objectives. First, they protect consumers from confusion by enabling them to identify the source of goods and services. Secondly, they safeguard the investments made by proprietors in developing and maintaining the goodwill associated with their marks. Such protection is particularly important in preventing unfair competition practices, including the imitation of well-known trademarks by traders seeking to benefit from an established reputation without making corresponding investments.¹⁴

Trademarks are protected as intellectual property rights owing to their distinctive character and the goodwill attached to them. Such goodwill is often developed through sustained innovation, quality control, and commercial reputation. The legal threshold for trademark protection is generally assessed by determining whether the use of an allegedly infringing mark is likely to cause confusion among consumers in relation to a registered trademark.¹⁵

Unlike many other forms of intellectual property, trademarks are capable of perpetual protection through successive renewals. As proprietary assets, trademarks may be transferred through various legal mechanisms, including licensing, assignment, and franchising. The proprietor of a trademark enjoys the exclusive right to use the mark in relation to the goods or services for which it is registered and to prevent others from using marks that are identical or confusingly similar within the protected jurisdiction. This exclusivity constitutes a valuable commercial asset. It enables businesses to establish and maintain market identity, protects brand reputation, and provides a competitive advantage by discouraging imitation by competitors. Furthermore, the assurance of continued protection encourages trademark proprietors to invest in quality improvement, consumer satisfaction, and business development.¹⁶

Trademarks therefore play a critical role in commerce by protecting business identity and goodwill. Under section 31 of the Trade and Service Mark Act of 1986,¹⁷ registration confers upon the proprietor the exclusive right to use the mark in relation to the goods or services for which it is registered. Beyond the protection of individual rights, trademarks promote fair competition by preventing the use of confusingly similar marks and protecting consumers from deception. They also encourage investment in branding and innovation, thereby contributing to economic growth.

Moreover, trademarks integrate various elements, including names, terms, signs, symbols, logos, and designs, to create a distinctive representation of a business's goods or services. These representations are essential in building brand identity, generating commercial value, and securing a competitive position in the marketplace. However, the full benefits of trademark protection are dependent upon timely and proper

¹⁴ Saudin Mwakaje, 'Intellectual Property Rights in Tanzania: An Appraisal of the Law and Development Issue' (2022) 20(1) Tanzania Journal of Development Studies at Pg 118.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

registration. Without formal registration, the legal and commercial advantages associated with trademark ownership may not be fully realized.¹⁸

Historical Development of Trademark Law in Tanzania

Tanzania is a common law jurisdiction, and its legal framework, including trademark law, has historically been derived from United Kingdom trademark law.¹⁹ During British colonial rule in Tanzania, numerous British statutes were extended to Tanganyika pursuant to the Foreign Jurisdiction Act, 1890 (UK),²⁰ a statute that authorized the application of British laws to colonial possessions. The Tanganyika Order in Council of 1920 further conferred authority upon the Governor to legislate for the territory and to incorporate British enactments, either verbatim or as adapted for use in India.²¹ Through the colonial administration, Tanzania inherited the United Kingdom's Trade Marks Act 1938, including its fundamental features, notably the conferral of broad and largely discretionary powers on the Registrar of Trade Marks. To provide a domestic legal framework, the Legislative Council enacted the Trade Marks Ordinance²², 1957, which came into force in 1958. Subsequently, the Ordinance was repealed and replaced by the Trade and Service Marks Act No. 12 of 1986.²³ The enactment was intended to reflect the prevailing political and economic developments within Tanzania and the broader international trading environment. However, enacting the trademark law of 1986²⁴ did not eliminate the colonial legacy embedded in Tanzania's legal framework; rather, it reaffirmed the same principles found in the UK trademark Law.²⁵ The new Act²⁶ failed to establish any form of control or oversight mechanism over the powers of the Registrar of trademarks. This was consistent with the UK trademark law,²⁷ this similarly conferred broad administrative authority upon the Registrar of trademarks without corresponding procedural safeguards. Moreover, the Tanzania trademark legislation²⁸ did not provide any legal or judicial recourse for applicants to challenge unreasonable delays caused by the Registrar of trademarks. As a result, the regulatory vacuum persisted, and the colonial administrative structure remained entrenched within the trademark system. Therefore, the enactment of the new law effectively preserved the colonial atmosphere within Tanzania's trademark legal regime.²⁹

Even though the Trademark Act³⁰ was amended in 2021³¹ and further amended in the year 2026³², the foundational principles originally adopted from the UK Trademark law of 1938 remain largely intact. These enduring principles continue to influence the structure and operation of trademark administration in Tanzania, including the extensive administrative powers granted to the Registrar of trademarks.

¹⁸ Rishi Ram Chapagai, 'Economic Perspectives of Trademarks' (2018) IX The Saptagandaki Journal 76 www.nepjol.info accessed 9 December 2024

¹⁹ Trademark Act, 1938

²⁰ 53 & 54 Vict. c. 37

²¹ Through reception clause Article 17 of Tanganyika Order in Council, 1920. The same imported Common Law, equity and statutes of general application in force in England on 22nd July, 1920

²² Chapter 216 of the Laws of Tanganyika

²³ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

²⁴ Ibid

²⁵ Trademark Act, 1938 of UK

²⁶ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

²⁷ Trademark Act, 1938 of UK

²⁸ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

²⁹ Ibid

³⁰ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

³¹ Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021(Tanzania)

³² The Written Laws (Miscellaneous Amendments) (No. 1) Act, 2026

The historical development of trademark law in Tanzania is particularly relevant to the present discussion because many of the administrative features inherited from the colonial legal framework continue to influence the operation of the current trademark registration system. Notably, the broad discretionary powers vested in the Registrar of Trade and Service Marks under earlier legislation were substantially retained under the Trade and Service Mark Act of 1986. Consequently, the absence of statutory timelines governing the performance of the Registrar's functions can be traced, in part, to the historical structure of trademark administration inherited from the United Kingdom. Understanding this historical background is therefore essential in explaining the persistence of administrative delays and the need for legislative reforms aimed at enhancing accountability, efficiency, and predictability in trademark registration in Tanzania.

Legal and Institutional Framework Governing Trademark Registration in Tanzania

Tanzania's legal system is grounded in the common law tradition inherited from English legal principles, including those governing intellectual property rights such as trademarks. Trademark legislation serves as the primary legal framework through which exclusive rights are conferred upon trademark proprietors. These rights protect trademarks as intangible assets capable of generating future revenue, enhancing business identity, and securing market competitiveness.

With the rapid expansion of open markets in Tanzania, there has been a significant increase in both local and foreign investment across various sectors. As businesses grow, so does the need to protect their distinctive brands and services, which constitute key components of commercial identity, against unfair competition and unauthorized use. Effective trademark protection is crucial not only for brand recognition but also for fostering investor confidence in a liberalized market environment.

However, such protection can only be meaningful where the trademark registration system operates efficiently. This includes the existence of clear administrative procedures and the timely performance of statutory functions by the Registrar of trademarks. Delays in registration and decision-making processes may undermine both the integrity of the trademark system and the economic interests of rights holders.

Accordingly, the current legal framework governing trademark registration and administration in Tanzania consists of the Trade and Service Mark Act, Cap. 326 R.E. 2023, and the Trade and Service Marks Regulations, GN No. 40 of 2002. The Trade and Service Mark Act³³ of 1986 establishes the legal basis for the registration of trademarks by defining registrability requirements, rights conferred by registration, and procedures relating to opposition, assignment, and cancellation. The Regulations³⁴ complement the Act³⁵ by prescribing procedural requirements, including application procedures, prescribed forms, and other administrative steps necessary for registration.

The administration of trademark registration is vested in the Business Registration and Licensing Agency (BRELA), an executive agency under the Ministry of Industry and Trade.³⁶ Within Business Registration and Licensing Agency (BRELA), the Registrar of Trade and Service Marks is responsible for overseeing the registration process and exercising both administrative and quasi-judicial functions. These functions include the examination of applications, publication of accepted marks for the statutory opposition period,

³³ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

³⁴ GN No. 40 of 2002

³⁵ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

³⁶ It was established under the Government Executive Agency Act No. 30 of 1997 and formally launched on 3rd December, 1999

determination of opposition proceedings, and the issuance and renewal of registration certificates. The Registrar of trademarks also exercises powers relating to the assignment and cancellation of trademarks. While this legal and institutional framework provides a structured system for trademark administration, the broad powers conferred upon the Registrar of trademarks, coupled with the absence of prescribed timelines for the discharge of those powers, create significant scope for administrative discretion. This has important implications for the efficiency, predictability, and overall effectiveness of the trademark registration process in Tanzania.

Procedural Framework for Trademark Registration in Tanzania

Trademark registration in Tanzania follows a structured administrative process governed by the Trade and Service Mark Act³⁷ of 1986 and the Trade and Service Marks Regulations,³⁸ of 2002. The process consists of several sequential stages administered by the Registrar of Trademarks, beginning with the submission of an application and ending with the issuance of a certificate of registration.

1. Preliminary Information Required for Registration

Before filing an application for trademark registration, the applicant or proprietor is required to provide certain information to the trademark attorney or agent. Such information includes the name and full address of the trademark owner, together with the trade or business description of the applicant. Where the applicant is an individual, the nationality of the applicant should be provided. Where the applicant is a partnership, the full names of all partners must be disclosed. In the case of a body corporate, the nature of incorporation and the country of incorporation should be specified.

The applicant or proprietor is also required to disclose whether the proposed trademark has been registered in another jurisdiction and, where applicable, provide proof of such registration. In addition, the applicant must identify the goods or services in respect of which registration is sought. Where a trademark has previously been registered in another jurisdiction, the applicant may claim priority within six months in accordance with the Paris Convention for Protection of Industrial Property, 1983 as Tanzania is a party to this convention³⁹.

Furthermore, goods and services are classified in accordance with the *Nice Agreement concerning the International Classification of goods and services for the purpose of registration of marks, 2011*.⁴⁰ Tanzania is a member of Nice Agreement and registers trademarks in accordance with the relevant classes of goods and services prescribed under that classification system.⁴¹

2. Official Search (Optional)

An official search is ordinarily conducted by a trademark attorney or agent through a formal application to the office of the Registrar of Trademarks for the purpose of determining whether an identical or similar trademark is already registered or pending registration in the trademark registry. Conducting an official search is optional and remains at the discretion of the applicant or proprietor of the trademark.

However, there are several important reasons for conducting a trademark search. First, it assists in avoiding potential liability arising from trademark infringement claims. Secondly, it enables the applicant to

³⁷ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

³⁸ GN No. 40 of 2002

³⁹ Section 22 of Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Section 18 of the Trade and Service Marks Regulations, GN No. 40 of 2002 provides the right of priority claim.

⁴⁰ Tenth edition of 2011

⁴¹ Tanzania is an official member of the Nice Agreement and accession on 14th June, 1999 and the treaty officially entered into force for Tanzania on 14th September, 1999

identify prior users or registered proprietors of similar marks, thereby avoiding the time and expense associated with changing a trademark after substantial investment has been made in its development and promotion. Thirdly, where a proposed trademark is identical or confusingly similar to an existing registered trademark in respect of identical or similar goods and services, the application is likely to be refused. In such circumstances, the registration fees and professional fees incurred in the application process may not be recoverable.

It is therefore advisable for every applicant or proprietor to conduct a trademark search before filing an application. Such a search helps to ascertain whether the proposed trademark, or a substantially similar mark, has already been registered in respect of identical or similar goods or services. Where a trademark is intended to be used in international trade, it is also prudent to conduct searches in potential export markets in order to minimize the risk of infringement and registration conflicts in those jurisdictions.

3. Filing of Trademark Application

Upon receiving instructions from the applicant or proprietor, a trademark attorney or agent may submit an application for registration of a trademark to the Registrar of Trademarks in the prescribed form⁴² and the application must be signed by the applicant or the applicant's authorized agent and must be accompanied by the prescribed fees. The application is required to be made on Form TM/SM 2 and may relate to goods or services falling within one or more classes of the international classification system.⁴³

4. Examination by the Registrar

Upon receipt of an application and payment of the prescribed fees, the Registrar of trademarks shall cause an examination of the application to be conducted.⁴⁴ The purpose of the examination is to determine whether there exists, among registered trademarks or pending applications, any trademark that is identical or so nearly resembles the mark applied for as to be likely to deceive or cause confusion in relation to the same goods or services. The Registrar of trademarks may also cause the examination to be renewed at any time before acceptance of the application, although he is not obliged to do so.⁴⁵ Upon completion of the examination, the Registrar of trademarks may accept the application absolutely, refuse it, or accept it subject to conditions, including association with another mark, disclaimers, amendments, or other limitations considered appropriate in the circumstances

5. Acceptance, Objections and Publication in the Trade and Service Marks Journal

Where, upon examination, it appears that the applicant is entitled to registration of the trademark, the Registrar of trademarks shall accept the application and cause the trademark to be advertised in the Trade and Service Marks Journal.⁴⁶ Following the examination and consideration of the application, together with any evidence of use, distinctiveness, or other relevant matters furnished by the applicant, the Registrar of trademarks may accept the application absolutely, object to the application, or indicate a willingness to accept it subject to such conditions, amendments, disclaimers, modifications, or limitations as may be considered appropriate.⁴⁷

Where the Registrar of trademarks objects to the application, he is required to notify the applicant in writing of the grounds of objection and provide the applicant with an opportunity to submit representations or request a hearing. If the applicant fails to pursue the application within the prescribed period, the

⁴² Section 21(1) and (2) of Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026.

⁴³ Section 17 of the Trade and Service Marks Regulations, GN No. 40 of 2002.

⁴⁴ Section 26 of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁴⁵ Section 26 of the Trade and Service Marks Regulations, GN No. 40 of 2002

⁴⁶ Section 26(2) of Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026.

⁴⁷ section 27 of the Trade and Service Marks Regulations, GN No. 40 of 2002

application shall be deemed to have been withdrawn.⁴⁸ The applicant is required to respond within one month from the date of notification, failing which the application shall be deemed to have been withdrawn.⁴⁹ Where the applicant amends the application or requests a hearing and the Registrar of trademarks remains uncertain as to the registrability of the trademark, the Registrar of trademarks may direct that the application be advertised before acceptance in the Trade and Service Marks Journal.⁵⁰ Accordingly, where a trademark is accepted either absolutely or subject to conditions, and such conditions have been complied with, the trademark shall be advertised in the Trade and Service Marks Journal.⁵¹

6. Opposition Proceedings

Following publication of the trademark in the Trade and Service Marks Journal, any person may oppose the registration of the trademark on the ground that the application does not satisfy the registrability requirements prescribed under Part IV of the Trade and Service Mark Act⁵² of 1986. The Trade and Service Mark Act,⁵³ 1986⁵⁴ provides that any person may, within the prescribed period from the date of advertisement of the application, give notice of opposition to the Registrar of trademarks. The notice must be in writing, submitted in the prescribed manner, and accompanied by a statement of the grounds of opposition,⁵⁵ such notice must be filed within sixty days from the date of advertisement. Upon receipt of the notice of opposition, the Registrar of trademarks is required to furnish a copy thereof to the applicant. The applicant must then submit a counter-statement setting out the grounds upon which the application is supported. Failure to file a counter-statement within the prescribed period shall result in the application being deemed abandoned.⁵⁶ The applicant is required to file the counter-statement on Form TM/SM 6 within sixty days of receiving the notice of opposition. The counter-statement should indicate which facts alleged in the notice of opposition are admitted and identify the grounds relied upon in support of the application.⁵⁷ Upon receiving the counter-statement, the Registrar of trademarks shall furnish a copy to the opponent and, after considering the evidence and hearing the parties where necessary, determine whether registration should be permitted and, if so, subject to what conditions or limitations, if any, registration is to be permitted.

The Regulations⁵⁸ further require the opponent to file evidence in support of the opposition by way of statutory declaration within sixty days and to serve a copy upon the applicant. Failure to do so shall result in the opposition being deemed abandoned. Where evidence is filed, the applicant is required to submit evidence in support of the application by way of statutory declaration within the prescribed period, and a copy thereof must be served upon the opponent. The opponent may thereafter file evidence strictly in reply.⁵⁹

⁴⁸ Section 26(3) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026.

⁴⁹ Section 28 of the Trade and Service Marks Regulations, GN No. 40 of 2002

⁵⁰ Section 26(4) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁵¹ Section 32 of the Trade and Service Marks Regulations, GN No. 40 of 2002.

⁵² Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁵³ Ibid

⁵⁴ Section 27(1) of the Trade and Service Mar Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁵⁵ Section 27(3) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and section 35 of the Trade and Service Marks Regulations, GN No. 40 of 2002

⁵⁶ Section 27(4) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁵⁷ Section 36 of the Trade and Service Marks Regulations, GN No. 40 of 2002

⁵⁸ Trade and Service Marks Regulations, GN No. 40 of 2002

⁵⁹ Sections 37, 38 and 39 of the Trade and Service Marks Regulations, GN No. 40 of 2002.

The law on Trade and Service Mark⁶⁰ also gives room for one who is dissatisfied with the decision of the Registrar of trademarks to appeal to the High Court as per section 48 of Trade and Service Mark Act⁶¹ of 1986 and Section 96 of Trademark Regulation⁶² of 2002 which states that when any person intends to appeal to the Court, such appeal shall be made by memorandum in the usual way, and no such appeal shall be entertained unless a memorandum of appeal be delivered within sixty days from the date of the decision appealed against or within such time as the Registrar of trademarks shall allow and Section 97 of the Trademark Regulation⁶³ of 2002 which states that every application to the court shall be served on the Registrar of trademarks.

7. Issuance of Certificate of Registration

Where an application for registration of a trademark has been accepted and either no opposition has been filed within the prescribed period or any opposition filed has been determined in favor of the applicant, the Registrar of trademarks shall proceed to register the trademark unless the application was accepted in error.

Pursuant to section 28(1) of the Trade and Service Mark Act⁶⁴ of 1986, the trademark shall be registered as of the date on which the application for registration was received, and that date shall be deemed to be the date of registration. Upon registration, the Registrar of trademarks shall cause a certificate of registration to be sealed and issued to the applicant in accordance with section 28(2) of the Trade and Service Mark Act⁶⁵ of 1986. The certificate is issued in Form TM/SM 9 as prescribed under section 50 of the Trade and Service Marks Regulations⁶⁶ of 2002.

The Missing Timeline

The Trade and Service Mark Act⁶⁷ of 1986 and the Trade and Service Marks Regulations⁶⁸ of 2002 confer various powers upon the Registrar of trademarks in the administration of trademarks. These powers include examining trademark applications, advertising trademarks in the Trade and Service Marks Journal for the statutory opposition period, issuing certificates of registration and renewal, determining opposition proceedings, recording assignments, and dealing with matters relating to registered users. While the legislation⁶⁹ confers extensive powers upon the Registrar of trademarks, it does not prescribe specific timelines within which those powers must be exercised. Consequently, the performance of key stages of the trademark registration process is largely dependent upon the administrative discretion of the Registrar of trademarks and his personnel.

For instance, the Trade and Service Mark Act,⁷⁰ of 1986 together with its accompanying Trade and Service Mark Regulation,⁷¹ obliges the Registrar of trademarks to examine any goods or services submitted for

⁶⁰ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁶¹ Ibid

⁶² GN No. 40 of 2002

⁶³ Ibid

⁶⁴ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁶⁵ Ibid

⁶⁶ GN No. 40 of 2002

⁶⁷ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026

⁶⁸ GN No. 40 of 2002

⁶⁹ Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Trade and Service Mark Regulation GN. No. 40 of 2002

⁷⁰ Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Trade and Service Mark Regulation GN. No. 40 of 2002

⁷¹ G.N. No. 40 of 2000

registration.⁷² The underlying purpose of these provisions is to ensure that the Registrar of trademarks verifies whether the proposed trademark relates to goods or services for which identical or closely resembling trademarks have already been registered. This mandate requires the Registrar of trademarks to assess the potential for consumer confusion by determining whether the applied trademark is deceptively similar to any existing trademarks on record. The objective is to prevent the registration of trademarks that may mislead the public or cause confusion in the marketplace.

The broader interpretation of the Trade and Service Mark Act⁷³ of 1986 and its Trade and Service Mark Regulation⁷⁴ of 2002 suggests that trademark law⁷⁵ merely empowers the Registrar of trademarks to conduct an examination. However, neither the Trade and Service Mark Act⁷⁶ of 1986 nor its Trade and Service Mark Regulation⁷⁷ of 2002 stipulates a clear timeframe within which such an examination must be conducted. During the examination, the Registrar of trademarks is vested with the authority to either accept the application outright or express willingness to accept it subject to conditions, amendments, disclaimers, modifications, or limitations as deemed appropriate. Importantly, the law⁷⁸ does not stipulate any timeline within which the Registrar of trademarks must issue an examination report determining whether a trademark is accepted absolutely or conditionally.⁷⁹ Thus, the issuance of examination reports occurs entirely at the discretion of the Registrar of trademarks, raising concerns about administrative delay and unpredictability in the trademark registration process.⁸⁰

Upon acceptance of a trademark application, the Trade and Service Mark Act⁸¹ of 1986 and its accompanying Trade and Service Mark Regulations⁸² of 2002 mandate the Registrar of trademarks to cause the trademark application to be advertised in the trademark journal for a statutory period of 60 days.⁸³ However, while the law⁸⁴ specifies the duration of the advertisement period, it remains silent on the timeframe within which the Registrar of trademarks must initiate such advertisement following acceptance.⁸⁵

This legislative gap effectively grants the Registrar of trademarks discretionary authority to determine when the advertisement will be published. As a result, the advertisement of accepted trademarks is conducted at the Registrar of trademarks' convenience, without any legal obligation to adhere to a specific timeline.⁸⁶ These administrative powers or discretion further compound procedural delays and underscore the absence of statutory controls over the Registrar of trademarks' function.

⁷² Section 26(1) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Rule 26 of the Trade and Service Mark Regulation G.N. 40 of 2000 of the Laws of Tanzania

⁷³ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁷⁴ G.N. No. 40 of 2000

⁷⁵ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Trade and Service Mark Regulation, G.N. No. 40 of 2000

⁷⁶ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁷⁷ Trade and Service Mark Regulation, G.N. No. 40 of 2000

⁷⁸ Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Trade and Service Mark Regulation GN No. 40 of 2002

⁷⁹ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁸⁰ Trade and Service Mark Regulation, G.N. No. 40 of 2000

⁸¹ Act No. 12 of 1986 R.E. 2003 as amended in the year 2026 of the Laws of Tanzania

⁸² G.N. No. 40 of 2000 of the Laws of Tanzania

⁸³ Section 26(2) of the Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Rule 32 of the Trade and Service Mark Regulation, G.N. No. 40 of 2000 of the Laws of Tanzania

⁸⁴ Trade and Service Mark Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 and Trade and Service Mark Regulation GN No. 40 of 2002

⁸⁵ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁸⁶ G.N. No. 40 of 2000 of the Laws of Tanzania

In addition, the Trade and Service Mark Act⁸⁷ of 1986 and its corresponding Trade and Service Mark regulations⁸⁸ of 2002 require the Registrar of trademarks to issue a certificate of registration to the applicant, which remains valid for a period of seven years. However, neither the Trade and Service Mark Act⁸⁹ of 1986 nor its Trade and Service Mark Regulation⁹⁰ of 2002 stipulate a specific timeframe within which the certificate must be issued. As a result, the issuance of the registration certificate is left entirely to the discretion of the Registrar of trademarks, further evidencing the lack of time-bound administrative accountability in the trademark registration process.

Furthermore, the delays associated with trademark registration arise largely from the broad administrative discretion enjoyed by the Registrar of trademarks in determining when to discharge his statutory functions. It may be argued that such delays are difficult to challenge through a writ of mandamus, particularly where the duty imposed is discretionary rather than imperative in nature. This principle was reiterated in the case of *John Mwombeki Byombalirwa v. Regional Commissioner and Regional Police Commander, Bukoba*.⁹¹ and in the case of *M/s Olam Tanzania Limited vs Leonard Magesa & 2 others*.⁹² Consequently, the absence of statutory timelines not only contributes to administrative delay but also limits the effectiveness of legal remedies available to aggrieved applicants.

The foregoing challenges have not been addressed through administrative modernization initiatives. The position remains unchanged notwithstanding the introduction of the Online Registration System (ORS) by the Business Registration and Licensing Agency (BRELA) in 2018. The Online Registration System (ORS) has improved accessibility and convenience by enabling applicants to file applications electronically and access registration services without physically visiting Business Registration and Licensing Agency (BRELA) offices. However, the introduction of the Online Registration system (ORS) did not amend the substantive provisions of the Trade and Service Marks Act⁹³ of 1986 or the Trade and Service Marks Regulations⁹⁴ of 2002. Consequently, while the Online Registration System (ORS) has modernized the method of filing applications, it has not addressed the absence of statutory timelines governing the performance of the Registrar of trademark's functions, and the challenge of delays in trademark registration remains.

Accordingly, although Tanzania's trademark registration framework provides a structured procedure for the registration and protection of trademarks, the absence of prescribed timelines for the performance of the Registrar's functions continues to create uncertainty in the registration process. As a result, applicants are often unable to predict with certainty when their trademarks will ultimately be registered.

Conclusion and Recommendations

The trademark registration system in Tanzania is governed by the Trade and Service Mark Act No. 12 of 1986 and the Trade and Service Marks Regulations, GN No. 40 of 2002, and is administered by the Business Registration and Licensing Agency (BRELA) through the Registrar of Trade and Service Marks.

⁸⁷ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁸⁸ Trade and Service Mark Regulation, G.N. No. 40 of 2000

⁸⁹ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁹⁰ Trade and Service Mark Regulation G.N. No. 40 of 2000

⁹¹ (1986) TLR 73 (HC).

⁹² Misc Civil Cause No. 6 of 2019

⁹³ Act No. 12 of 1986 R.E. 2023 as amended in the year 2026 of the Laws of Tanzania

⁹⁴ GN No. 40 of 2002

The legal framework establishes a structured procedure for trademark registration, including application, examination, publication, opposition proceedings, and the issuance of certificates of registration.

Notwithstanding the existence of this structured framework, the article has demonstrated that the legislation does not prescribe specific timelines for the performance of key functions by the Registrar. While applicants and opponents are subject to strict statutory timelines at various stages of the registration process, no corresponding timelines are imposed upon the Registrar in the discharge of statutory duties. Consequently, the duration of trademark registration remains uncertain and largely dependent upon administrative discretion.

The article has further shown that although the introduction of the Online Registration System (ORS) improved accessibility and convenience in filing applications, it did not address the underlying legislative gap relating to the absence of statutory timelines. As a result, delays in examination, publication, opposition proceedings, and the issuance of registration certificates may continue to affect the efficiency, predictability, and effectiveness of trademark administration in Tanzania.

It is therefore recommended that the Trade and Service Mark Act No. 12 of 1986 and the Trade and Service Marks Regulations be reviewed to incorporate specific timelines governing the performance of the Registrar's functions at key stages of the registration process. Such reform would enhance administrative accountability, improve predictability in trademark registration, and strengthen the protection afforded to trademark proprietors.

It is further recommended that consideration be given to the introduction of an expedited examination procedure for applicants requiring urgent registration in exceptional circumstances. Such a mechanism would provide an alternative avenue for obtaining timely trademark protection while maintaining the integrity of the registration process.

The introduction of statutory timelines and appropriate administrative safeguards would contribute significantly to improving the efficiency, certainty, and predictability of trademark registration in Tanzania. Such reforms would strengthen administrative accountability, enhance investor confidence, promote commercial certainty, and ensure that trademark proprietors obtain timely protection of their rights in an increasingly competitive marketplace.

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