

LEGAL CHALLENGES ON THE DISCHARGING OF ADMINISTRATIVE POWERS IN TANZANIA: A CASE STUDY OF TRADE AND SERVICE MARK OFFICE

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Abstract

This article attempts to examine the powers of the Registrar of trademarks pertaining to the administration of trade and service marks in Tanzania. In essence, herein the focus is on whether these powers are exercised according to the law. Assessment has also been done on the adequacy of the law on trade and service mark of Tanzania where it was found that in many aspects the law leaves a lot to be desired. In particular, the law provides only on how to handle the trademark applications but, it does not in any way provide the time frame within which a particular function should be performed. In such a situation, the Registrar of trademarks or people acting for him misuse the powers in not timely performing the legal duties such as issuance of letter of acceptance, in conducting examination, advertising the mark in the trademark journal, issuance of renewal certificate and related matters.

Key word: *Legal Challenges, Trade and service mark, Tanzania.*

Research Area: *Intellectual Property Law*

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1.0 Introduction

The gist of this paper is to examine and explore the powers of administrative officers in discharge of their daily duties. It is undoubted fact that, in Tanzania, the Registrar of trademarks

enjoys enormous autonomy regarding trademark application and registration. The implementation of such autonomy sometimes challenged on human rights aspects and good governance. It is on this unquenched curiosity that this article stemmed.

There is no harder and faster rule to define what the term trade mark stands for, however the term Trademark can be defined to mean symbol that is applied or attached to goods or services offered for sale in the market, so as to distinguish them from similar goods, and to identify them with a particular business qualifications. Statutorily, the term trademark is defined to mean:-

“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.”¹

In Tanzania the Registrar of trade and Service Marks is appointed under the Trade and Service powers can be executive, legislative or judicial in nature Mark Act, 1986² by the President of the United Republic of Tanzania. The Registrar of trade and service marks operates under the office of Business Registration and Licensing Authority (BRELA). It is *inter alia* provided by the law³ that the Registrar of trademarks shall perform the duties and exercise powers imposed by the Act⁴ and shall be responsible for its administration. The powers of the registrar of Trade mark is viewed from the aspect of administrative powers which is construed to mean such power to administer or enforce a law within administrative office. Administrative. Administrative power intends to carry the laws into effect, practical application of laws and the execution of the principles prescribed by the law maker within specific and unified territorial jurisdictions.⁵ Good example is when the English Attorney General once appeared before Lord Dunedin for the Registrar of trade marks in *F. Reddaway & Co Ltd's*⁶ in which he recorded himself as the counsel for the Registrar as an Administrative officer.

¹Trade and Service Mark Act, 1986, Act No. 12 of 1986

²Act No. 12 of 1986

³ Trade and Service Mark Act, No. 12 of 1986

⁴ Ibid

⁵Source – <http://administrative law.uslegal.com /administrative-agencies/characterization-and-classification-of-administrative-powers>. Accessed on 14/8/2018 at 5.00pm

⁶Application, 1972

2.0 POWERS OF THE REGISTRAR OF THE TRADEMARKS

For clarity purposes the exercise of administrative powers of the registrar of trademarks can be categorized into different categories. Some of those categories includes the power vested in order to facilitate the registration of the trade and service marks in the country, before during and after the granting and issuance of the certificate as follows:-

2.1 PRE GRANTING PROCESS

2.1.1 Power to Maintain Trade and Service Mark Registry

It is the duty of the registrar to maintain a trademark registry in which he shall record all trade and service marks granted as well as such other matters as may be prescribed”.⁷ Irrespective of anything it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies, diskettes or in any other electronic devices. That maintenance of the register may also be done into other designated centers as well as branches of the registrar offices as the case may be.⁸ In the case of *Union Carbide & Carbon’s Application*⁹ it was established that “the registry of trademarks is being controlled and managed by the Registrar of trademarks.” The Court further held that:-“One of the major objectives of the Registrar is to keep the purity of the register intact”

2.2.2 Power to Examine a Trademark Application

It is the duty of the registrar of the trade and services mark to examine the registrability of the trade and service mark and whether the trade and service mark is required to be associated in accordance with the prerequisite legal requirements.¹⁰ Furthermore upon such examination if it appears that the applicant is entitled to registration of his trade or service mark, the Registrar of trademarks shall accept the application there for and cause the trade or service mark to be

⁷ Section 6(1) of Trade and Service Mark Act No. 12 of 1986

⁸ Nagarajan, R K, Intellectual Property Law, 3rd Ed, Allahabad Law Agency, 2011, India at Pg 372

⁹ (1952) RPC 310

¹⁰Section 41 of the Trade and Service Mark Act No. 12 of 1986 reads and I quote “Where a pending trade or service mark that is registered in respect of any goods or services is identical with another mark that is registered, or is pending, in the name of the some proprietor in respect of the same goods or services or closely related goods or services, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade or service mark be entered in the register as associated trade or service marks”.

advertised in the trademark journal¹¹ or if upon examination, the Registrar of trademarks objects to the application, he shall notify the applicant in writing of the objections and shall allow him time, as prescribed, to submit his representation or to request a hearing. Lastly the law provides that in case the applicant fails to pursue his application within the time allowed, he shall be deemed to have withdrawn his application.¹²

Further, the rules¹³ requires the Registrar to cause an examination to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are in records in respect of the same goods or services or description of goods or services. This process among others intends to disqualify registration of all marks short fall on prerequisites.¹⁴ Amanda Michael with Andrew Norris¹⁵ explicates the position of UK. The author strongly argues that the trademark must be examined by the Registrar of trademarks to ensure that it satisfies the requirements of the trademark law. At the same time, the Registrar of trademarks will carry out a search for potentially conflicting registered trademarks.¹⁶ The learned authors further contends that the length of time taken by the Registrar of trademarks to carry out its examination is not very great; it aims to issue an examination report within a month of receipt of an application.¹⁷

2.2.3 Power to refuse on the ground of Geographical Origin

In Tanzania it is trite law that¹⁸ the trade or service mark cannot be registered if the use of it would likely cause confusion as to the geographical origin. Further, the regulations¹⁹ provides that, if the Registrar objects to the application, he shall inform the applicant of his objections in writing and unless within one month the applicant applies for a hearing or makes a

¹¹ Section 26(2) of the Trade and Service Mark Act No. 12 of 1986

¹² Section 26(3) of the Trade and Service Mark Act No. 12 of 1986

¹³ Trade and Service Mark Act Regulation of 2000

¹⁴ Section 26 of the Trade and Service Mark Act Regulation 2000

¹⁵ Amanda Michael with Andrew Norris, *A Practical Approach to Trade Mark Law*, 4th Ed, Oxford University Press New York, 2010 at Pg 82

¹⁶ *Ibid* at Pg 82

¹⁷ *Ibid*

¹⁸ Section 19(a) of the Trade and Service Marks Act, No. 12 of 1986

¹⁹ Trade and Service Mark Act, Regulation of 2000

considered reply in writing to those objections he shall be deemed to have withdrawn his application.²⁰

Kitchin,²¹ explain that the use, by trader, of marks with geographical significance is both normal and problematic. It is normal to indicate a connection with a particular geographical location if that location gives to the product a characteristic it would not otherwise have. It is problematic, if in doing so the trader seeks to fence off-part of the commons which should be free to any other who does not mislead by using the geographical name.

2.2.4 Power to refuse on the ground of being similar/identical

The Registrar cannot accept a mark if a similar mark is already being registered. The law²² provides that subject to the provision of subsection (2)²³ trade or service mark cannot be validly registered in respect of any goods or services if it is identical with a trade or service mark belonging to a different proprietor and already on the register in respect of the same goods or services or closely related goods or services or that so nearly resembles such a trade or service mark as to be likely to deceive or cause confusion.²⁴ In the case of *Brooke Bond Ltd .V. Chai Ltd*,²⁵ the Court held *inter alia* that, "...the likelihood of confusion or deception is not disapproved by placing the two marks side by side and demonstrating how small is the chance of error in any customer who places his order for goods with both the marks clearly before him, for orders are not placed or are often not placed under such conditions. It is more useful to observe that in most persons the eye is not an accurate recorder of visual detail, and marks are remembered rather by their general impressions or by some significant detail than by any photographic recollection of the whole...'

²⁰ Section 28 of the Trade and Service Mark Act, Regulation, 2000

²¹ Ibid Kitchin at Pg 302

²² Act No. 12 of 1986

²³ Subsection 20(2) of Trade and Service Mark Act No. 12 of 1986 provides that:- "In the case of honest concurrent use, or of other special circumstances, trade or service mark that are identical or nearly resemble each other in respect of the same goods or services or closely related goods or services may be registered in the name of more than one proprietor, subject to such conditions and limitations, if any, as considered necessary to impose"

²⁴ Section 20(1) of Trade and Service Mark Act No. 12 of 1986

²⁵ (1971) E.A. 10

Moreover the law requires the Registrar to inform the applicant of his objections in writing, then the applicant is entitled for a fair hearing or makes a considerable reply in writing to those objections he shall be deemed to have withdrawal his application²⁶.

Other scholars²⁷ explains that these marks could misguide the consumer with reference to the goods and service they intend to purchase, possess and use. It would adversely affect the market which is considered as anti-trade practices or unfair practices. Marks which are similar, which cause confusion in the minds of the consumer with regard to the origin or source or to the quality of the goods and services cannot be registered.²⁸

Generally, the similar marks can never be registered.²⁹ This was the position of the court in the case of *National Sewing Thread .v. James Chadwick*,³⁰ that the law on trademark does not provide registration for marks which are similar to any existing marks.

2.2.5 Power to Disclaim a Trademark

In Tanzania the Registrar of trademark is vested with power for “Disclaimer” where he is of the valid opinion that the mark needs to be disclaimed. The law³¹ provides that if a trade or service mark contains a matter or matters common to disclaim the trade or it is of a or service non-distinctive character, in determining whether the trade or service mark should be entered or remain in the register, it shall be required as a condition of its being on the register that the applicant or the proprietor shall disclaim any right to the exclusive use of any part of the trade or service mark, or to the exclusive use of all or any portion of such trade or service mark as aforesaid to the exclusive use of which he is not entitled; or that the applicant shall make such other disclaimer as it considered necessary for the purpose of defining his rights under the registration, provided that no disclaimer on the register shall affect any rights of the proprietor of a trade or service mark except such as arise out of registration of the trade or service mark in respect of which the disclaimer is made.”³²

²⁶ Section 28 of the Trade and Service Mark Regulations, 2000

²⁷Sreenivasulu N.S., Law Relating to Intellectual Property, 1st Ed, Partridge Publishing, 2013, India at Pg 74

²⁸ Ibid

²⁹ Ibid at Pg 75

³⁰ AIR (1953)SC 357

³¹ Act No. 12 of 1986

³²Section 18(a) and (b) of the Trade and Service Mark Act, No. 12 of 1986

Apart from the parent Act also the same has been elaborated under the Trademark Regulation.³³ The Regulation³⁴ provides that the registrar may call upon the applicant to insert in his application such disclaimer as the Registrar may think fit, for the public to understand what are the applicant's right, if his mark is registered.³⁵

2.2.6 Power to Associate a Trademark

By definition the associate trademark is where a trademark which is registered, or is subject to an application for registration in respect of any goods or services is identical with another trademark which is registered or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may, at any time, require that the trade marks shall be entered in the register of associated trademarks.³⁶

In Tanzania the law³⁷ provides that “Where a pending trademark or service mark or a trade or service mark registered in respect of any goods or services is identical with another mark that is registered, or is pending, in the name of the same proprietor in respect of the same goods or service or closely related goods or services, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trademark or service mark be entered in the register as associated trade or service marks.³⁸ Furthermore the rules provides that where a mark is registered as associated with any other mark or marks the Registrar shall note in the register in connection with the first-mentioned mark the numbers of the marks with which it is associated and shall also note in the register in connection with each of the associated marks the number of the first-mentioned mark as being a mark associated therewith.

Generally, where a mark is registered as associated with any other mark or marks the Registrar shall note in the register in connection with the first-mentioned mark the numbers of the marks

³³ Trade and Service Mark Regulation, 2000

³⁴ Ibid

³⁵ Section 31 of the Trade and Service Mark Act, Regulation of 2000

³⁶ Nagarajan, R K, Intellectual Property Law, 3rd Ed, Allahabad Law Agency, 2007, India at Pg 374 -375

³⁷ Act No. 12 of 1986

³⁸ Section 41(1) of Trade and Service Mark Act, 1986

with which it is associated and shall also note in the register in connection with each of the associated marks the number of the first-mentioned mark as being a mark associated therewith.³⁹

2.2.7 Power to Advertise in the Trademark Journal

It is the statutory power of the registrar of Trade mark to register a mark in the trademark journal.⁴⁰ Upon filling of an application for registration of a trademark and the payment of the prescribed fees, the Registrar shall cause an examination to be made as to conformity with the formalities required. If upon the examination it appears that the applicant is entitled to registration of his trade mark, the Registrar shall accept the application and cause the trade or service mark application to be advertised in the trademark journal for statutory opposition period of 60 days.⁴¹

The regulations⁴² provides that when the Registrar has accepted an application for the registration of a mark or of a series of marks absolutely or has accepted it subject to conditions or limitations to which the applicant does not object, he shall promptly, advertise it in the Trade and Service Marks Journal.⁴³

2.2.8 Power to Advertise before Acceptance

The advertisement of the trademark on the trademark journal is done prior to its acceptance for registration by the registrar.”⁴⁴ In case there is an objection the law requires the Registrar to notify the applicant of his objection, and provided that the Registrar may cause an application to be advertised before acceptance in any case where he considers there are exceptional circumstances for so doing.⁴⁵ Furthermore the law⁴⁶ provides that the Registrar shall consider

³⁹Section 48 of the Trade and Service Mark Regulation, 2000

⁴⁰ Section 26(1) of Trade and Service Mark Act, 1986

⁴¹ Section 34 of Trade and Service Mark Regulation, 2000

⁴² See Trade and Service Mark Act, Regulation, 2000

⁴³ See Section 32 of Trade and Service Mark Act, Regulation, 2000

⁴⁴ <http://www.selvamandselvam.in> accessed on 7/3/2016

⁴⁵See Section 26(4) of Trade and Service Mark Act, 1986

⁴⁶ See Trade and Service Mark Act, Regulation of 2000

the application made under regulation 69⁴⁷ and shall, if it appears to him expedient, advertise the application in the Journal before its verdict.⁴⁸

2.2.9 Power to Issue a Certificate of Registration

When an application for registration of a trade or service mark has been accepted, shall be registered as of the date on which the application for registration was received, and that date shall be deemed as registration date.⁴⁹ The law further provides that on the registration of a trade or service mark, the Registrar shall cause to be sealed and shall issue to the applicant a certificate in the prescribed form of the registration thereof.⁵⁰ The regulations also provides that⁵¹ upon the registration of a mark the Registrar shall issue to the applicant a certificate in the Form 02, and shall affix thereto a copy of the mark, which may be a representation thereof supplied by the applicant under regulation 23.⁵²

Lastly it should be concluded that on the registration of trademark, the Registrar of trademarks shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the trademark registry. The certificate of registration of a trademark is sufficient evidence of the fact and can be used to initiate infringement action without the Registrar, or someone from his office, having to attend the court and testify to the fact of the registration.⁵³

2.3 POWER OF THE REGISTRAR AFTER GRANT

2.3.1 Power to Issue a Renewal Certificate

⁴⁷Section 69 of the Trade and Service Mark Act, Regulation, 2000 provides that, an application to the Registrar for the alteration of the register by correction, change, cancellation, or striking out goods, or for the entry of a disclaimer or memorandum, may be made by the registered proprietor of the mark or by such person as may satisfy the Registrar that he is entitled to act in the name of the registered proprietor. Such applications shall be made on Form TM/SM 16, TM/SM 17, TM/SM 18, TM/SM 19, TM/SM 20, TM/SM 21, or TM/SM 22, as may be appropriate; but an application on Form TM/SM 21 or TM/SM 20, or TM/SM 27, shall be signed by the registered proprietor or other person entitled under this rule unless in exceptional circumstances the Registrar otherwise allows, or, in the case of Form TM/SM 27 only, it is signed by an agent expressly authorized for the purpose of such an application.

⁴⁸ See Section 74(1) of the Trade and Service Mark Act, Regulation of 2000

⁴⁹Act No. 12 of 1986

⁵⁰ See Section 28 (2) of the Trade and Service Mark Act, No. 12 of 1986

⁵¹ See section 48 Trade and Service Mark Regulation, 2000

⁵² Section 23 of the Trade and Service Mark Regulation, 2000 provides that, where a drawing or other representation or specimen cannot be given in the manner aforesaid, a specimen or copy of the mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.

⁵³ See Chapter 3 of the Manual of Trade Marks Law & Practice in Malaysia, 2nd Ed, Kaula Lumpur, 2003

The law expressly provides that's even years is the tenure for the registered trade and service mark in Tanzania subject to renewal from time to time.⁵⁴ The renewal is for the period of ten years from the date of expiration of original registration or of the last renewal of registration.⁵⁵ The regulations provides that⁵⁶ the Registrar of trademarks shall notify the registered proprietor in writing of the approaching expiration of the term of registration and of the conditions as to payments of fees and other requirements necessary in obtaining renewal at least six months before the expiration date of the last renewal. Failure to send or receive the reminder, or any error in the reminder, shall not affect the expiration date.⁵⁷ In addition, the trademark Regulation⁵⁸ provides that at the time not less than fourteen days and not more than one month before the expiration of the last registration of a mark, the Registrar of trademarks may, if no fee has been received, send a notice in writing to the registered proprietor at his trade or business address as well as at his address for service, if any.⁵⁹

In other jurisdictions there is no limitation whatsoever on the number of renewals, and thus a trademark may be valid indefinitely as long as it is renewed on time.⁶⁰ In India⁶¹ the registration of a trademark shall be for a period of seven years but, may be renewed from time to time. The Registrar of trademarks shall, on application made by the registered proprietor of a trademark in the prescribed manner and within the prescribed period and subject to payment of the prescribed fee, renew the registration of a trademark for a period of seven years from the date of expiration of the original registration or of the last renewal of registration, as the case may be.

2.3.2 Power to remove a trademark from the registry for non use

The Registrar of trademark is vested with the statutory power to remove a registered trademark from the registry for nonuse. Indeed the law allows and vest the power to registrar to remove from the register a mark, on the ground that, up to one month prior to the filling of the

⁵⁴ See Section 29(1) of Trade and Service Marks Act, No. 12 of 1986

⁵⁵ See Section 29(1) and (2) of Trade and Service Mark Act, No. 12 of 1986

⁵⁶ See Trade and Service Mark Regulation 2000

⁵⁷ See Section 52 of Trade and Service Mark Regulation, 2000

⁵⁸ See Trade and Service Mark Regulation, 2000

⁵⁹ See Section 53 of Trade and Service Mark Regulation, 2000

⁶⁰ Eran Liss and Dan Adin, *Intellectual Property Law and Practice in Israel*, Oxford university Press New York, 2012, at Pg 238

⁶¹ Op cit Sarkar at Pg 149

application a continuous period of three years or longer had elapsed during which the registered proprietor did not use the trade or service mark.⁶² In the case of *Vitamin Foods (1989) Ltd .V. Scotch whisky Association*⁶³ in which the court held that:-

- (i) The Respondent is a lawful registered company and one of its aims and objects is to protect and promote the reputation vested in Scotch Whisky throughout the World.
- (ii) The respondent, therefore, had locus standi to bring the application because the law allows any aggrieved party to apply to the Registrar for the removal of an entry from the register.
- (iii) The respondent has a *locus standi* as provided for by article 7(b)(3) of the Paris Convention of 1883
- (iv) The Registrar correctly accepted the application signed by the advocate of the dependent.

The removal of the trade mark is done on prescribed form as per the provisions of section 35⁶⁴ or 36 for making, expunging or varying of any entry in the register shall be made on Form TM/SM 23 and shall be accompanied by a statement setting out fully the nature of the applicant's interest, the fact upon which he bases his case and the relief which he seeks.⁶⁵ Furthermore the law provides that⁶⁶ where the application is made by a person who is not the registered proprietor of the mark in question it shall be accompanied by a copy of the application and a copy of the statement, and these copies will be transmitted forthwith by the

⁶²See Section 35 of the Trade and Service Marks Act, No. 12 of 1986

⁶³ (2001) TLR 55

⁶⁴ Section 35 of the Trade and Service Mark Act No. 12 of 1986 provides that, a registered trade or service mark shall be removed from the register in respect of any of the goods or services in respect of which it is registered on application by an aggrieved person to the court or, at the option of the applicant under the provision of section 55 of this Act, to the Registrar, on the ground that up to one month prior to the filling of the application a continuous period of three years or longer had elapsed during which the registered proprietor did not use the trade or service mark in relation to those goods or services, provided that failure to use the trade or service mark shall not be taken into account where (a) it is attributed solely to special circumstances preventing us of the trade or service mark and not to any intention to abandon or not use the trade or service mark; or the non use is within five years from the date of first advertisement of the trade or service mark in accordance with section 28 or within the period from such date extended to two years from the date of the final decision on the registration whichever period expires later.

⁶⁵ See Section 66(1) of the Trade and Service Mark Regulation, 2000

⁶⁶See Trade and Service Mark Regulation, 2000

Registrar to the registered proprietor.⁶⁷ In the of *Kouk Oil and Grains Pte Ltd .V. Murzah Oil Mills Limited*,⁶⁸ the court held that the life span of the trademark had elapsed and therefore the Registrar of trademarks under the law can bite and remove the trademark from the registry.”

However distinguishably by the case of *Tanzania Cigarette Company Limited .V. Burundi Tobacco Company Limited and Mastermind Tobacco (Tanzania) Limited*,⁶⁹ the court held that the respondent’s trademark was not renewed within the prescribed period and the Registrar has no unfettered discretion to do whatever he/she likes. There are limitations in his/her discretion. The Registrar had no power to extend the renewal period after expiration of the grace period. The applicant’s application to remove the respondent’s mark was granted”.

Definitely a trademark may be removed from the registry of trademarks for non-use continuously for five years except when it is shown that, the non-use has been due to the existence of “Special circumstances” in the trade and not to any intention to abandon or not to use the trademark.⁷⁰ The same was maintained in the case of *J.N. Nichols Ltd .V. Rose and Thistle*,⁷¹ where the appellant failed to prove such “Special Circumstances.” The court said that the word “use” does not necessary mean and imply actual physical sale and even mere advertisement without having even the existence of the goods can be said to be a “use” of the mark. Therefore a person may not be selling any goods under a particular trademark but, so far as he advertises the goods, then he will be presumed to be using the trademark.

3.0 DISCUSSION

The Tanzania substantive trademark law⁷² as well as its procedural and regulations made therein ⁷³vests several powers on the registrar of trade and services marks prior, during and after the granting processes. Those powers ought to be diligently and judiciously discharged without being detrimental to the applicant as well as the authority. Such exercise of powers have not been allotted with time within which reasonably decision could be made. Therefore

⁶⁷See Section 66(2) of the Trade and Service Mark Regulation, 2000

⁶⁸ Civil Ref No. 14/2002

⁶⁹ Miscellaneous Comm Cause No. 7 of 2004

⁷⁰See Chowdhury, *Laws of Trademarks, Copyright, Patent and Design*, 2nd Ed, Kamal Law House, 1999, India at Pg 498

⁷¹ (1993) (II) CHN 395 (Cal) (DB)

⁷² See Section 26(1) of Trade and Service Mark Act No. 12 of 1986

⁷³ See Section 26 of Trade and Service Mark Regulation, 2000

the registrar being reasonable person and official ought to know what reasonable is reasonable in a given circumstances.

There are crucial aspects for the trade mark registration like examination process and alike. Only upon examination process is where the registrar may accept or reject the application for registration. Again despite of being no time line the registrar is ought to process examination diligently and come to the findings within the reasonable time. Once the mark is accepted, for the registration then the Registrar of Trademarks also ought to cause the trademark and service mark application to be advertised in the trademark journal for statutory opposition period of 60 days. Upon close scrutiny of the wording of the cited provision of the Act⁷⁴, together with its Regulation it only requires the Registrar of Trademarks to advertise the mark in the trademark journal for statutory opposition period of 60 days but however, neither the Act⁷⁵ nor its Regulation⁷⁶ draws a timeline upon the Registrar of Trademarks as to when the mark shall be advertised in the trademark journal. This can be followed by argument that when 60 days statutory period for advertisement and making objection lapses and no opposition has been raised then the Registrar of trademarks shall issue a certificate of registration to the applicant which shall be valid for seven years. The wording of the Act⁷⁷ together with its Regulation⁷⁸ confers powers upon the Registrar of Trademarks to issue certificate of registration once the opposition period of 60 days has lapsed but however, does not provide the time line upon the Registrar of Trademarks as to when the certificate of registration to be issued.

4.0 RECOMMENDATIONS

It is recommended on the basis of what has been discussed in this paper that the Trade and Service Mark Act, 1986 be amended so as to establish a strong mechanism of controlling the exercise of powers by the Registrar of trademarks and service marks. The law should prescribe clear guidelines requiring the office of the Registrar of trade and service marks to exercise its powers properly. The issue of time limit within which the Registrar should perform the particular function should be specifically provided for.

⁷⁴ Act No. 12 of 1986

⁷⁵ Ibid

⁷⁶ Trade and Service Mark Regulation, 2000

⁷⁷ Act No. 12 of 1986

⁷⁸ Trade and Service Mark Regulation, 2000

5.0 CONCLUSION

Following the above critical discussion, it is suggested by this study that it is now high time for introducing new amendment(s) in the law especially on the powers of the Registrar. This is the only way in which the current system will be likely trusted by applicants and the people due to efficient and timely deliverance of services. The most challenging issue shown in the above discussion is the insufficient or lack of timeline in law within which the office Registrar deliver its services. Again, to achieve this goal policy makers need to work with all stakeholders so as to ensure that the system is well integrated.

In addition to the above, in Tanzania, all applications for trademark registration were done through a paper-based system, whereby, the applicants for trademark registration were required to fill out specific prescribed forms and then submit them at the office of Registrar of trademark for compliance in other consequential procedural requirements such as examination. Practically, the applicants had to physically collect these forms from the office of the Registrar of trademark. But then, like in many part of the world, the new age of development in information technology blossomed. In the recent past Tanzania had witnessed a tremendous switch into a new digital world. All service providers, be it the government or private sector, are all on the run to digitalize their products. Indeed, it is just a matter of time before Tanzania go aboard as one of the leading nation in providing digital service.

Sometimes in February 2018 the Business Registration and Licensing Authority (BRELA) announced a move to replace the paper-based registry with the Online Registration System (ORS). Among other things, the new online system is aimed at efficient and time deliverance of services. Therefore, all services which are traditionally provided such as registration Trademarks and Companies shall now be accessible through ORS. Whether ORS becomes the panacea of the challenges regarding the powers of the Registrar in respect of trademark application and registration remain to be one of the most exciting thing to look up to. Suffice to say that all applications for trademark Registration is now done through an online system (ORS) but the uncontrolled powers of the Registrar of trademarks remains intact.

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DISSERTATION

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