FICPI 17th Open Forum

Emerging Markets: Are you ready to advise your clients

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Value addition through the use of trademarks and industrial designs can assist companies to expand their market share.

**BRANDS**
- Identify the product and services
- Differentiate them from those of the competitors
- Reduce search cost
- Position the product in a specific segment of the market
- Assign responsibility to product maker and ensure quality
- Attract consumers and ensures loyalty

**INDUSTRIAL DESIGNS**
- Make products more attractive increasing marketability
- Influence consumer’s decision
- Increases customer’s aesthetic pleasure and public welfare
- Enhances market efficiency
- Aesthetically appealing industrial designs therefore provide competitive advantage

Brands Strengthens ID
ID Strengthens Brands

Fostering Creativity and Innovation for Economic Growth and Development in Africa
INDUSTRIAL DESIGNS CAN INFLUENCE CONSUMERS CHOICES

Fostering Creativity and Innovation for Economic Growth and Development in Africa
DESIGNS - POTENTIAL TO ENHANCE NATIONAL IDENTITY

Fostering Creativity and Innovation for Economic Growth and Development in Africa
Almost all African Countries ratified the main international legal instruments protecting Industrial Designs, namely:

- Paris Convention for the Protection of Industrial Property 1883
  - Art 5 quinquies – ID shall be protected by all Members

- Berne Convention for the Protection of literary and artistic works
  - Art 2 (7) provides for protection of applied art and ID under copyright

- Hague Agreement for Int’l Registration of ID

- Agreement on the Trade Related Aspects of IP 1994
  - Art 25 (1) – Members shall provide for protection [of ID]
INDUSTRIAL DESIGN PROTECTION IN AFRICA

- Protection is further provided by the Regional IP Systems:
  - OAPI: Annex IV - Bangui Agreement

- Industrial Designs are also protected under the General National Laws of IP

- Some countries have a specific Law/ Act on Industrial Designs
  - Comoros – Law of July 14, 1909, on Designs and Models
  - Ghana Industrial Designs Act, 2003 (Act 660)
  - Malawi – Registered Designs Act, Chapter 49:05
  - South Africa
  - South Sudan and Sudan – Industrial Designs Law No. 18 of 1974
  - Tunisia – Law No. 2001-21 of February 6, 2001 on the Protection of Industrial Designs
  - Zimbabwe – Industrial Designs Act (Chapter 26:02)
INDUSTRIAL DESIGN PROTECTION IN AFRICA

RIGHTS CONFERRED UPON REGISTRATION

Registration precludes:

■ Reproduction of the design in the manufacture of a product
■ Importing, selling or utilizing for commercial purposes a product reproducing the design
■ Holding such a product for the purpose of selling it or of utilizing it for commercial purpose

DURATION OF RIGHTS

■ 10 years – ARIPO, DR Congo, Zambia
■ 15 years - Angola, Botswana, Burundi, OAPI, Djibouti, Egypt, Gambia, Ghana, Kenya, Libya, Madagascar, Malawi, Namibia, Nigeria, OAPI, Rwanda, Sao Tome & Principe, Seychelles, South Africa, South Sudan, Sudan, Tunisia, Zimbabwe
■ 25 years - Morocco, Mozambique, Cape Verde
■ 50 years - Comoros
ENFORCEMENT OF RIGHTS

Once violation is established Courts generally award:

■ An interdict

■ Order to surrender any infringing good

■ Damages

■ Order to pay an amount corresponding to a reasonable royalty payable by a licensee or sub-licensee in respect of the design concerned (in lieu of damages)

CHALLENGES IN THE ENFORCEMENT OF RIGHTS

■ Some National Laws are outdated (prompting lacuna and ambiguities)
■ Courts are slow in deciding cases
■ IP issues are complex and there is no adequate expertise to decide cases
Africa is yet to fully realize the value of Industrial Designs
ID perceived as a 'problem-solving activity' directed towards the basic development problems - ‘developmentalist’ role
Many companies are SMEs and faces skills and financial constraints
Resources are limited to invest in product development and innovation processes
Many companies are not aware or do not use design as a strategic resource for competitiveness
Investment in design is therefore absent
Risk of imitation, piracy and counterfeiting

SOME POTENTIAL AREAS OF DESIGN DEVELOPMENT IN AFRICA
- Textiles – Ghana
- Leather
- Fashion – Ghana, Nigeria
- Shoes – Ethiopia and Nigeria
- Industry in general – South Africa
- Packaging – Throughout the continent
- Furniture
- Handicrafts

Global applications (2015): 1,144,800

Africa: 16,300 (less than patents)

Share global: 1.4%

Origin of applications: 54.1% local

Source: World IP Indicators 2016 - WIPO
THE CASE OF SOUTH AFRICA

Pioneers of industrial design teaching

- University of Johannesburg – since 1963 (only programme in 25 years)
- Cape Technikon - since 1988
- Tswane University of Technology – since 2008

- Design Institute South Africa (branch of South Africa Bureau of Standards was also providing training in Design) – Since 1965

Current design education opportunities in SA:

<table>
<thead>
<tr>
<th>Applied Design</th>
<th>Engineering Design</th>
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<tbody>
<tr>
<td>Universities: 16</td>
<td>Universities: 9</td>
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<tr>
<td>Universities of Technology: 5</td>
<td>Universities of Technology: 8</td>
</tr>
<tr>
<td>Colleges: 10</td>
<td>Colleges: 15</td>
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<tr>
<td>Independent Schools: 30</td>
<td>Independent Schools: -</td>
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Pitsedisulejang Community members testing the water carrying capabilities of the ‘Tin Lizzy’ single-axle donkey cart prototype, designed by the University of Johannesburg, March 2007 (South Africa)

On top of design for industry there are Design Community-orientated projects addressing:
- special needs (disabled and shack dwelling communities)
- energy saving devices
- recycled materials
- community skills development
Existence of Tertiary Education programmes in design:

- Yaba College of Technology – since 1952
- Nigerian College of Arts, Science & Technology Ibadan- since 1952
- Nigerian Col. of Arts, Science & Technology, Kaduna State– since 1954
- University of Lagos, Obafemi Awolowo University and University of Nigeria - Nsukka

Currently: 17 Universities offer design courses in architecture, industrial design, graphics, ceramics, textiles, glass technology, jewellery, fashion, interior decoration, metal, and sculpture

BUT, AS STATED BY ONE PROFESSIONAL:

“I find it disappointing that in a country with 170 million people I know only 5 employed industrial designers, 4 of which are in my own company” - Funfere Koroye, Nigeria.

There’s no national policy on Design!
THE CASE OF KENYA

- First Design Policy 1890s - Kenya as British colony
  Country was treated as a source of raw materials and market for mass finished goods - development of design was discouraged

- Kenya Independence 1963 – foreign designs remain preferable and local design and manufacturing is discouraged

1986: Presidential Order to develop first independently develop African car

Kenya’s Vision 2030 – has potential for Design to thrive

Industrial Parks, Science Parks may enable design to develop

“However ugly and slow it may be!” - Daniel Arap Moi

There’s no national policy on Design!

Fostering Creativity and Innovation for Economic Growth and Development in Africa
THE CASE OF KENYA

Existence of Tertiary Education programmes in design:

- **22 Public Universities** offer courses in Graphic Design, Interior Design, Product Design and Communication Design
- **18 Public Universities** offer courses in Communication Design
- Private colleges teach interior design, clothing construction, fashion design, graphic design, sculpture, product design, painting, animation, film, television and video games development

Design Profession

- **14 Designers** in the public sector
- At least **12 designers** in Government corporations
- Private sector: Employs **85%** of designers in **300 registered design companies and design businesses**
THE CASE OF THE FASHION INDUSTRY

- Economic growth rates of between 3-15 in most Africa countries
- Growth of middle class, changing lifestyles, shift to luxury goods
- Growing youth population (18-35 years)
- Unemployment and strong call for youth entrepreneurship
- Creative products and services by youth (avid producers) and for youth (strong consumers)
- Existence of some strong hubs for creative industry (fashion) in Accra, Cape Town, Johannesburg, Kampala, Lagos, Nairobi, etc.
- New fashion trends coupled with cultural patterns

Challenges:
- Lack of policies to support entrepreneurship and fashion industry
- Stiff Competition and lack of support mechanisms at the regional, national and local levels in Africa
- Weak textile industry to respond to the needs of the designers
PARADIGM SHIFT FOR PROMOTION OF ID SYSTEM IN AFRICA

- Promote the ‘developmentalist’ role of Industrial Designs coupled with competitiveness and profit-oriented interest of industries
- Adopt National Policies and Strategies on Design
- Promote strategic use and protection of ID - Review legislation
- Recognize design as a tool of industrialization
- Promote change of corporates attitude towards Design – companies to capture importance of ID for competitiveness
- Introduce design curriculum, courses and establish design training centers
- Undertake design awareness through exhibitions, festivals, awards and promotional materials
- Focus on design support through finance support, research and training
- Promote partnerships between International Design Associations, academia, industry and community
FINAL REMARKS

SIGNIFICANCE:
- ID can be a powerful tool for value addition for Africa
- ID could be instrumental for Africa industrialization
- ID can be harnessed to address local needs, even in remote communities

ACTION
- Governments and companies are yet to fully realize that potential
- Growing number of Higher Learning Institution teaching shows interest and potential to grow
- Policy development, Law reform and better enforcement required

PROTECTION
- The legal framework is in place, updated and TRIPS compliant
- Protection of ID can be secured throughout Africa
- Enforcement mechanisms available (Courts, Remedies, Border Measures)
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