



# FICPI 17th Open Forum

**Emerging Markets: Are you ready to advise  
your clients**

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*Fostering Creativity and Innovation for Economic Growth and Development in Africa*

# OUTLINE

- **Background**
- **Role of Industrial Designs**
- **ID Legal protection and Enforcement**
- **ID Situation**
- **ID Registrations**
- **Kenya, Nigeria and South Africa Case Studies**
- **Need for Paradigm Shift on ID System in Africa**
- **Final Remarks**



# BACKGROUND

- ❑ Value addition through the use of trademarks and industrial designs can assist companies to expand their Market share

## BRANDS

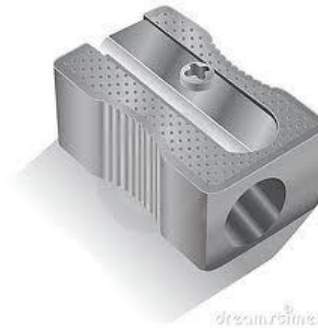
- Identify the product and services
- Differentiate them from those of the competitors
- Reduce search cost
- Position the product in a specific segment of the market
- Assign responsibility to product maker and ensure quality
- Attract consumers and ensures loyalty

## 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



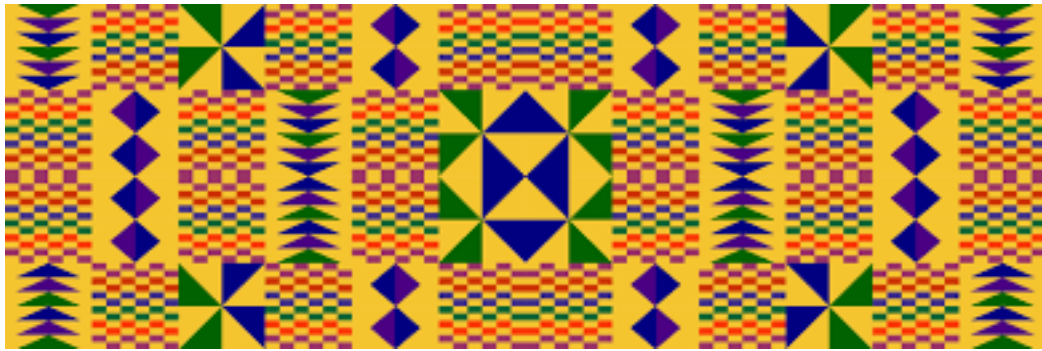
# INDUSTRIAL DESIGNS CAN INFLUENCE CONSUMERS CHOICES



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# DESIGNS - POTENTIAL TO ENHANCE NATIONAL IDENTITY



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# LEGAL PROTECTION

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:
  - **ARIPO: Harare Protocol for the protection of Patents and Industrial Designs (1982)**
  - **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





# INDUSTRIAL DESIGN PROTECTION IN AFRICA

## 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



# INDUSTRIAL DESIGNS SITUATION IN AFRICA

- 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



# INDUSTRIAL DESIGNS REGISTRATIONS IN AFRICA

- Industrial Designs in force Worldwide (2015): 3.4 Million
- 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

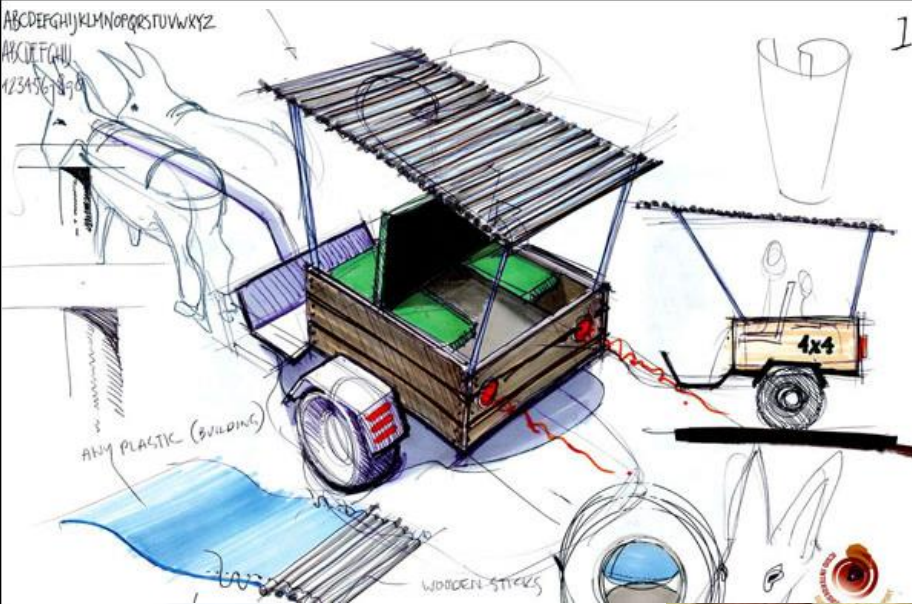
- University of Johannesburg – since 1963 (only programme in 25 years)
  - Cape Technikon - since 1988
  - Tswane University of Technology – since 2008
- Design Institute South Africa (*branch of South Africa Bureau of Standards was also providing training in Design*) – Since 1965

## ■ Current design education opportunities in SA:

APPLIED DESIGN	ENGINEERING DESIGN
Universities: 16	Universities: 9
Universities of Technology: 5	Universities of Technology: 8
Colleges: 10	Colleges: 15
Independent Schools: 30	Independent Schools: -







**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**



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# THE CASE OF NIGERIA

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!**



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# 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 developed African (



**“HOWEVER UGLY AND SLOW IT MAY BE!”**

**- Daniel Arap Moi**

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

*Industrial Parks, Science Parks may enable design to develop*

*There’ s no national policy on Design!*

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# 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
- Design professional bodies: Design Kenya Society, Association of Fashion Designers Kenya, Architectural Association of Kenya, Photo-Journalists Association of Kenya





# 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





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# 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



## 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)







## *African Regional Intellectual Property Organization*

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