

# Mandatory Anti Counterfeit Recordation of IP Rights: Benefits and Implications of Recent Developments in Kenyan Law

6 June 2022

[cliffedekkerhofmeyr.com](http://cliffedekkerhofmeyr.com)



**anti  
counterfeit  
authority**  
*Promoting Genuine*



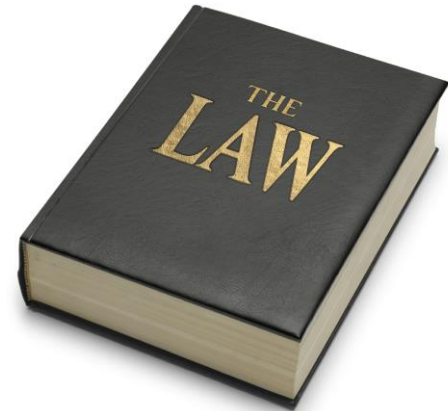
CLIFFE DEKKER HOFMEYR

INCORPORATING  
**KIETI LAW LLP, KENYA**

# Kenyan Legal Framework for Anti Counterfeit Measures

CLIFFE DEKKER HOFMEYR

- ❑ The Constitution of Kenya
- ❑ The Anti – Counterfeit Act (Number 13 of 2018):
  - ❑ Purpose
  - ❑ Definitions – “Protected goods” and “counterfeit goods”
  - ❑ Penalties - Fines and jail terms
  - ❑ Complaints and redress mechanisms
  - ❑ IPR Recordation Framework
- ❑ The Anti – Counterfeit (Recordation) Regulations 2021.



# Recordation of IPRs – Section 34, ACA and the Anti – Counterfeit (Recordation) Regulations 2021

- Mandatory recordation requirement
- Applications for recordation
- Approval or Denial of Recordation Applications
- Certification
- Seizure and Destruction



# Recordation of IPRs – Section 34, ACA and the Anti – Counterfeit (Recordation) Regulations 2021

- **Mandatory recordation requirement**
  - All trade marks relating to goods to be imported in Kenya must be recorded with the ACA regardless of whether they are registered in Kenya or elsewhere.
  - Trade marks applied on locally made goods may also be recorded.



# Recordation of IPRs – Section 34, ACA and the Anti – Counterfeit (Recordation) Regulations 2021

- **Applications for recordation**
  - Prescribed form applications, accompanied by a duly certified registration certificate in the Applicant's name plus prescribed fee.
  - Details of the application for recordation:
    - applicant's details;
    - places of manufacture of the goods bearing the recorded trade mark;
    - Samples/photos of the goods with details to enable differentiation of the same from counterfeits;
    - details of any foreign trade mark licensees or any related foreign companies that use the trade mark abroad.



# Recordation of IPRs – Section 34, ACA and the Anti – Counterfeit (Recordation) Regulations 2021

- **Approval or Denial of Recordation Applications**
  - Notified to applicants through a notice in the Anti Counterfeit Newsletter.
  - Recordations are effective from the date of their approval and remain valid for a year from the date of approval or for the period of the registration of the trade mark whichever is shorter.
  - The recordation also terminates upon cancellation of the recorded trade mark.



# Recordation of IPRs – Section 34, ACA and the Anti – Counterfeit (Recordation) Regulations 2021

## • Certification

- Upon fulfilment of all recordation requirements, the ACA is required to issue a certification mark in the form of an anti-counterfeit security device at a fee to be set out in the Second Schedule to the Act.
- Integrated Product Marking and Authentication System



# Recordation of IPRs – Section 34, ACA and the Anti – Counterfeit (Recordation) Regulations 2021

- **Seizure and Destruction**

- The ACA is granted power to seize and destroy any goods originally imported into Kenya and found in Kenya without the anti-counterfeit security device.
- ACA's conciliatory Approach to this





# ACA Commentary and Q&A Session





## COPYRIGHT

---

All rights reserved. This presentation and/or any part thereof is intended for personal use and may not be reproduced or distributed without the express permission of the author/s.

© 2022

[cliffedekkerhofmeyr.com](http://cliffedekkerhofmeyr.com)



INCORPORATING  
**KIETI LAW LLP, KENYA**