



# Trademark Cancellations

International Practice and Procedures

## NIGERIA

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**Trademark Cancellations: International Practice and Procedures** is an exclusive service provided to INTA members that offers a searchable database that provides practical information on trademark cancellation practice and procedure in country profiles covering topics including:

- availability of cancellation proceedings
- applicable grounds
- venue for bringing such proceedings
- time frames
- estimated costs
- rights of appeal

Each jurisdiction profile follows a standardized format, with topics organized by subject heading. This format makes it easy to search within a jurisdiction profile or to compare how different jurisdictions treat a particular subject.

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This material is only intended to provide an introduction to and simplified profile of this jurisdiction's local practice and procedure relevant to trademark cancellation. This material does not take the place of professional advice given with full knowledge of the specific circumstances of each case and proficiency in the laws of this jurisdiction such as might be provided by a local trademark attorney.

For more information about particular areas of practice, please see INTA's companion online publications: [International Opposition Guide](#).

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### I. AVAILABILITY

- Cancellation of a trademark is available for:
  - national marks.
  - This jurisdiction is not a member of the Madrid System; we have no international marks.
  - This jurisdiction is not a member of the European Community; we have no Community trade marks.
- "Cancellation" is not defined by legislation. "Cancellation" is not used in the Trade Marks Act (Trade Marks Act, Chapter 436, 1990, Chapter T13 Laws of the Federation of Nigeria 2004) to refer to the action referred to in this publication as "Cancellation." In Section 31 of the Trade Marks Act, it is provided that a trademark may be "taken off the register" for non-use. Additionally, in Section 38 of the Act, it is provided that, upon appropriate application being made to the Registrar or the court, challenging the validity of the subsistence of an entry on the register of trade marks, an order may be made "expunging or varying the entry" as the Registrar or the court thinks fit. These are the expressions used in the Act that are equivalent to the word "Cancellation" as used in this publication. They are not defined, but are expected to be understood from the context in which they are used.
- Cancellation actions can be filed online at the following URL: [www.iponigeria.com](http://www.iponigeria.com).

Note, however, that only accredited agents have access to the section of the website where applications can be filed.

### II. GROUNDS

#### A. Absolute Grounds

- The following absolute grounds may be raised in cancellation proceedings:
  - the mark is descriptive;

- the mark is misleading and/or deceptive;
- the mark lacks distinctiveness;
- the mark is generic;
- the mark consists of a geographical indication;
- the mark is against public policy or principles of morality;
- the application for or registration of the mark was made in bad faith.

## **B. Relative Grounds**

- The following relative grounds may be raised in cancellation proceedings:
  - there is an earlier application or registered mark;
  - there are earlier use-based rights in an unregistered mark;
  - the application for or registration of the mark was made in bad faith;
  - the mark is notorious or well known (Article 6bis of the Paris Convention);
  - the trademark application was filed or the registration was granted in the name of an agent or other person with a business connection to the owner of the mark (Article 6septies of the Paris Convention).

## **C. Grounds Other than Absolute, Relative or Non-Use**

- Other than the absolute or relative grounds listed above and/or the non-use grounds listed below, there are no other grounds that may be raised in cancellation proceedings.

## **D. Non-Use Grounds**

- Non-use may be raised as a ground in cancellation proceedings. (1) If the mark was registered without any bona fide intention on the part of the applicant to use it in connection with the goods for which it was registered and there had in fact been no bona fide use of the mark by any proprietor of the mark for the time being up to one month before the date an application for its cancellation was filed, the mark will be removed from the register. (2) If no bona fide use has been made of a registered mark by any of its proprietors for the time being, for a continuous period of five years up to one month before the date an application for its removal from the register is filed, the mark will be removed from the register.
- In relation to cancellation for non-use, "use" is defined as: "bona fide use," which in turn has been interpreted to mean genuine use judged by commercial standards.
- The definition of "use" provided above is derived from case law: There is no reported Nigeria judicial authority on the point; however, decisions of English courts on similar statutory provisions are of strong persuasive authority in Nigeria. Therefore, on the definition of "use," an applicable decision of an English court is: *Elextrux*, (1954) 71 R.P.C. 23.
- Use by a licensee or with the consent of the proprietor constitutes use by the proprietor. The literal interpretation of the relevant statutory provision is that the licensee must be registered as a "registered user" for his use to be deemed as use by the proprietor. However, English judicial authorities, which tend to be followed by Nigerian courts, suggest that a licensee under a written agreement need not be registered as a registered user for the court to recognize his use of the trademark as use by the proprietor. There is as yet no decided Nigerian authority on this point.

- The time frame within which a mark must be used in order to avoid cancellation runs from:
  - the date of issuance of the certificate of registration.
- Counting from the above date, to avoid cancellation for non-use, the mark must be used within: five years.
- There are no consequences to the interruption of use. Provided the interruption in use does not continue for up to five years, the registration will not be liable to cancellation.

### **E. Multiple Grounds**

- An application for cancellation may be based on multiple grounds (i.e., on a combination of absolute, relative and non-use grounds).
- The advantages of filing an action based on multiple grounds are as follows: The application may succeed on any of the grounds.
- If an action is based on multiple grounds and the action could be disposed of on one ground, the other grounds will nevertheless be considered. The Supreme Court requires lower courts to decide all issues raised and argued before them. Therefore, if a cancellation application is initiated at the Federal High Court, the Court is obliged to give a decision on all the grounds raised. However, the direction of the Supreme Court was addressed to the lower courts, and does not concern the Registrar of Trade Marks in the discharge of his adjudicatory duties under the Trade Marks Act. Therefore, the Registrar may not consider other grounds upon which a cancellation is sought once he decides in favor of the applicant on one of the grounds.

### **F. International Registrations and Community Trade Marks**

- Not Applicable

### **G. Introduced Later in Proceedings**

- Additional grounds for cancellation may be introduced at a later stage in the proceedings. The deadline for introducing additional grounds is: The application for cancellation may be amended with leave of the Court or the Registrar of Trade Marks, as the case may be, at any time before the hearing of the application to introduce additional grounds.

## **III. FORUM**

- The forum for cancellation proceedings is the same regardless of the grounds on which the proceedings are brought.
  - Cancellation proceedings on all grounds may be brought before the following court or other judicial tribunal: the Federal High Court.
  - Cancellation proceedings on all grounds may be brought before the following administrative body: the Registrar of Trade Marks.
- The administrative bodies listed above are not independent of the trademark registry.

## **IV. STANDING**

### **A. On Basis of Grounds**

- The following parties have legal standing to apply for cancellation, regardless of the grounds for cancellation:
  - any interested person. Legal interest is required.

## **B. "Person"/"Interested Person" Defined**

- For purposes of standing, a "person" is defined as:
  - both natural and juridical persons.
- For purposes of standing, an "interested person" is defined as:
  - someone who believes he is being damaged by the registration;
  - someone who has filed an earlier pending application to register a conflicting trademark;
  - someone who owns an earlier conflicting trademark registration;
  - someone who owns earlier rights in a copyright or design that conflicts with the mark that is the subject of the trademark application;
  - someone who owns rights to a conflicting trademark acquired through use;
  - someone who is a licensee of any conflicting trademark or other intellectual property right;
  - someone who owns a company name conflicting with the subject of the trademark application.

## **C. Domestic/Foreign Applicant**

- The legal standing criteria for domestic and foreign applicants are the same regardless of the grounds for cancellation.

## **D. Multiple Applicants**

- More than one applicant may apply jointly for a cancellation regardless of the grounds for cancellation, provided they have a common or joint interest in the grounds upon which the cancellation is sought.

## **E. Infringement Defendant as Applicant**

- In a court action for trademark infringement, cancellation may be sought by a defendant.

# **V. REPRESENTATION**

## **A. Qualifications**

- The applicant is always required to appoint a representative in cancellation proceedings.
- The representative (attorney, agent or other legal representative) must be domestic, e.g., with an office in the jurisdiction.
- Additional professional qualifications required of a representative in cancellation proceedings are as follows: The counsel acting for the applicant before the court must be enrolled to practice as a legal practitioner in Nigeria.

## **B. Power of Attorney/Notarization/Legalization**

- A signed power of attorney must be provided to a representative by an applicant in cancellation proceedings. This applies only where the cancellation application is before the Registrar of Trade Marks. However, where the cancellation application is before the Federal High Court, the counsel representing the applicant need not be provided with a power of attorney.
- There are no notarization/legalization requirements for a power of attorney form in cancellation proceedings.

## **VI. COMMENCEMENT**

### **A. Timing**

- Cancellation proceedings that are independent of opposition proceedings may never be commenced before a mark is registered. The provisions of the Trade Marks Act relating to removal of a trademark from the register presuppose prior registration. Therefore, cancellation proceedings cannot be initiated until a trademark has been registered.

### **B. Deadline**

- The deadline for bringing cancellation proceedings varies, depending on the grounds.
  - For proceedings based on absolute grounds, the deadline is: seven years from the date of registration of the trademark, after which the registration will be deemed conclusively valid. Thereafter, cancellation proceedings cannot be validly instituted against it. However, the time limit does not apply where the ground upon which a cancellation application is brought is an allegation that the registration was obtained by fraud or that as at the date the application to register it was filed, the trademark was not distinctive, was contrary to law or morality or was scandalous.
  - For proceedings based on non-use grounds, the deadline is: A cancellation application for lack of bona fide use must be filed within one month of the expiration of the five continuous years of non-use. Otherwise, any use made of the trademark after the one-month period will be recognized by the cancellation tribunal.

### **C. Statute of Limitations**

- There are no statute of limitations or acquiescence provisions that would prevent cancellation regardless of the grounds for cancellation.

## **VII. PARTIAL CANCELLATION**

- Partial cancellation of a registration is possible, regardless of the grounds.
- Multiclass registrations are not permitted in this jurisdiction. Thus, it is possible to apply for cancellation of some of the goods within the single class of the registration.

## **VIII. LENGTH OF PROCEEDINGS**

- The average duration of cancellation proceedings is: A cancellation proceeding instituted in the Federal High Court ought to be concluded within two years. It is difficult to estimate the time within which a cancellation application brought before the

Registrar of Trade Marks will conclude. Though opposition proceedings are now being heard and concluded within a year of the filing of notices of opposition, there is no certainty that similar proficiency will extend to cancellation applications.

- After final arguments have been made and/or oral hearings have taken place, a decision will be rendered within the following time frame: At the Federal High Court, a decision will normally be rendered within three months of final arguments. The Registrar's decision could be delayed for longer than six months after final arguments have been heard in a cancellation application.

## **IX. COSTS AND FEES TO INITIATE**

- The following costs and fees are associated with initiating cancellation proceedings:
  - attorney fees;
  - statutory or regulatory fees.
- No official fees are refundable if an application for cancellation is withdrawn, regardless of the grounds for cancellation.
- If an application for cancellation is based on multiple grounds, no additional official fees are due.

## **X. DOCUMENTATION / NOTARIZATION / LEGALIZATION REQUIREMENTS**

- The following documents must be notarized in cancellation proceedings regardless of the grounds for cancellation: (a) affidavit in support of the notice of originating motion (in respect of a cancellation action in the Federal High Court); (b) statutory declaration (in respect of a cancellation application before the Registrar).
- The documentation that must be submitted and the procedures necessary to initiate cancellation proceedings are the same regardless of the grounds for cancellation and are as follows: A cancellation application filed before the Registrar of Trade Marks shall be in compliance with statutory Form 27 and shall be accompanied by a statement setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief that he seeks. Both the application and the statement may be prepared and signed by an agent on behalf of the applicant.

An application for cancellation before the Federal High Court shall be initiated by a notice of originating motion in which the relief claimed and the grounds upon which the claim is based shall be stated. The notice of motion shall be accompanied by an affidavit providing evidence in support of the application. The notice of motion shall be prepared and signed by counsel. The affidavit in support of the motion may be sworn by any person who has personal knowledge of the facts to be deposed or who has gathered the facts from documents available to him or has been informed of the facts by someone whom he has reasonable grounds to believe.

## **XI. DISCOVERY**

### **A. Interrogatories**

- No party may request that any other party answer written questions, under oath ("Interrogatories"), in a cancellation application before the Registrar of Trade Marks. With regard to cancellation proceedings before the Federal High Court, however, provisions of the 2009 Rules of Civil Procedure of the Federal High Court permit Interrogatories to be delivered by either the plaintiff or defendant in any cause or



matter for the examination of the opposite party. This provision will apply to the applicant or respondent in a cancellation action.

- The general rules concerning the timing, number and scope of Interrogatories are as follows: Interrogatories must be delivered within seven days of close of pleadings. Close of pleadings with regard to an action commenced by an originating motion would be date of expiration of the time limit for the filing of the respondent's counteraffidavit in opposition to the motion. Affidavits in answer to Interrogatories must be filed within seven days of the delivery of the Interrogatories or within such extended time as the Court may grant upon application.
- If the requested party fails to provide answers to Interrogatories, in whole or in part, the procedure by which the requesting party can compel compliance is as follows: The party delivering the Interrogatories may apply to the judge to issue an order compelling the party on whom the Interrogatories were served to answer them. Failure to comply with the order of the court will render the defaulting party liable for contempt of court and subject to all consequential sanctions.
- If the requested party fails to provide answers to Interrogatories, in whole or in part, the consequences are as follows: Failure to comply with the order of the court will render the defaulting party liable for contempt of court and subject to all consequential sanctions.
- The grounds upon which a party may justify its refusal to respond to Interrogatories, in whole or in part, and the circumstances in which these grounds are applicable are as follows: Objection may be raised to answering any one or more of several Interrogatories on the ground that it is or they are scandalous or irrelevant. The objection maybe raised in the affidavit in answer.
- Answers to Interrogatories may be used as evidence in the action.

## **B. Document Requests**

- Any party may request that any other party produce documents in response to written document requests ("Document Requests"). Parties to cancellation proceedings before the Registrar of Trade Marks are not entitled to request the production of documents believed to be in the possession of the other party. In cancellation proceedings before the Federal High Court, however, parties may request other parties to make discovery on oath of any document in their possession, custody, power or control relating to any matter in question in the case. They may also request to inspect documents referred to in pleadings and affidavits filed by the other party. In addition, parties may apply to the Court for an order requiring any party to produce any document in their possession, even if such document was not referred to in any pleading or affidavit filed by that party.
- The general rules concerning the timing, number and scope of Document Requests are: Regarding the request for discovery on oath, a request must be served within seven days of the close of pleadings or within such period as the judge may direct. The party on whom a request for discovery is served shall answer on oath within seven days of being served with the request or within such other time as the judge may allow.

Concerning inspection of documents, the Court of Judge in Chambers may, at any time during the pendency of the action, order the production by any party of documents in his possession or power that relate to any matter in question in the action. The Court may deal with the documents when produced in such manner as appears just. Every party may give notice to any other party in whose pleadings or affidavits reference is made to any document to produce the document for inspection of the party giving the notice or of his lawyer and to permit him or them to take copies of such documents.

Any party failing to comply with the notice, subject to certain exceptions, shall not afterwards be at liberty to put any such document in evidence on his behalf in that action. Where the notice to produce refers to documents disclosed in an affidavit filed in compliance with a court order directing a party to make discovery on oath of the documents that are in his possession or power relating to any matter in issue, the party on whom the notice to produce is served shall within two days of receipt of the notice deliver to the party giving the notice a notice stating a time within seven days thereafter at which the documents may be inspected at the office of his lawyer and stating which (if any) of the documents he objects to produce and on what grounds. Where the documents demanded to be produced are not those disclosed in an affidavit filed in compliance with an order for discovery, then the party on whom a notice to produce is served has four days within which to comply with the notice.

- If the requested party fails to provide documents in response to Document Requests, in whole or in part, the procedure by which the requesting party can compel compliance is as follows: Regarding request to make discovery of documents, if the party on whom a request is served fails to answer the request, the party making the request may file an application for an order of court to compel the making of the discovery on oath. Upon failure of the party required to make discovery after an order of court in that regard has been made, the party in whose favor the order was made may apply to the court for an order to commit the defaulting party for contempt of court. Where an order of court for inspection of documents is made, the party in whose favor the order was made may file an application to commit the party against whom the order was made, for contempt of court, if that party fails to produce the documents for inspection.
- If the requested party fails to provide documents in response to Document Requests, in whole or in part, the consequences are as follows: (1) A party who fails to produce for inspection a document referred to in his pleadings or affidavit and in respect of which a notice requesting inspection was served on him shall be barred from putting the document into evidence during the proceedings. (2) A party who fails to comply with an order of the court for production and inspection of any document shall be liable to be committed for contempt of court. Furthermore, if the party is a plaintiff, his claim may be dismissed for lack of prosecution. If he is the defendant, his defense may be struck out, and the plaintiff may consequently apply for a default judgment against him.
- The grounds upon which a party may justify its refusal to respond to Document Requests, in whole or in part, and the circumstances in which these grounds are applicable are as follows: (1) Failure of a party to produce for inspection a document referred to in his pleadings or affidavit may be excused if he satisfies the Court that the document relates only to his own title or that he has some other excuse that the court deems sufficient for not complying with the notice. (2) The Court exercises an unfettered discretion regarding circumstances that may excuse the failure of any party to comply with its orders. Therefore, where a party fails to comply with the order of the court for production and inspection of any document, the grounds upon which the Court may refrain from applying the sanctions prescribed for such noncompliance are entirely within the discretion of the Court.
- Documents obtained in response to Document Requests may be used as evidence in the action.

### **C. Depositions**

- No party may request that one or more witnesses for any other party appear in person to be cross-examined under oath ("Depositions"). A party may, however, apply to the Court for an order that one or more witnesses who have deposed to affidavits in support filed in the cancellation action appear in person at the trial to be cross-

examined under oath. The decision of the Court concerning such an application is discretionary.

## **XII. BURDEN OF PROOF**

- The burden of proof can shift to the other party during the course of cancellation proceedings under the following circumstances: At all times, the burden of proof rests on the party against whom the decision would go if no further evidence were given in the proceedings. Therefore, at the commencement of proceedings, the burden of proof rests on the party applying for cancellation. Upon his tendering evidence sufficient to support a verdict in his favor if no further evidence were tendered, the burden of proof shifts to the other party.

## **XIII. WRITTEN ARGUMENTS**

### **A. Requirement/Deadline**

- Written arguments are optional in a cancellation application before the Registrar of Trademarks but are mandatory in cancellation actions before the Federal High Court.
- The deadline for submitting written arguments is determined by scheduling order or ruling of the court, other judicial tribunal or administrative body and is: at the discretion of the Court or the Registrar of Trade Marks, as the case may be.

### **B. Extensions to File**

- Extensions of time are available to the applicant to file written arguments.
  - The duration of the extension is: at the discretion of the cancellation tribunal.
- Extensions of time are available to the respondent to file written arguments.
  - The duration of the extension is: at the discretion of the cancellation tribunal.
- Extensions do not require the consent of the adverse party.
- Extensions require the approval of the court, other judicial tribunal or administrative body.
- No official fees are required to obtain extensions.

## **XIV. ORAL HEARINGS**

- Oral hearings are permitted in cancellation proceedings. Oral argument of the cancellation application is required by the Trade Marks Act and the applicable rules of the Federal High Court. In normal cancellation proceedings, however, oral testimony by witnesses is not permitted.
- The determination of whether oral hearings will take place is made by: the Trade Marks Act and the applicable rules of the Federal High Court.

## **XV. EVIDENCE**

### **A. To Establish Absolute Grounds**

- The following types of evidence may be submitted to establish absolute grounds: In proceedings before the Registrar of Trade Marks: statutory declarations and documents. In proceedings before the Federal High Court: affidavits and documents.

- Evidence must be submitted to: the Registrar or the Court, as the case may be.
- Evidence must be submitted by the following deadline: In proceedings before the Registrar, evidence in support of the application for cancellation must be filed by the applicant within one month of the service on him of the counterstatement of the respondent. In proceedings before the Federal High Court, an affidavit in support of the motion for the cancellation, together with copies of any documentary evidence to be relied on, must be filed along with the notice of motion.

#### **B. To Establish Relative Grounds**

- The following types of evidence may be submitted to establish relative grounds: in proceedings before the registrar of trade marks, statutory declarations and documents; in proceedings before the Federal High Court, affidavits and documents.
- Evidence must be submitted to: the Registrar or the Court, as the case may be.
- Evidence must be submitted by the following deadline: in proceedings before the Registrar, evidence in support of the application for cancellation must be filed by the applicant within one month of the service on him of the counterstatement of the respondent. In proceedings before the Federal High Court, an affidavit in support of the motion for the cancellation, together with copies of any documentary evidence to be relied on, must be filed along with the notice of motion. The respondent must file his counteraffidavit and written argument within seven days of being served with the applicant's notice of motion and written argument.

#### **C. To Establish Non-Use Grounds**

- The following types of evidence may be submitted to establish non-use grounds: In proceedings before the Registrar of Trade Marks: statutory declarations and documents. In proceedings before the Federal High Court: affidavits and documents.
- Evidence must be submitted to: The Registrar or the Court, as the case may be.
- Evidence must be submitted by the following deadline: In proceedings before the Registrar, evidence in support of the application for cancellation must be filed by the applicant within one month of the service on him of the counterstatement of the respondent. In proceedings before the Federal High Court, an affidavit in support of the motion for the cancellation, together with copies of any documentary evidence to be relied on, must be filed along with the notice of motion.

#### **D. To Establish Other Grounds**

- Not Applicable

#### **E. Applicant's Proof of Use**

- The applicant must submit proof of use of the mark upon which the cancellation is based.

#### **F. Applicant's Extensions of Time**

- Extensions of time available for the applicant's submission of evidence are the same regardless of the grounds on which the cancellation proceedings are based. Extension is possible for: filing of the applicant's statutory declaration in support of an application before the Registrar of Trade Marks. The affidavit in support of the application before the High Court must be filed along with the application.

- No official fees are payable to obtain an extension for submitting evidence.

### **G. Additional Evidence**

- Additional evidence may be submitted at a later stage in the cancellation proceedings. The deadline for submitting additional evidence is: at the discretion of the Registrar in applications before the Registrar of Trade Marks. As for applications before the High Court, additional affidavits may be filed in support of the application at any time before the hearing of the application.

### **H. Evidence in Reply/Deadline and Extensions**

- Evidence in reply is optional.
- Evidence in reply must be submitted by the following deadline: in proceedings before the registrar, one month after the respondent has been served with the evidence of the applicant; in proceedings before the Federal High Court, within 30 days of being served with the notice of motion.
- The following extensions of time for the respondent's submissions are available: An extension of time within which to file the respondent's evidence may be granted by the Federal High Court or the Registrar of Trade Marks. The length of the extension is at the discretion of the judge or the Registrar, as the case may be.
- The official fees payable to obtain these extensions are: (a) at the trademarks registry, a fee approximating \$87.00; (b) in court, for each day of default in performing an act within a given time limit, a penalty of approximately \$1.36 per day.
- Petitioner cannot demand that respondent provide additional particulars relating to the respondent's proffered evidence.

### **I. Proof of Respondent's Use**

- The respondent may submit the following kind of evidence to prove use:
  - invoices;
  - catalogues;
  - evidence of turnover;
  - packaging;
  - labels;
  - price lists;
  - advertisements;
  - written statements;
  - market surveys.
- In assessing whether "use has been made," sufficient use is demonstrated by: evidence of genuine trading activity within Nigeria.
- The following factors are considered when determining whether a mark has been sufficiently used:
  - the nature of the goods or services at issue;
  - market characteristics;
  - the scale and frequency of use of the mark;
  - export use.

- Respondent cannot demand that petitioner provide additional particulars relating to the petitioner's proffered evidence.

## **J. Consequences of Failure to Respond**

- The consequences if a respondent fails to file a response or answer to a petition for cancellation are as follows:
  - Upon request of the petitioner, the court, other judicial tribunal or administrative body may enter a default judgment in favor of the petitioner.
  - The court, other judicial tribunal or administrative body may consider and decide the matter on the merits despite such failure.

## **XVI. DEFENSES**

### **A. Acquired Distinctiveness**

- Acquired distinctiveness cannot be a valid defense to cancellation proceedings based on absolute grounds.

### **B. Excusable Non-use**

- Non-use can be excused, thereby avoiding cancellation, if: the non-use is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trademark in relation to the goods to which the applications relate.

## **XVII. MONETARY AWARDS/ATTORNEY FEES**

### **A. Basis/Amount of Award**

- A cancellation decision will not include a formal monetary award against the losing party regardless of the grounds for cancellation. Costs are awarded in favor of the successful party. The principle the Court is required to observe in fixing costs is that the party in the right is to be indemnified for the expenses to which he has been unnecessarily put in the proceedings, as well as compensated for his time and effort in coming to Court. This should mean that all the expenses incurred by the successful party, including his attorney fees should be awarded as costs in his favor. In practice, however, attorney fees are not usually awarded. Indications are that this may change in the near future.

### **B. Attorney Fees**

- The successful party is entitled to recover attorney fees in cancellation proceedings, regardless of the grounds for cancellation. In respect of cancellation proceedings before the Federal High Court, the court is empowered by its rules of civil procedure to award cost to a successful party to indemnify him for the expenses he has unnecessarily incurred during the proceedings. This should ordinarily mean that attorney fees may be included in the computation of cost to be awarded to the party. In practice, however, the Courts do not normally include attorney fees as part of cost to be awarded. Attitudes are, however, slowly changing and it is possible that in the near future the courts will take attorney fees into account in the award of cost. In respect of proceedings before the Registrar, the registrar is given a broad discretion to award to any party "such cost as he may consider reasonable." This does not preclude the

award of attorney fees as costs. In practice, however, the Registrar does not include attorney fees in the costs he awards to the successful party in proceedings before him.

- The award of attorney fees in cancellation proceedings is:
  - discretionary.

## **XVIII. CONCLUSION OF PROCEEDINGS**

### **A. Effect of Decision**

- A decision in cancellation proceedings is only valid between the parties to the proceeding.
- A decision ordering cancellation of a mark takes effect: on the date the order was made.

### **B. Withdrawal or Termination of Proceeding/Costs**

- Cancellation proceedings based on any grounds can be terminated by withdrawing the cancellation application regardless of the grounds for cancellation. A cancellation application can be withdrawn anytime before the hearing commences. Where hearing of the cancellation application has, however, commenced before the application for the withdrawal is brought, the tribunal should dismiss the application rather than strike it out.
- Withdrawal of a cancellation application based on any grounds requires the approval of the court, other judicial tribunal or administrative body regardless of the grounds for cancellation.
- Withdrawal of a cancellation application does not require the approval of the other party to the proceedings; termination is automatic regardless of the grounds for cancellation.
- When cancellation applications are withdrawn, the cost of the proceedings is borne by: the applicant.

## **XIX. APPEALS**

### **A. Availability/Deadline**

- A cancellation decision may be appealed.
- Appeals of cancellation decisions must be brought before the following deadline: An appeal from the decision of the Registrar of Trade Marks lies to the Federal High Court and must be filed within one month of the date on which the decision of the Registrar was delivered or notified. An appeal from the decision of the Federal High Court lies to the Court of Appeal and must be filed within three months of the date on which the judgment of the Federal High Court was delivered.

### **B. Forum**

- Regardless of the grounds for cancellations, appeals are heard by
  - the following court or other judicial tribunal: for appeals from the decision of the Registrar of Trade Marks, the the Federal High Court; for appeals from the decision of the Federal High Court, the Court of Appeal.

### **C. New Evidence**

- New evidence may be submitted on appeal. This is, however, only by leave of the appellate court. Such leave will not be granted unless special circumstances are shown. The special circumstances would be for the applicant to show that the new evidence was unavailable during trial and could not have been obtained by reasonable diligence on the part of the applicant.

### **D. Representation/Cost/Awards**

- The approximate cost range of official fees (in local currency) to file an appeal is: not more than NGN 5,000.
- Specialist counsel is not required, but is recommended, for an appeal of a cancellation decision.
- An appeal decision cannot include a monetary award against the losing party, if the earlier decision did not include a monetary award.

### **E. Scope**

- An appeal consists of a complete rehearing of the matter.

### **F. Further Appeals/Alternatives to Appeal**

- Appeal decisions may be further appealed.
  - Appeal decisions may be further appealed to: the Court of Appeal, for appeal of decisions of the Federal High Court; the Supreme Court, for appeal of decisions of the Court of Appeal.
- There is no alternative procedure to an appeal.

## **XX. CONSEQUENCES**

### **A. Revocation or Invalidation**

- A mark that is revoked does not differ from a mark that is declared invalid following cancellation proceedings.

### **B. Licenses, Assignments, Other Transactions**

- The consequences for license agreements if a mark has been revoked in cancellation proceedings are: the license agreement becomes invalid from the date of revocation of the trademark.
- Because a mark that is revoked does not differ from a mark that has been invalidated in cancellation proceedings, the consequences for licensing agreements are the same, and are: the license agreement becomes invalid from the date of revocation or invalidation of the trademark.
- Because a mark that is revoked does not differ from a mark that has been invalidated in cancellation proceedings, the consequences for assignments are the same, and are: the assignment becomes invalid.
- Because a mark that is revoked does not differ from a mark that has been invalidated in cancellation proceedings, the consequences for past transactions are the same, and are: past transactions are not adversely affected in that the removal of the trademark from the register takes effect from the date the order of Court or the Registrar is made.



## **XXI. NOTIFICATION TO TM OFFICE**

- Following a decision to cancel a mark, the Trademark Office must be formally notified of the cancellation, regardless of the grounds on which the proceedings were brought.
  - The following party has responsibility to notify the Office: Where the cancellation proceeding was before the Registrar, there is no requirement for the applicant to notify the Registrar of a cancellation order made by the Registrar. However, where the cancellation proceeding was before the Federal High Court, or the cancellation order was made by an appellate court, it is the responsibility of the applicant to notify the Registrar of the order of the court.
  - The deadline to make the notification is: none.
- The consequences of failing to meet the deadline to notify the Trademark Office are: not applicable. There is no deadline for notifying the Registrar of a cancellation order made by the Court.

## **XXII. REILING OF IDENTICAL MARK**

- After a cancellation, depending upon the grounds on which the proceeding was based, an application to register the mark may be refiled:
  - by either of the parties to the action;
  - by a third party.
- There are no time limits for reiling following the cancellation of a mark.

## **XXIII. COLLECTIVE MARKS**

- Collective marks may not be registered in this jurisdiction.

## **XXIV. CERTIFICATION MARKS**

- Certification marks may be registered in this jurisdiction. Certification marks are defined as: a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, method of manufacture, quality, accuracy or other characteristic from goods not so certified, provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified. (Section 43(1) of the Trade Marks Act.)
- The provisions discussed throughout this jurisdictional profile all apply to the cancellation of certification marks.

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