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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

REPORT OF THE 140TH INTERNATIONAL TRADEMARK ASSOCIATION (INTA)
MEETING HELD BETWEEN 19TH AND 25TH MAY 2018 IN SEATTLE, WASHINGTON

STATE, USA	
THE NATIONAL ASSEMBLY PAPERS LAID	
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TABLED BY:	Hon. Corneil Serem, M.P. Vice Chairman, DC on Trade, Industry & Cooperatives
CLERK-AT THE-TABLE:	Rachele Kain - Principal Clerk Assistant

Directorate of Committee Services
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NAIROBI **DECEMBER, 2018**

ABBREVIATIONS AND ACRONYMS

ACA	Anti Counterfeit Agency
ARIPO	African Regional Intellectual Property Organization
EU	European Union
INTA	International Trademark Association
IP	Intellectual Property
KECOBO	Kenya Copyright Board
KEPHIS	Kenya Plant Health Inspectorate services
KIPI	Kenya Industrial Property Institute
OECD	Organisation for Economic Co-operation and Development
PSPs	Payment service providers
UNBS	Uganda National Bureau of Standards
WCO	World Customs Organisation
WIPO	World Intellectual Property Organisation

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PREFACE

The Committee sent a delegation to participate in the 140th Annual Meeting of the International Trade Mark Association (INTA) held in Seattle, Washington State in the USA from 19th to 25th May 2018.

INTA is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation. INTA membership comprises of more than 7,200 organizations from 191 countries. It is headquartered in New York City and also has offices in Brussels, Santiago, Shanghai, Singapore, and Washington D.C. and representatives in Geneva and New Delhi.

The Committee was represented at the meeting by a **delegation of four (4) Members of Parliament and two (2) members of the secretariat** as follows –

- 1) Hon. Alois Lentoimaga, MP
- 2) Hon. Jones Mlolwa, MP
- 3) Hon. Daniel Maanzo, MP
- 4) Hon. Joseph Ngugi, MP
- 5) *Ms. Nuri Kitel Nataan Clerk Assistant III (Secretary to the delegation)*
- 6) *Mr. Joshua Ondari Clerk Assistant III*

The meeting offered the Committee an opportunity to attend and learn from the various events, workshops and meetings emerging issues in protection of intellectual property. The Committee attended various sessions including: *the Anti-counterfeit Government Workshop; Comparing the Approach under Trademark and Copyright Law; the Psychology of Mediation: Analyzing How Parties Negotiate and Copyright and Trademark: What Participants Can Learn From Each Other On the Internet Frontier of Trademark Protection*, amongst others.

The delegation also had an opportunity to –

- i. learn and identify various legislative gaps existing in the area of trademark and copyright;
- ii. network and exchange ideas with other participants;
- iii. initiate continuous engagement with the International Trademark Association that will not only see Members attend future INTA meetings but also gain from the resources and

training aimed at building the capacity of Members of Parliament to promote matters of trademark, intellectual property and copyright.

The Committee was privileged to hold a bilateral meeting with Mr. Etienne Sanz de Acedo, CEO of INTA. This meeting culminated in a visit by Mr. de Acedo to the National Assembly on 6th June, 2018 where he paid a courtesy call on Hon. Justin Muturi, EGH, MP, Speaker of the National Assembly and also met Members of the proposed Caucus on Intellectual Property.

As the Leader of the Delegation, I take this opportunity to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. I also wish to commend the Members of the delegation who showed great commitment to duty throughout the duration of the meeting.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Trade, Industry and Cooperatives, to present this report to the House pursuant to the provisions of Standing Order 199 of the National Assembly.

Signed.....

Date.....

HON. ALOIS MUSA LENTOIMAGA, MP

LEADER OF DELEGATION

EXECUTIVE SUMMARY

This Report is a culmination of the various workshops, meetings and plenary sessions attended by a delegation from the Committee on Trade, Industry and Cooperatives to the 140th Annual Meeting of the International Trade Mark Association (INTA) held in Seattle, Washington State in the USA from 19th to 23rd May 2018 at the Washington State Convention Centre.

INTA is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation.

This report is made up of five chapters each covering the deliberations, different topics of discussion as well as resolution resulting from the meeting.

Intellectual property is defined as creations of the mind, such as inventions, literary and artistic works, designs, symbols, names and images used in commerce. Intellectual property is a valuable asset in today's global trading world, but if rights in intellectual property cannot be adequately enforced, the value of such rights and the incentive to trade in them is greatly diminished. Kenya is a great asset both geographically and economically in the fight against counterfeits in the region.

The report details the following –

- 1) Background information on the International Trademark Association (INTA) and the 140th Annual Meeting;
- 2) Rationale for the Committee's participation at the 140th INTA Annual meeting;
- 3) Presentations and deliberations at the Meeting;
- 4) Intellectual Property (IP) in Kenya; and
- 5) Resolutions and Way forward.

1.0 BACKGROUND

1.1 Establishment of the Committee

The Departmental Committee on Trade, Industry and Cooperatives is one of the fifteen Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, access and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may be deemed necessary, and as may be referred to the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.2 Mandate of the Committee

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee:-

Trade, securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development including small and medium-size enterprises, intellectual property, industrial standards, anti-counterfeit policies and co-operatives development.

In executing its mandate, the Committee oversees the Ministry of Industry, Trade and Cooperatives.

1.3 Committee Membership

The Committee on Trade, Industry and Cooperatives was constituted by the House on Thursday 14th December, 2017 and comprises of the following Members:-

Chairperson	Hon. Kanini Kega, MP
Vice Chairperson	Hon. Cornelly Serem, MP
Members	Hon. Alexander Kimutai Kigen Kosgey, MP
	Hon. Alois Musa Lentoimaga, MP
	Hon. Anab Mohamed Gure, MP
	Hon. Andrew Mwadime, MP
	Hon. Bunyasi John Sakwa, MP
	Hon. Daniel Maanzo, MP
	Hon. Wanyonyi Ferdinand, MP
	Hon. James Mukwe, MP
	Hon. Jones Mlolwa, MP
	Hon. Kipruto Moi, MP
	Hon. Murungi Kathuri, MP
	Hon. Gichimu Robert, MP
	Hon. Kimani Patrick Wainaina Jungle, MP
	Hon. Korir Generali Nixon Kiprotich, MP
	Hon. Nduati Joseph Ngugi, MP
	Hon. Wachira Rahab Mukami, MP
	Hon. (Dr.) Wilberforce Oundo, Phd, MP

1.4 Rationale of the Committee's participation at the 140th INTA Annual Meeting

It was envisaged that the meeting would enable the participants to:

- 1) Attend and learn from the various events, workshops and meetings addressing various key issues related to IP. The topics included: Anti-counterfeit Government Workshop, Comparing the Approach under Trademark and Copyright Law, The Psychology of Mediation: Analysing How Parties Negotiate and Copyright and Trademark: What participants Can Learn From Each Other On the Internet Frontier of Trademark Protection among others;
- 2) Learn and identify legislative gaps existing in Kenya in the area of Trademark and Copyright;
- 3) The over 10,000 participants at the meeting would give the delegation an opportunity to network and exchange ideas with other participants;
- 4) Initiate continuous engagement with INTA that will not only see Members attend future INTA meetings but also gain from the resources and trainings available at INTA;
- 5) Hold a bilateral meeting with Mr. Etienne Sanz de Acedo, CEO of INTA.

1.4 Expected Outcomes

- 1) Capacity building for the Committee's Members in the area of Trademark and Copyright
- 2) Effective sharing of knowledge and networking with other global participants
- 3) Collaboration between INTA and the Committee for future engagements and capacity building

2.0 ABOUT THE INTERNATIONAL TRADEMARK ASSOCIATION (INTA)

The International Trademark Association (INTA) is a non-profit global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation. It was founded in **1878 by 17 merchants and manufacturers** who saw a need for an organization “to protect and promote the rights of trademark owners, to secure useful legislation and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

INTA members are drawn from **7,200 organizations from 191 countries** and collectively contribute almost US \$12 trillion/€8.8 trillion /¥73 trillion to global GDP annually. For comparison purposes, the 2016 annual GDP of the top three markets was \$11.2 trillion (China), \$16.4 trillion (European Union) and \$18.6 trillion (United States).

The Association's member organizations represent approximately 31,000 trademark professionals and include brand owners from major corporations as well as small and medium-sized enterprises, law firms, and non-profits. There are also government agency members, as well as individual professor and student members.

As a not-for-profit association, INTA's role is to serve its members and society as a trusted and influential advocate for the economic and social value of brands.

Headquartered in New York City, INTA also has offices in Brussels, Santiago, Shanghai, Singapore, and Washington D.C. and representatives in Geneva and New Delhi.

INTA works to;

1) Promote the Value of Trademarks and Brands through:

- Protection of trademarks and related IP;
- Harmonization of laws and convergence of practices;
- Enforcement; and
- Business value of brands.

2) Reinforce Consumer Trust;

- Reinforce trademarks as sources of information and brands as promises of delivery;
- Communicate the contribution of brands to economies and society;
- Brand equity.

3) **Embrace Innovation and Change**

- Evaluate changes as a result of technology, innovation, and evolving consumer needs and values;
- Educate members on the impact of innovation, technology, and change on brands;
- Provide innovative, valuable services to members.

3.0 DISCUSSION TOPICS AT THE 140TH INTA ANNUAL MEETING

The 140th INTA Annual Meeting was held from May 19th to May 23rd, 2018 in Seattle, Washington, at the Washington State Convention Center. The Annual Meeting is the largest gathering of the global trademark community and provided a unique venue for exceptional educational and networking opportunities. Over 10,000 registrants from more than 140 countries participated in the event.

One of the interesting workshops INTA hosted was an **Anti-counterfeit Workshop** on Saturday, 19th May, 2018. This was a closed-door session which offered participants an opportunity to collaborate with brand owners, investigators, leading anti-counterfeit associations, and others on the battle against counterfeiting.

INTA also hosted a **Government Officials Reception** on Tuesday, 22nd May at the Washington State Convention Center during which government representatives had the opportunity to network and to meet INTA's top leadership.

Similarly, the delegation **had a bilateral meeting with Mr. Etienne Sanz de Acedo, CEO of INTA** where issues of common interest and collaboration were discussed.

The delegation also had an opportunity to attend other workshops that ran during the week. Some of the topics of interest included;

- (i) Fair Use: Comparing the Approach under Trademark and Copyright Law Entire delegation
- (ii) The Psychology of Mediation: Analysing How Parties Negotiate
- (iii) More or Less Secure: Are International Data Privacy Regulations Helping You Protect Your Brand?
- (iv) Copyright and Trademark: What Participants Can Learn From Each Other On the Internet Frontier of Trademark Protection

Anti-counterfeit Workshop

This workshop gave in-house teams, including marketplaces and government officials, an opportunity to benchmark and collaborate with respect to the ongoing challenges of online counterfeiting.

This hands-on and discussion-heavy workshop also gave participants the opportunity to work together to share best practices and lessons learned, and discuss how to enhance collaboration and cooperation among key stakeholders to effectively stem the rising tide of online counterfeiting.

Each group discussed a series of common questions, including:

- What does “success” in the fight against online counterfeiting look like to you in one year and in five years? What does “best in class” look like from your perspective?
- What are the key obstacles to success? What will make us fail?
- What will make this work? What steps could be taken, by you and by other stakeholders, to overcome those obstacles in the short, intermediate, and long term?

From the discussions, the delegation observed that in the global environment, the sale of counterfeit goods remains a significant issue facing consumers, industry, and governments alike. The continuous change that is inherent in the internet raises the problem to heightened levels as counterfeiters find simplified means and additional channels online to promote and sell counterfeit goods to consumers.

A number of **key factors continue to spur the growth of counterfeit sales online:**

- 1) The **worldwide reach of the Internet** means that sellers of counterfeits can reach consumers all over the world and are not limited to “brick and mortar” establishments.
- 2) Likewise, consumers who have **access to the Internet are more exposed to, and have more opportunities to purchase, knowingly or unknowingly**, counterfeits from sellers within or outside their respective countries.

- 3) **Payments can be made entirely online.** Therefore, it is not only consumers who can purchase counterfeits using the internet; retailers, wholesalers, resellers, or anyone else with a credit card can shop for counterfeits online.
- 4) The **anonymity gained from operating via the internet** allows counterfeiters more easily to dupe consumers into thinking they are buying genuine goods.
- 5) Counterfeiters can reach individual consumers and make **small international sales that are less likely to result in significant loss** if the goods are seized by customs or other authorities and that are harder for authorities to track and seize.

The **impact has resulted in –**

- 1) **increased sale of and access to counterfeits that poses serious threats to the economy and to public health and safety.** As the Organisation for Economic Co-operation and Development (OECD) noted in a 2007 study, the internet was a significant factor in the distribution of counterfeits and was becoming an increasingly important vehicle for sales of all kinds of merchandise. The report also noted that public health and safety were put at grave risk by counterfeit goods, such as pharmaceuticals, airplane and automotive parts, and electronic goods that were made with substandard and/or toxic materials.
- 2) **abuse of the internet by criminal organizations to facilitate counterfeiting activities.** The OECD report shows that criminal networks and organized crime thrive via counterfeiting and piracy activities. U.S. authorities have reported that sales of counterfeit goods, including fake medicine, have been used to support the Middle Eastern terrorist group Hezbollah. Counterfeiting proceeds have been linked by other investigators to Al-Qaeda, ETA, the Mafia, Chinese Triad gangs, the Japanese Yakuza crime syndicates, Russian organized criminals, and international illegal drug cartels.

Some of the **best practices for voluntary measures** in addressing the sale of counterfeits on the internet discussed included;

1) **Best Practices for Search Engines**

- (i) **Search engine advertising:** for example, applicable terms of service or other policies should expressly and clearly prohibit advertisements promoting counterfeit goods by

advertisers using search engine advertising services; search advertising services should enforce these terms and policies.

- (ii) **Search engine services:** for example, search engines should provide a timely and effective process for trademark owners to notify them of the illegal sale of counterfeit goods and of any court order that a trademark owner has obtained against a defendant in which the court has adjudicated that the defendant is engaged in the illegal sale of counterfeit goods. Search engines should remove the search results leading to the illegal counterfeiting content from their index and provide a process to respond to such reports of illegal counterfeiting.

2) Best Practices for Trading Platforms

- Online trading platforms should strengthen and streamline procedures for identifying and taking more effective action against repeat offenders, as well as tighten repeat offender policies.
- Online trading platforms should employ preventive measures to reduce the sale of counterfeits by anonymous counterfeiters, such as filters and identity verifications and improved customer screening

3) Best Practices for Payment Service Providers

- Payment service providers (PSPs) should have in place policies prohibiting the use of their services for the purchase and sale of goods that are determined to be counterfeit under applicable law. Such policies should include a “chargeback reason code” permitting the payee to receive a refund without returning the goods to the merchant where the goods have been determined to be counterfeit by the trademark owner, a customs agency, a law enforcement agency, or another neutral expert.
- PSPs and related financial institutions should adopt appropriate due diligence processes and educational initiatives to minimize the offering of online payment processing services to purveyors of counterfeit goods

4) Best Practices for Trademark Owners

- Trademark owners should take steps on an ongoing basis to educate online platforms, other intermediaries, and the public as to their trademarks.

- Trademark owners should take steps to actively monitor offers on online marketplace, shopping, and social media platforms, with the aim of identifying counterfeits, and notify the platforms and PSPs if applicable.

5) Best Practices for Social Media Sites

- Applicable terms of service, content, and other guidelines should expressly and clearly prohibit counterfeiting activities by users of social media sites. Social media sites should actively enforce these terms and guidelines by warning that, if reported, an infringing account can be closed and that repeated reports of infringement can lead to the user's being banned from the site indefinitely.
- Social media sites should have a clear and effective process publicly available to deal with the sale and offering of counterfeit products. Such process shall specify, at a minimum, the information required to be reported by the trademark owner or user, which shall not be unduly burdensome; when, to whom, and how such information is to be reported; and the process by which and time frame within which the social media site or its agent shall act upon such reports. Social media sites should conform to their stated process requirements.

6) Best Practices for Registrars and Registries

- Registrars and registries should adopt, publish, and enforce IPR policies and effect appropriate due diligence to address and minimize misuse of their services, which they will clearly communicate and indicate on their sites and include in the contracts and terms of service that they conclude with their customers.
- Registrars and registries should, furthermore, consistently enforce the terms of service with their customers.

7) Best Practices for Logistics Companies

- Logistics companies should procure comprehensive and detailed identity and contact information for consignors and consignees before providing logistics support.
- Logistics companies should have simple procedures in conformity with the applicable laws of the respective jurisdiction for the sharing of information with enforcement agencies and trademark owners investigating counterfeiting activities.
- Logistics companies should have in place mechanisms for blacklisting consignors/consignees found to be involved in counterfeiting activities.

Fair Use: Comparing the Approach Under Trademark and Copyright Law

The workshop explored the **concept of fair use in both trademark and copyright law** in the United States, European Union (EU), and other countries with similar federal trademark and copyright laws. Speakers offered comparisons between situations under trademark and copyright law, specifically with respect to parodies and comparative advertising. The panel explored the following questions:

- Does copyright protection prevent trademark use in comparative advertising or nominative fair use situations?
- Does trademark protection prevent copyright fair use or fair dealing in expressive works?
- Do the fair use concepts influence each other, and can trademark owners benefit from fair use exemptions under copyright law?
- How are claims of exemption under the same fact pattern approached by different jurisdictions, and what is the likely outcome of such claims in different jurisdictions?

Annual Meeting Registrant First-Time Orientation and Reception

First time attendants learnt from experienced Annual Meeting attendees about the many resources and opportunities for education and networking; they also found out how to navigate the Exhibition Hall and make the best use of their time.

After the talk from experienced INTA attendees about how to maximize time at the Meeting, the attendees were able to network with other first-time attendees and got to know each other better. First-time attendees, young practitioners, and students, as well as new INTA members, found the orientation essential to making the most of their first Annual Meeting and had the opportunity to network at a reception after the session.

Africa Global Advisory Council Meeting

The delegation had the opportunity to meet with the INTA Africa Global Advisory Council representatives. The representatives reiterated that the creation and protection of IP rights has the

potential to significantly contribute to economic diversification across Africa, and INTA has been increasing activities such as advocacy and education in efforts to explain this economic and social value across the continent.

Further that at an organizational level, INTA works with other bodies, including the World Intellectual Property Organization (WIPO), the African Regional Intellectual Property Office, and the Organisation Africaine de la Propriété Intellectuelle, to create an IP friendly environment.

The delegation was informed that Kenya has witnessed an increased need for strategic collaboration with key authorities, which it is hoped, would facilitate local development and economic growth. The Council representatives also observed that Kenya is a strategic and regional hub hence the need to possibly have an INTA office in Nairobi. The challenge, though, is the lack of adequate legislation and regulations in the Kenyan market as far as IP is concerned.

The representatives confirmed to the delegation that they were considering a proposal to have one of their meetings in Kenya and would want the support of Parliament in that initiative. They further informed the delegation that each region of the world has an advisory council whose work is to advise the INTA Board on areas of interest to INTA. In the past, several countries had sent their proposed policies to INTA's advisory councils as well as research requests.

In conclusion, the Africa Regional Advisory Council reiterated they were keen to engage with Kenya, going forward.

Africa Regional Update: Land, Sea and Air Adventures—New Developments and Trends in the Protection and Enforcement of Trademark Rights in Africa

The session offered an assessment of cross-border regional strategies, focusing on the flow of goods in Africa and how best to enforce IP rights across borders. The journeys through Africa will focused on West, East, and Southern Africa, and covered:

- Main transit routes and flow of goods in the region: from borders and airports to the end consumer.
- Regional best practice and strategies.

- Current developments, trends, and regional case updates.
- Enforcement of regional trademark registrations.
- Tips on using traditional IP rights in non-traditional enforcement measures.
- Online and e-commerce in Africa: an outline of the challenges and strategies on how to protect and enforce IP rights online in Africa.

In the discussions, a comparison was made between East and West Africa in the fight against counterfeit. In East Africa, the fight against counterfeit trade has been led by other some key agencies in the region namely the Anti counterfeit Agency (ACA) in Kenya and the Uganda National Bureau of Standards (UNBS). In West Africa, the focus has mostly been in the fight against illicit medicines.

One of the examples of best practice as far as the war against counterfeit is concerned in the Africa region is Namibia. The Namibia Revenue Authority even hosted the World Customs Organisation(WCO) Regional IP Workshop in January 2017.

Some of the challenges faced in West Africa in cross border IP protection include;

- (i) influx of counterfeit products via air;
- (ii) difficulty in effective monitoring retail businesses;
- (iii) registration at customs or entry port. Monitoring is impossible since there is no filing or registration system; and
- (iv) The inability to detect original from counterfeit products.

An update was given by the presenters from countries in North Africa including: Algeria, Morocco, Tunisia, and Libya. In Algeria, for instance, there is a requirement for mandatory registration of trademarks prior to commercialisation.

Bilateral meeting with INTA Senior Leadership

The highlight of the Conference was the meeting with the INTA CEO, Mr. Etienne Sanz de Acedo, the INTA President Ms. Tish Berard and INTA staff members.

Mr. Sanz de Acedo briefed the delegation on the Association's global activities, emphasising INTA's desire to increase cooperation with key stakeholders in Africa, including Kenya. He also shared INTA's interests in developing joint activities with the legislative branch, such as the establishment of an IP Caucus, awareness- raising programs and trainings.

The Kenyan delegation welcomed the proposal and acknowledged that partnering with an international organisation such as INTA will contribute to the government's efforts to promote IP Rights, which will go a long way in fighting counterfeits. The MPs observed that counterfeiting is a great concern in Africa given that 42% of drugs in Africa are counterfeits. This therefore affirms that matters of trademark and copyright are also health, security and economic issues.

The INTA CEO informed the delegation that the US Congress has an IP Caucus, currently with 30 Members who champion IP matters in the Congress. INTA offers technical support e.g. training when called to do so.

Mr. Acedo confirmed to the MPs that he would be visiting Nairobi on an official visit from 4th – 6th June 2018. During this visit, he hoped to pay a courtesy visit on Hon. Justin Muturi, EGH, MP, Speaker of the National Assembly as well as meet chairs of the relevant National Assembly Committees in Parliament.

Formation of the Intellectual Property (IP) Parliamentary Caucus

The meeting with the INTA CEO at the 140th Annual INTA meeting resulted in a proposal by the delegation Members to establish an **Intellectual Property (IP) Parliamentary Caucus**. The aim of the caucus would be to –

- (i) promote legislation in the area of intellectual property;

- (ii) mainstream and advocate on issues of intellectual property in the Legislature and by extension in other arms of Government;
- (iii) act as a link to INTA to promote training of Members of Parliament and Parliamentary Officers on issues of Intellectual Property; and
- (iv) raise awareness on issues of intellectual property.

4.0 INTELLECTUAL PROPERTY IN KENYA

Intellectual Property is defined as creations of the mind, such as inventions, literary and artistic works, designs, symbols, names and images used in commerce. It is a valuable asset in today's global trading world, but if rights in intellectual property cannot be adequately enforced, the value of such rights and the incentive to trade in them is greatly diminished.

In Kenya, Intellectual Property rights are conferred either by statute or common law and they include;

- 1) Patents under the Industrial Property Act;
- 2) Copyright and related Rights under the Copyright Act;
- 3) Trademarks under the Trade Marks Act;
- 4) Industrial Designs under the Industrial Property Act;
- 5) Utility models under the Industrial Property Act;
- 6) Technovations under the Industrial Property Act;
- 7) Geographical indications under the Trade Marks Act Trade secrets by common law;
- 8) Plant Breeders Rights under the Seeds and plant Varieties Act;
- 9) Traditional knowledge under the Constitution.

The above categories of Intellectual Property rights are granted by various institutions in Kenya established by their respective legislation and there are three main such institutions in Kenya including; the

- Kenya Industrial Property Institute (KIPI)
- Kenya Plant Health Inspectorate services (KEPHIS)
- and the Kenya Copyright Board (KECOBO)

The Constitution of Kenya, 2010 under Article 260 (c) includes IP in the definition of “property.” Secondly, Article 40 (5) obliges the State to support, promote and protect the intellectual property rights of the people of Kenya.

In the same breath, Article 69(1) (c) and (e) mandates the State to protect and enhance intellectual property, traditional or indigenous knowledge of biodiversity and the genetic resources of the communities and protect genetic resources and biological diversity.

Under Article 11(1), the Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation and mandates the state to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage; recognise the role of science and indigenous technologies in the development of the nation; and promote the intellectual property rights of the people of Kenya.

Parliament is also mandated to enact a law to ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage. This legislation should also be passed which recognise and protects the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

The Anti-Counterfeit Agency in Kenya was established in 2010 under the Anti-Counterfeit Act 2008 as a State Corporation with the mandate to;

- (i) enlighten and inform the public on matters relating to counterfeiting;
- (ii) combat counterfeiting, trade and other dealings in counterfeit goods;
- (iii) devise and promote training programs to combat counterfeiting; and
- (iv) co-ordinate with national, regional or international organizations involved in combating counterfeiting.

Kenya is a member state to the World Intellectual Property Organisation (WIPO) and the African Regional Intellectual Property Organization (ARIPO).

Similarly, Kenya is a signatory to various others treaties on matters IP both globally and in the African Region. These include among others;

- 1) Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (October 12, 2014)
- 2) Protocol (III) additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (April 28, 2014)
- 3) Convention on the Rights of Persons with Disabilities (June 18, 2008)
- 4) Convention for the Safeguarding of the Intangible Cultural Heritage (January 24, 2008)
- 5) Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 (January 24, 2008)
- 6) Constitutive Act of the African Union (July 10, 2001)
- 7) Treaty for the Establishment of the East African Community (July 1, 2000)
- 8) Treaty Establishing the Common Market for Eastern and Southern Africa (December 8, 1994)

5.0 RESOLUTIONS & WAY FORWARD

- 1) The 140th INTA Annual Meeting was an opportunity for capacity building for the delegation on matters IP as well as benchmarking from other nations, network and engage with practitioners from around the world. With over 10,000 delegates from 190 countries attending the meeting the experience sharing was very impactful. The delegation resolved to attend future INTA Annual Meetings for the aforementioned reasons.
- 2) Kenya is in a strategic position both geographically and economically to be able to lead the fight against counterfeit products in the region. Kenya being the hub in the region, many counterfeit goods have found their way in the region through Kenya. The delegation resolved to work closely with INTA to advise and train Members on matters intellectual property in order to mainstream and advocate them in the legislature.
- 3) The delegation resolved to support INTAs future plans of possibly setting up an office in Nairobi and the proposal by the INTA African Advisory Council host of one of their meetings in the Nairobi.
- 4) On legislation, the Committee observed there is need to enact and/or enhance legislation on matters IP, i.e., trademark, copyright, patent, industrial designs and traditional knowledge among others. The delegation was made aware that draft legislation on Trademark and Geographic Indication would soon be introduced in the House, while the Copyright (Amendment) Bill, 2018 is currently before the National Assembly Committee on ICT. The Anti Counterfeit Agency (ACA) is also currently undertaking public participation on reviewing the Anti-Counterfeit Act 2008. The delegation resolved to positively impact on the proposed pieces of legislation when brought before the House as well as the Regulations therein. Members also resolved to sponsor some of the legislation on IP.
- 5) Following the meeting with the INTA CEO at the 140th Annual INTA meeting the delegation resolved to establish an Intellectual Property (IP) Parliamentary Caucus similar to the one in the US Congress. The aim of the caucus is to –
 - (i) promote legislation in the area of Intellectual Property;

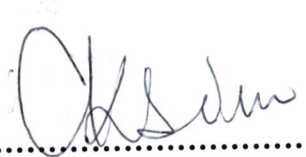
(ii) mainstream and advocate on issues of Intellectual Property in the Legislature and by extension in other arms of Government;

(iii) act as a link to INTA to promote training of Members of Parliament and Parliamentary Officers on issues of Intellectual Property; and

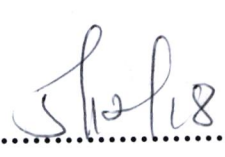
(iv) raise awareness on issues of Intellectual Property.

6) The delegation also regrettably noted the absence of Kenya's Executive at the 140th INTA Annual Meeting. The workshops and deliberations therein would have been greatly beneficial to the Executive, specifically the line ministries and departments in charge of IP. The delegation requested Mr. Tat-Tienne Louembe the INTA Representative for Africa and Middle East to extend future invitations for INTA activities to the Executive and possibly the Judiciary.

SIGNED.....



DATE.....



HON. KANINI KEGA, M.P (CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVE