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Author(s)	Kongolo, Tshimanga
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Trademark Protection under Congo's Industrial Property Act and TRIPs Agreement

Tshimanga Kongolo*

In the field of trademarks, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) has provided international minimum standards of protection that all member countries of the World Trade Organization (WTO) have to comply with. Congo (ex-Zaire) has been a member of the WTO since January 1, 1997. In principle, Congo has to meet the requirements of the TRIPs Agreement. On the other hand, as a developing country, Congo encounters tremendous difficulties in the course of implementing the so-called international recommendations.

This study endeavors to analyze the system of protection embodied into the Congo's Trade-marks Law and the regime provided under the TRIPs Agreement as regards trademarks. The principal objective is to compare the two regimes of protection in order to point out conflicting provisions. This study comes to the conclusion that the Congo's Law is silent over substantial trademark issues such as compulsory licenses, exhaustion of rights, and well-known marks.

Keywords : Congo (ex-Zaire), World Trade Organization (WTO), TRIPs Agreement,
Congo's Trademark Law

* Ph. D. candidate, Osaka School of International public Policy, Osaka University

I. Introduction

The Democratic Republic of Congo (ex-Zaire) is a member of the Paris Convention for the Protection of Industrial Property. In general terms, its trademark law is similar to the laws of most member countries of the Paris Convention. It should also be mentioned from the outset that Congo is likewise a member of the World Trade Organization (WTO).¹⁾ Accordingly, Congo is obliged to meet the requirements of the TRIPs Agreement in the area of trademarks.

It is meaningful to notice however that some rules embodied into the TRIPs Agreement as regards trademarks do not respond to the expectation of Congo in providing protection of trademarks and service marks. In other words, some provisions of the TRIPs Agreement conflict with the Congo's Trademark Law.

This paper endeavors to outline the main features of the Congo's Trademarks Law. The second aim of this study is to highlight the innovations of the TRIPs Agreement as regards trademarks. A comparative analysis between the TRIPs Agreement and the Congo's Trademark Law will be carried out.

II. Trademark Protection in Congo (ex-Zaire)

Trademarks are protected under the Industrial Property Act, 1982.

Under this section, attention will be drawn to the scope of trademark protection (protectable and unprotectable marks), publication and registration of marks, rights and obligations, collective marks, nullity and extinction of marks, and infringement. We will refer to the practice as well. The statistic data will illustrate our assumptions.

1. Scope of Trademark Protection

The Trademark law provides for the protection of trademarks, trade names, service marks and certification marks called "marque nationale de garantie." These marks (trademarks, trade names, and service marks) can be collective or non-collective.²⁾ Service marks are protected in the same manner as trademarks.

Under the present law, a mark is defined as any sign capable of identifying or distinguishing goods or services of one undertaking from those of other undertakings.³⁾

A trademark may, in particular, consist of words (including personal names), letters, designs, numerals, colors, abbreviations, etc.

Marks are registrable only to the extent that they are used to identify goods or serv-

1) Tshimanga Kongolo (1), Prospective Reform in Zairian Patent Law after the Enforcement of the TRIPs Agreement, 1 INTERNATIONAL PUBLIC POLICY STUDIES (1997) at 148.

Congo (Zaire) is a full member of the WTO since January 1997.

2) Industrial Property Act, Article 127.

3) Industrial Property Act, Article 128.

See, Bojan Pretnar, Industrial Property and Related Trade Policy in Less-Developed Countries: Economic Appraisal of Legal Concepts, 21 IIC (1990) at 790.

ices, not companies or businesses. A registration only affords protection for a mark when the mark is used in relation to the class of goods or services for which it is registered.⁴⁾ Problems arise when a mark used creates confusion with another registered mark even if it is applied to different goods or services. It is not clear in Congo's Law whether confusing or misleading marks which belong to different classes or categories would be registrable.⁵⁾

It needs to be emphasized that a mark is new if it has not been a subject of registration with respect to the same goods or services. This provision should be applied with caution, especially in cases where the used mark deceives or misleads the public (consumers) and creates a negative image as regards registered goods or services belonging to different classes.

The "marque nationale de garantie" (certification mark) aims at certifying the quality of Congolese goods. It has been recognized that in respect to certain particular goods, the prior affixing of the "marque nationale de garantie" is required before to be launched on the national market.⁶⁾

A mark must be registered in order to be protected. Zaire has opted for the "registration regime".⁷⁾ The registration confers exclusive rights to the proprietor of the mark. However, there are some marks which may

not be registered.

The following are not considered as marks under the present Act:⁸⁾

(a) signs which the use of may be contrary to public order or to accepted principles of morality (immoral marks), armorial bearings, flags, and other State emblems, official signs and hallmarks indicating control and warranty, and any imitation from a heraldic point of view;

(b) misleading marks which consist of signs or indications which may serve to denote the quality or the value of the goods;

(c) trivial or common designation of the goods or services;

(d) expressions or phrases which, without referring to the product itself, indicate the quality or the intended purpose of the concerned product, such as "Extra Royal, Super".

The first paragraph (a) of this provision is in conformity with Article 6ter of the Paris Convention.

The afore-mentioned items constitute grounds for refusal of registration. No registration would be allowed in cases of misleading marks, immoral marks or marks which are contrary to public order.

2. Registration and Publication of Marks

The Ministry of Economy and Industry is competent to deal with matters concerning

4) The first aim of a trademark is to identify goods or services, to create an image of goods or services in order to make the public (consumer) aware of specific quality or features of the concerned goods or services. Under this approach, a mark which may create confusion or mislead consumers, might not be registered if it (mark) refers to the same goods or services.

5) National Seminar on Industrial Property (held in Zaire in 1991).

6) Industrial Property Act, Article 129(3).

7) The registration regime is also called statutory regime.

8) Industrial Property Act, Article 133.

the filing of applications for the registration of trademarks and service marks. A proprietor of a mark or a person designated by him shall file the application in written form. The application for the registration of a mark must include, besides proof of payment of the registration fee, the following particulars:

(a) the pattern of the mark including the enumeration of goods or services where the mark will be applied;

(b) the corresponding international classification of the mark;

(c) the cliche' of the mark;

(d) the name and address of the owner of the mark or of the person appointed by him and acting on his behalf.

Let us highlight through the following table the trend of the filing of applications for the registration of trademarks or service marks in Congo. The objective is to compare the number of applications filed by residents and non-residents (mostly foreigners).

The registered trademark confers to its

owner the exclusive rights to use his mark. In this connection, the use of the trademark without his consent amounts to infringement.

It should be noted that the priority date for a trademark registered abroad must be claimed at the time of the filing of the application for registration of the mark in Congo. In accordance with the Paris Convention, a priority has been recognized towards trademarks which had been subject of registration in one of the countries of the Union (signatory countries of the Paris Convention).⁹⁾ Moreover, Zaire has adopted the "first-to-file" principle.¹⁰⁾ That is to say that if two persons apply for registration of the same mark in respect of the same goods or services, the person who applied first will be granted the priority. The acceptance of the application for registration or the grant of priority in respect to foreign registered trademarks, is conditioned to the payment of the registration fee.

Let us show the trend of registered trademarks and services marks during the years

Table 1: Application Filed for Registration of Trademarks and Service Marks for the Years 1986, 1987, 1988, 1994 and 1995

	1986	1987	1988	1994	1995
Residents	90	72	90	250	189
Non-Residents	334	369	250	274	289
Total	424	441	340	524	478

Source : WIPO-Industrial Property Statistics-Publication B, 1996 Edition.

During the years 1986, 1987, 1988, 1994 and 1995, applications for registration filed by non-residents were higher than those filed by residents. Despite the fact that the number of applications filed is very low compare with other countries, it is noticed, however that, in 1994, the number went up as regards residents.

9) Id.

The question is whether the priority would be extended to member countries of the WTO.

10) Tshimanga Kongolo (1), supra note 1, at 150.

Table 2: Registered Trademarks and Service Marks in 1986, 1987, 1988, 1994 and 1995

	1986	1987	1988	1994	1995
Residents	87	72	89	248	186
Non-Residents	326	369	250	271	289
Total	413	441	339	519	475

Source : WIPO-Industrial Property Statistics-Publication B, 1996 Edition.

During the years 1986, 1987, 1988, 1994 and 1995, the registered trademarks and service marks were higher for non-residents 326, 369, 250, 271 and 289 against 87, 72, 89, 248 and 186 for residents. Accordingly, the working or the non-working of the trademark or service mark would have some implications to the system.

1986, 1987, 1988, 1994 and 1995.

That is to say that if the foreign trademark or service mark is registered for the purpose of establishing an import monopoly, that would restrict the expansion of local enterprises.¹¹⁾

It should be mentioned that a trademark or service mark is protected for a period of 10 years from the date of registration. The registration may be renewed at the request of the proprietor, subject to payment of a renewal fee, for a further period of ten years. The renewal of registration must be made before the expiration of the period of protection (registration).¹²⁾ A registered trademark shall not be altered during the period of registration or on renewal. Further, the classified goods or services covered by the mark shall not be altered or modified as prescribed above.¹³⁾

The certification mark (Marque nationale de garantie) is registered indefinitely.

3. Rights and obligations

Article 138 of the Industrial Property Act prescribes the rights and obligations of the proprietor of the trademark or service mark. The proprietor of a registered trademark has exclusive rights to use his mark. He is entitled to prevent third parties from offering, or displaying goods for sale, putting them on the market or stocking them for those purposes under the sign, or offering or supplying services under the sign. He also has the right to prevent third parties from importing or exporting counterfeit goods. A person infringes a registered trademark if he uses in the course of trade a sign which is identical with the trademark in relation to goods or services which are identical with those for which it is registered.¹⁴⁾

He is entitled to assign¹⁵⁾ his exclusive right or to enter into a license agreement with another person.

11) Tshimanga Kongolo(2), Le Transfert de Technologie et les Propriétés Intellectuelles (Transfer of Technology and Intellectual Property), AFROVISION (1997-98 Canada) at 20.

12) Industrial Property Act, Article 137.

13) Id.

14) Id.

The registration of a mark is compulsory. In principle, without registration there is no protection. The proprietor of a registered mark shall use his mark within three years from the registration. This Act is silent as to the compulsory licensing of trademarks. The cancellation of the mark may be the solution in the case of the trademark that has not been used within the prescribed period of three years.

Under the Act, there is no provision which deals with the issue relating to well-known marks.

The Act is further silent as to the exhaustion of rights conferred by registered trademark. This leads to the question relating to the parallel importing of goods. In our view, we are for the acceptance of the parallel importing of registered trademarks in relation to goods which have been launched on the market by the proprietor or with his consent.

4. Collective Marks

Any organization or association with legal entity may acquire collective marks, for public interest or in order to foster the expansion of trade and business of its members.¹⁵⁾

A collective mark is a mark distinguishing the goods or services of members of an association which is the proprietor of the mark

from those of other undertakings. An application for registration of a collective mark shall be accompanied by regulations governing the use of such collective mark. The regulations shall specify the persons authorized to use the mark, the conditions of use of the mark, the common features of goods or services to be covered by the mark, including any sanctions against misuse. The regulations shall not include any provision which is contrary to public order or principles of morality.

It should be mentioned that under the trademark law, the assignment of a collective mark is valid only if it takes place together with the transfer of the business to which the mark belongs.¹⁷⁾ The license of a collective mark is not permitted.

Unless otherwise stipulated, the proprietors of collective marks enjoy similar rights to those provided for proprietors of non-collective marks.

5. Nullity and Extinction of Marks

Any interested person may invoke the nullity of a mark which does not comply with the prescriptions of Articles 128, 132, 133 and 142 of the Industrial Property Act.¹⁸⁾

The non-use of the mark within three years from the date of registration may entail the

15) The Act is not clear as to the assignment of trademark. The issue is to know whether a trademark can be transferred with or without the business to which the trademark belongs. However, as regards collective marks, the Act explicitly stipulates that the assignment is valid only if it takes place together with the transfer of the business to which the mark belongs.

16) Industrial Property Act, Article 140.

17) Id., Article 145.

18) Article 128 provides the definition of a mark (trademark and service mark); Article 132 indicates features of items which may designate marks; Article 133 lays down matters which are out of the scope of trademark protection or the unregistrable marks; Article 142 prescribes condition to meet while filing an application for registration of collective marks.

extinction of the mark. The expiration of the protected period and express renunciation would imply the extinction of the mark. It has been recognized that the non-payment of the renewal fee may be grounds for the extinction of the mark. However, a trademark which has been removed may be restored within five years from the removal under prescribed conditions.¹⁹⁾ In this connection, a third party may apply for registration of a mark which was subject to removal. However, regarding removed collective marks, the lapse of a period of three years is required before the marks may be registered as regards the same goods or services.

6. Infringement of Trademark

As stipulated above, the use of exclusive rights of the proprietor of a trademark without his consent constitutes an infringement. Under the present law, civil and criminal remedies are provided.

III. Trademark Regime under the TRIPs Agreement

Unless otherwise provided, rules embodied into the Paris Convention as regards trade-

marks are incorporated into the TRIPs Agreement.

In this paragraph, we will highlight some main features of the trademark regime as provided under the TRIPs Agreement. We will deal with the protectable subject matter, rights conferred, and requirement of use.²⁰⁾

1. Protectable Subject Matter

In general terms, the protectable regime is similar to the one provided under the Paris Convention. Besides that, the TRIPs Agreement attempted for the first time to define the subject matter of protection of trademarks. Article 15 of the TRIPs Agreement sets out the definition and the scope of protection of trademarks.²¹⁾ Accordingly, a trademark is considered as any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings. That is to say that any sign that does not bring confusion might be eligible for registration as a trademark. In the same line of reasoning, signs that may create confusion are not registrable.

In addition, service marks have acquired the same level of protection as trademarks.

In the sense that under TRIPs, service marks

19) If the mark in question has been already used by another person after the removal, the restoration is not possible. The applicant will be obliged to file a new application for registration.

20) Paul J. Heald, Trademarks and Geographical Indications: Exploring the Contours of the TRIPs Agreement, 29 VAND.J. OF TRANS.L. (1996) at 639-641.

See, Bruce W. Schwab, The New Era in Trademark Treaties and Multinational Agreements, in GLOBAL TRADE-MARK AND COPYRIGHT (1994) at 169-78.

See also, Eleanor K. Meltzer, TRIPs and Trademarks, or-GATT Got Your Tongue?, 83 TRADEMARK REPORT (1993) at 18.

21) Article 15(1) of the TRIPs Agreement:

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

receive protection equal to the marks affixed to goods or trade names.²²⁾ Moreover, the TRIPs Agreement gives member countries the option to require, as a condition of registration, that signs be visually perceptible where signs are not capable of distinguishing the relevant goods or services. By the same token, the TRIPs Agreement gives discretionary authority to members to condition the registrability of trademarks to the distinctiveness acquired through use. In this connection, members may make registrability depend on use (Article 15).

The TRIPs Agreement does not require "actual use" of a trademark as a condition for filing an application for registration. This latter prescription does not favor developing countries. Requiring use before registration would probably generate an efficiency gain that would benefit international markets.²³⁾ Furthermore, the nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.²⁴⁾ This provision is in some respects confusing. How about goods that may be destructive to human health? In the same sense, how about services which are immoral or which create an immoral picture to consumers?

The scope of protection of components eligible for registration is too large and may entail confusion. The wording "any sign" is not appropriate even though this sign has the ability to distinguish the goods or services. The products shape or packaging are also

not included in the definition of a trademark.

Article 15(5) postulates that members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, members may afford an opportunity for the registration of a trademark to be opposed.

Like the Paris Convention, under the TRIPs Agreement both the "use regime" and the "registration regime" are provided.

2. Rights Conferred

Article 16 grants to the owner of a registered trademark the exclusive right to prevent all third parties not having his consent from using in the course of trade identical or similar signs for goods and services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion.

As a trademark as well as a service mark aims at creating an image of the concerned goods or services, signs or combination of signs that may create confusion or damage the interest of the owner of the registered mark shall not be put to use. In conformity with the prescription of Article 16, an unauthorized label on goods of signs already registered as a trademark shall be considered as infringement, and the labeled goods as counterfeit goods. Moreover, the TRIPs Agreement prescribes explicitly that Article 6bis of

22) Paul J. Heald, *supra* note 20, at 641.

23) *Id.*, at 659.

24) Paris Convention provides the same rule in Article 7.

the Paris Convention to apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that the use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark.

It has to be noted that in the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. In other words, if a person carries out activities that are similar to those undertaken by the owner of a registered trademark, and labels goods with identical signs, his bad faith will be deduced.

It should be pointed out that the TRIPs Agreement gives authority to members to provide limited exceptions to the rights conferred by a trademark. It also appears that, these exceptions to be provided must take into consideration the legitimate interests of the owner of the trademark and of third parties. According to Article 21, members may determine conditions on the licensing and assignment of trademarks.

In addition, it should be mentioned that under the TRIPs Agreement's trademark regime, a compulsory license is not permitted. Moreover, unlike the Paris Convention, the owner of a registered trademark has the right to assign his trademark with or without the transfer of the business to which the

trademark belongs (Article 21). This has implications for the so-called transfer of technology to developing countries in general and African States in particular because usually trademarks are attached to manufactured or produced goods.²⁵⁾ The transfer of goods without the transfer of technology to produce such goods creates dependency relationships.²⁶⁾

It should also be emphasized that the TRIPs Agreement accords special protection to well-known trademarks without giving any definition and scope of the well-known trademarks. There is no criteria to determine a well-known trademark. This may also impair local enterprises from promoting activities in the area already dominated by the so-called well-known trademarks.

The exclusive rights of the owner or right holder of a trademark are protected at least for a period of 7 years and are renewable indefinitely (Article 18).

3. Requirement of Use

It has been prescribed that the cancellation of a trademark cannot occur before an uninterrupted period of at least three years of non-use if the use is required to maintain a registration. If there are valid reasons for the non-use of the trademark by its owner based on the existence of obstacles to such use, a grace period may be granted.²⁷⁾ That is also to say that if any circumstances independent

25) Tshimanga Kongolo (3), *Les Dilemmes des Pays en Voie de Développement dans le Domaine de Propriété Intellectuelle après l'Adoption de l'Organisation Mondiale du Commerce (OMC)*, 2 AFRO VISION MAGAZINE (September-October-November 1997) Canada, at 23.

26) Frederick S. Ringo, *The Trade-Related Aspects of Intellectual Property Rights Agreement in the GATT and Legal Implications for Sub-Saharan Africa* (1995) at 130.

27) Otten and Wager, *Compliance with TRIPs: The Emerging World View*, 29 VAND. J. OF TRANS. L., (1996) at 399.

to the will of the trademark owner impede him to exercise his rights to use his trademark, the above-prescribed period may be extended. In the same line of reasoning, import restrictions or other requirements for goods or services may constitute obstacles.

It has been recognized that the use of a trademark by another person on behalf of the owner of the trademark, constitutes "use" as required under Article 19. In other words, if the owner of a trademark still exercise control on the user of his trademark, it should be presumed that he received his consent, so that the exploitation is deemed to be "use" of the trademark for the purpose of maintaining the registration.

This requirement may favor the conclusion of license agreements between nationals and foreign enterprises in the case where a foreign enterprise cannot use or exploit its trademark in the prescribed period. On the other hand, a foreign enterprise may "play a game" by using its trademark in an ineffective manner for maintenance purposes of registration. Because compulsory licensing has not been recognized, the situation may cause harm to the economy of developing countries. The increase of the renewal registration fees of trademarks in the case of ineffective use might be a solution. Requiring use before registration would probably generate an effi-

ciency gain that would benefit international markets.²⁸⁾ However, Article 20 prescribes as follows:

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

The precedent provision is a "counter-provision" to the one provided under the Paris Convention authorizing developing countries to prescribe special requirements in respect to the use of foreign trademarks. Member States can no longer require foreign trademark owners to couple their marks with the indigenous marks of local firms.²⁹⁾

It should be noted that the TRIPs Agreement is silent as to the issue of exhaustion of rights.³⁰⁾ As noted also by Heald, the TRIPs Agreement specifically sidesteps the issue of the propriety of importing "gray market" goods.³¹⁾

IV. Comparative Analysis between TRIPs and Congo's Trademark Law

Attention will be drawn to the scope of protection of trademarks, time of protection,

28) Paul J. Heald, *supra* note 20, at 659.

29) J.H. Reichman, *Universal Minimum Standards of Intellectual Property Protection under the TRIPs Component of the WTO Agreement*, 29 *THE INTERNATIONAL LAWYER* (1995), at 363.

30) Marco C.E.J. Bronkers, *The Impact of TRIPs: Intellectual Property Protection in Developing Countries*, 31 *COMMON MARKET LAW REVIEW* (1994) at 1265.

31) Paul J. Heald, *supra* note 20, at 656-57.

He arguments in favor of gray market goods. He argued that the refusal of gray market goods looks much like a tariff; it creates a barrier at the border that certain sorts of goods cannot cross. By definition, the goods are not counterfeit: the trademarks they bear are affixed with the authorization of the trademark owner. He added that from a global perspective, a strong argument can be made that the free movement of legitimately trademarked goods meets the GATT/WTO principles and spirit.

well-known trademarks, issues relating to the compulsory license, and the exhaustion of rights.

1. Scope of Protection of Trademarks

The TRIPs Agreement has extended the scope of protection of trademarks. The definition of a trademark includes any sign capable of distinguishing goods or services. In addition, according to Article 15(1) of the TRIPs Agreement, members may require, as a condition of registration, that signs be visually perceptible.³²⁾ The Congo's Trademark Law defines a trademark as any sign capable of identifying or distinguishing goods or services. Furthermore, the Congo's Trademark Law has clearly provided marks which are not eligible for registration. The definition of what a trademark includes is broad under both TRIPs and Congo's Law.

It is important to mention that under Congo's Trademark Law, the registration of a mark is a condition *sine qua non* for a mark to be protected. Congo has adopted the "registration regime".

2. Time of Protection

TRIPs Agreement sets the term of protection of trademarks at 7 years and they are renewable indefinitely. Under Congo's Law, the period of protection is prescribed for 10 years from the registration of the mark. The Congo's Law does not state explicitly whether the registration is indefinitely renew-

able. In practice, unless the owner of the registered trademark fails to comply with the requirements of the trademark law³³⁾, the registration is renewed indefinitely (every 10 years).

3. Issue Pertaining to Well-Known Marks

What should be mentioned here is that the Congo's Trademark Law is silent as to the protection of well-known trademarks. TRIPs explicitly requires member countries to provide protection of well-known trademarks in compliance with the Paris Convention. Unfortunately, a well-known mark is defined in neither the TRIPs Agreement nor the Paris Convention.³⁴⁾

The protection of well-known marks is a conflicting issue in developing countries. The special protection of unregistered well-known marks does not favor local enterprises which carry on business in the same sector. Although TRIPs prescribes that the knowledge of the trademark in the relevant sector of the public shall be taken into consideration, the issue is far from finding an adequate solution.

4. Issue relating to Compulsory License

Congo's Law is silent as to the compulsory licensing of trademarks. As mentioned before, it can be interpreted that when a trademark owner fails to use his registered trademark within 3 years from registration, any interested person may invoke the nullity of

32) Ricketson Sam, *The Future of the Traditional Intellectual Property Conventions in the Brave New World of Trade-Related Intellectual Property Rights*, 26 IIC (1995) at 887.

33) Such as the payment of renewal fees.

34) Paul J. Heald, *supra* note 20, at 641.

the mark. On the other hand, the TRIPs Agreement has formally forbidden members from providing compulsory licensing as regards trademarks.

It should be noted that unlike the Paris Convention, under the TRIPs Agreement, the owner of the trademark is entitled to assign his trademark with or without the transfer of the business to which the trademark belongs. Congo's Trademark Law is silent over the issue. The Act provides that in respect of collective marks, the assignment is valid only if it takes place together with the transfer of the business to which the mark belongs.

5. Exhaustion of Rights

Congo's Trademarks Law is silent as to the issue of the exhaustion of trademarks. TRIPs has prescribed that nothing in the Agreement shall be used to address the issue of the exhaustion of intellectual property rights. We recommend the recognition of worldwide exhaustion as regards trademarks with some limitations.³⁵⁾

V. Conclusion

This article has attempted to highlight rules regarding trademarks protection as provided under Congo's Trademark Law and TRIPs Agreement. It should be pointed out that only a few provisions of the Congo's Trademark Law are in conflict with the so-called standards of protection embodied into

the TRIPs Agreement. The reason why there are only a few matters which are in conflict is that in most conflicting issues such as compulsory licensing of trademarks, assignment of a trademark with or without the transfer of the business, protection of well-known marks, Congo is silent. Congo's Law is more in conformity with the Paris Convention for the Protection of Industrial Property.

35) W.R. Cornish & Jennifer Philips, *The Economic Function of Trade Marks: An Analysis With Special Reference to Developing Countries*, 13 IIC (1982) at 44.

See Eguchi Junichi, & Chaen Shigeki, *Kokusai Torihiki to Chitekizaisan*, in *Genzai Kokusai Torihiki-Ho Koza* (Matsuoka Hiroshi) Horitsu Bunka-Sha (1996) at 190.