



TRADEMARKING “YORUBA”: ILLEGALITY OR MERE CULTURAL APPROPRIATION?

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On May 23, 2021, Gbemisola Isimi, the founder of CultureTree, a UK based organization which runs a parents and toddlers play group called Yoruba Stars, where children are taught the Yoruba language, reported on social media that Timbuktu Limited, an outdoor clothing brand based in Northern England, had successfully registered the word ‘Yoruba’ as a trademark in the UK Intellectual Property Office (“**UK IPO**”) with respect to clothing, in 2015. It was reported that upon an attempt by CultureTree to register the trade mark Yoruba Stars, a name given to all students in the class, with the UK IPO, an opposition was filed against the registration by Timbuktu Limited.¹ Furthermore, it was reported that Timbuktu Limited offered to license the trademark to CultureTree for a fee. Consequently, CultureTree took to social media, claiming that Timbuktu’s registration of the trademark Yoruba, was cultural appropriation.

The post on social media went viral and quite a number of news outlets reported on the matter, including CNN and BBC. In a press statement subsequently published on CultureTree’s website, it was stated that Timbuktu Limited had withdrawn its opposition at the UK IPO against the registration of Yoruba Stars and the issue was being resolved. In addition to the steps taken by Timbuktu to resolve the matter, it appears that the company closed down all of its social media accounts, including its website and reportedly filed an application to surrender the trademark ‘Yoruba’.

The issue with CultureTree and Timbuktu Limited sparked up debates surrounding the legality or otherwise of individuals or companies trademarking names of ethnic groups and using same to promote their products, brands and/or businesses. Whilst some argue that the registration of the trademark should not have been allowed by the UK IPO, due to the fact that the word Yoruba connotes a geographical origin, others have argued that this is merely a case of cultural appropriation and in so far as Timbuktu Limited met all the requirements for filing, without any opposition from the public, and to the extent that the UK trademark registration is based on the first to file principle, Timbuktu Limited has a legal right to the exclusive use of its trademark within the United Kingdom.



Under the UK Trade Marks Act of 1994, (the “**UK Act**”)² a trademark is defined as any sign, consisting of words (including personal names), designs, letters, numerals, colours, sounds or the shape of goods or their packaging, capable of being represented in the register in a manner which enables the registrar and

1. <https://culturetree.co.uk/press-statement-yorubaisnotforsale/>

2. Implementing the EU Directive No. 89/104/EEC

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through the cracks and is registered, a somewhat simple solution to rectify this would be to invoke the provisions of Section 22 (1)(a) of the Nigerian Act, on the basis that the trademark “Yoruba” was accepted in error. This section provides that where an application has been accepted and the application has not been opposed and the statutory window of opposition has closed, the Registrar shall, **unless the Application has been accepted in error**, register the trademark. To the extent that “Yoruba”, being one of the largest ethnic groups in Nigeria of circa 30 million people, falls under a non-registrable criterion under Section 9 of the Nigerian Act, any interested party may petition the Registrar to remove the entry from the Register. The prescribed format for the petition would be an application made on Form 27, accompanied by a statement setting out fully the nature of the applicant’s interest, the facts upon which their case is based and the relief they seek.

Ultimately, whilst the backlash and public outrage was sufficient to propel the owners of the contentious trademark in this matter to surrender the trademark, there may not always be an outcry of this magnitude to spur other applicants to surrender their duly

registered trademarks, which may be names of ethnic groups/minorities, languages etc. in Nigeria or other foreign countries. This is why it is pertinent that we are all aware of existing individual and collective rights as well as the legal remedies available in such circumstances.

The essence of intellectual property laws is to protect intellectual property. Although the first to file trademark regime is applicable in Nigeria (i.e. applicants that are first to apply for registration of their marks are assigned trademark rights and priority, irrespective of whether the Applicants have used the marks in commerce or whether the marks were previously used by others), the system should not be exploited in order to disenfranchise any individual or even a group of people or infringe on the rights of others.

DISCLAIMER: This article is intended to provide a general guide to the subject matter and does not by itself constitute a legal advice to readers. Specialist advice should be sought about readers’ specific circumstances.

For further information on trademarks, kindly contact our **Intellectual Property and Technology Practice Group** at ipgroup@banwo-ighodalo.com

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