



What to do when your Intellectual Property is Infringed.

Intellectual property (IP) plays a central role in protecting business value. It underpins brand identity, supports revenue generation, and sustains competitive advantage.

Trademarks distinguish goods and services, copyrights protect creative works, patents and utility models safeguard technical innovations, industrial designs protect product aesthetics, while trade secrets preserve confidential business information.

Despite these protections, infringement remains common. Infringement may be deliberate or arise from ignorance, but the impact is often the same: commercial harm and weakened rights.

This article outlines the key legal steps to take when intellectual property infringement is identified under Kenyan law.

The Legal Framework Governing IP Infringement in Kenya

In Kenya, intellectual property rights are protected under a combination of statutes that provide both civil, administrative and criminal enforcement mechanisms.

These include the [Trade Marks Act \(Cap. 506\)](#), [Industrial Property Act \(Cap. 509\)](#), [Copyright Act \(Cap. 130\)](#) and [Seeds and Plant Varieties Act \(Cap. 326\)](#), which govern IP infringement and provide remedies for trademarks, patents, utility models, industrial designs, plant breeder rights and copyrighted works.

The [Anti-Counterfeit Act, 2008](#) further strengthens enforcement through the Anti-Counterfeit Authority (“ACA”), including the seizure and detention of suspected counterfeit goods.

In addition, the [Penal Code \(Cap. 63\)](#) imposes criminal liability for counterfeiting and related offences.

Collectively, these laws provide intellectual property owners with a comprehensive framework to enforce their rights through both civil action and administrative intervention.

Steps to Take When Your Intellectual Property Is Infringed

When IP infringement is suspected or identified, a structured response is critical. The effectiveness of enforcement often depends on the speed, quality of evidence and strategic choice of remedies.

1.Document the infringement

The most fundamental step is to identify, preserve and secure evidence of the infringing activity. This is particularly important because infringing material, especially online content, may be altered or removed without notice.

The key evidence may include:

- Screenshots or archived copies of online infringement;
- Photographs or samples of counterfeit goods;
- Records indicating dates, locations and distribution channels;
- Identification details of the alleged infringer, where available; and
- Marketing, packaging or sales materials incorporating protected works.

Comprehensive documentation strengthens both pre-litigation negotiations and any subsequent court proceedings by establishing a clear evidentiary foundation.

2.Issue a cease-and-desist letter

Once sufficient evidence of infringement has been secured, the next step is to notify the infringer through a cease-and-desist letter. In practice, this step frequently resolves disputes at an early stage, particularly where the infringement is unintentional or where the infringer is seeking to avoid the cost, disruption and reputational risk associated with court proceedings.

3. Parallel administrative action (counterfeit goods)

Where the infringement involves physical counterfeit goods, rights holders should consider pursuing administrative enforcement under the Anti-Counterfeit Act, 2008. Section 34 of the Act allows an application to the ACA for the seizure and detention of suspected counterfeit goods, including at points of importation or within the local market.

This mechanism provides a swift and effective means of disrupting infringing trade before further commercial harm occurs.

To facilitate this process, it is essential that the relevant intellectual property rights are duly recorded with the ACA, as required under the Act.

For further guidance on this requirement, please refer to [our article](#) on the mandatory recordation of intellectual property rights in Kenya.

4.Explore Alternative Dispute Resolution

Where appropriate, parties may seek to resolve the dispute through negotiation, mediation or other forms of alternative dispute resolution (“ADR”). ADR offers several practical advantages, including faster resolution compared to litigation, reduced legal costs and preservation of commercial relationships.

5.Commence litigation where necessary

Where infringement persists, causes significant commercial harm or is not resolved through pre-litigation measures, it may become necessary to initiate formal legal proceedings.

In Kenya, intellectual property litigation may be commenced depending on the nature of the right involved. The courts and relevant tribunals are empowered to grant a range of civil remedies, including:

- Interim and permanent injunctions restraining further infringement;
- Damages for financial losses suffered;
- An account of profits derived from the infringing activity; and
- Orders for delivery up, seizure or destruction of infringing goods.

In appropriate cases, rights holders may also pursue parallel enforcement measures. This includes administrative seizure of counterfeit goods through the ACA under Section 34 of the Anti-Counterfeit Act, as well as potential criminal prosecution under Section 381 of the Penal Code for counterfeiting-related offences.

Conclusion

Intellectual property infringement can significantly undermine business value, reputation and market position. However, with a structured, timely and strategic response, rights holders can effectively enforce their rights under Kenyan law. Ultimately, effective protection depends on early detection, documentation, informed legal strategy and decisive enforcement through the appropriate legal and administrative channels.

How We Can Help You

Protecting and enforcing intellectual property rights requires swift, strategic and well-informed legal action. At our **Intellectual Property and Technology Practice**, we assist rights holders in safeguarding their brands, innovations and creative works through effective enforcement strategies tailored to each case.

We provide comprehensive support across the full spectrum of IP enforcement, including:

- **IP risk assessment and advisory:** Evaluating the strength and scope of your intellectual property rights and potential infringement risks.
- **Infringement analysis and evidence review:** Assessing suspected infringement and advising on the most effective enforcement approach.
- **Cease-and-desist strategy and drafting:** Preparing and issuing formal notices to halt infringing activity at an early stage.
- **Anti-counterfeit enforcement:** Supporting administrative action before the Anti-Counterfeit Authority, including seizure and detention applications.
- **Negotiation and Alternative Dispute Resolution:** Assisting in settlement discussions and mediation to resolve disputes efficiently.
- **Litigation and court representation:** Representing clients in infringement proceedings before the High Court and relevant tribunals, including applications for injunctive relief and damages.

If you would like to discuss this article or require assistance with any intellectual property matter, please contact the contributor below or reach out to our Intellectual Property and Technology team at tmtpractice@cmadvocates.com.

AUTHOR

Mercy Chore,
Associate Advocate
Email: mchore@cmadvocates.com
CM Advocates LLP

Head Office Nairobi
I&M Bank House, 7th Floor, 2nd Ngong Avenue, Nairobi, Kenya
T: +254 20 2210978 / +254 716 209 673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office
Links Plaza, 3rd Floor, Links Road, Nyali, Mombasa, Kenya
T: +254 41 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

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