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Tanzania: A Commentary on the Merchandise Marks (Recordation) Regulations, 2025

A Legal Brief

1. Legal Basis

The Merchandise Marks (Recordation) Regulations of 2025 (Government Notice No. 352F published on 30/6/2025) are made under section 25(2)(f) of the Merchandise Marks Act (Cap. 85), which empowers the Minister to issue subsidiary legislation to combat counterfeit goods. The Regulations are drawn to implement Section 11A of the Merchandise Marks Act, which was introduced to the Act under the Finance Act, 2025. They establish a mandatory recordation system with the Fair Competition Commission (FCC) for all trademarks on goods to be imported into Mainland Tanzania. The new requirement is set to take effect on 1st December 2025.

For the sake of clarity, it is pertinent to point out that recordation is distinct from trademark registration under the Trade and Service Marks Act, Chapter 326, which remains under the Business Registration and Licencing Agency (BRELA). The practicality of the two processes lies in the fact that registration confers proprietary exclusive rights, while recordation enables border enforcement and anti-counterfeit inspections.

2. What are the Positives of the New Requirement

Several regulatory and enforcement positives may arise from the implementation of the new regulations. These include:

2.1. Enhanced Enforcement Capacity: By requiring importers to record trademarks, customs, and FCC inspectors can easily verify the authenticity of goods and block counterfeits at entry points.

2.2. Transparency: Creates a centralised FCC database of recorded trademarks linked to import activities.

2.3. Consumer Protection: Prevents counterfeit goods that undermine consumer safety and local industries.

2.4. Alignment with Global Best Practices: Similar recordal systems exist in Kenya (Anti-Counterfeit Authority), China, and the US (Customs IP recordation).

2.5. Procedural Clarity: Regulations set timelines (as per Reg. 4(1) twenty-one (21) days for determination and as per Reg. 4(2), five (5) days for the Chief Inspector to communicate the decision to the applicant, hence making a total of 26 days), clarity on information required in Form FCC 1 and FCC 2, a reasonable degree of clarity in renewal rules, and penalties for false information.

3. Areas of Concern

Despite the positives, a close review of the Regulations suggests some legal and operational setbacks could arise:

3.1. **Duplication with Trademark Registration:**
Businesses must first register trademarks in the jurisdiction of their choice (Reg. 3(2)(a)), then record them separately with the FCC. This dual compliance increases costs and administrative burdens.

3.2. **Short Validity Period:**
In terms of Regulation 5(2), the recordation lasts only one year; thus, it would require frequent renewal, which may be costly and cumbersome for importers, particularly those with small-sized businesses. Notably, in other jurisdictions, such as Kenya, the same timeframe for renewal applies.

3.3. **Costs:**
While the prescribed recordal fees are fairly affordable, the fact that renewal is done annually (Reg. 5(2)) and each class of trademark registration must be recorded separately (the proviso to Reg. 3(2)) may translate into significant expenditure to importers with a big trademark portfolio.

3.4. **Sphere of Application:**
Considering the intellectual property and competition landscape in Tanzania, which has a dual regulatory framework in Mainland Tanzania and Zanzibar, the new requirement will only apply to Mainland Tanzania. Zanzibar has its own trademark legal structure under the Business and Property Registration Agency (BPRA) and, for competition, the Zanzibar Fair Competition Commission (ZFCC), which could lead to potential market distortions and confusion. What if goods are imported through Zanzibar and then later transported to the Mainland of Tanzania? Will the FCC treat such goods as imports? Given the current architecture of the Recordal Regulations, it seems that as long as goods are subjected to customs declaration in Mainland Tanzania, the new recordal requirement will apply. Admittedly, these are still grey areas that will be tested when the new requirements are implemented.

3.5. **Capacity Issues:**
Currently, the FCC may lack adequate ICT systems and trained inspectors to handle a high volume of recordal applications and cross-checks at border points.

3.6. **Trade Delays:**
Imports may risk clearance delays if recordation data is incomplete or mismatched.

3.7. **Legal Uncertainties:**
The Regulations are silent on the institutional collaboration between BRELA, FCC, and the Customs Authorities. Furthermore, the regulations are silent on the grounds for refusing an application for recordal. Ideally, one would have expected the FCC to reject an application if the mark is registered in Tanzania by another proprietor at BRELA. In the absence of system coordination and integration, the FCC will hardly be able to detect a registration at BRELA. During the interview, FCC confirmed that the process is underway to develop an integrated system between FCC, BRELA, and Customs.

4. Implementation Challenges

There are likely to be several implementation challenges:

4.1. **Institutional Overlaps:**
Ambiguity between the legal mandate of the FCC (recordation/enforcement) and BRELA (registration/proprietary rights).

4.2. **Awareness:**
Traders (Importers) and local agents may not understand the practical distinction between registration and recordation.

4.3. **Resource Constraints:**
FCC must urgently build its ICT infrastructure capacity for database management and coordination with BRELA and the customs authority.

4.4. **Legal Uncertainty:**
Potential challenges from traders arguing that recordation duplicates or indirectly restricts their trademark rights. Lack of clarity regarding the treatment of imports that enter the Tanzania Mainland through Zanzibar.

5. Institutional Collaboration

For the new requirement to function seamlessly, it is pertinent to have a defined, formalized institutional collaboration between the following institutions:

5.1. **FCC and BRELA Coordination:**
Develop a shared IP database or information exchange protocol to avoid duplication.

5.2. **FCC & TRA (Customs):**
Seamless integration of recordation with customs clearance systems for border enforcement.

5.3. **FCC & Business Community:**
Engagement with importers, national chambers of commerce, and trademark agents to raise awareness.

5.4. **FCC & Zanzibar BPRA**:
Although Zanzibar is outside this system, harmonisation discussions could reduce cross-border inconsistencies within Tanzania.

5.5. **Judiciary & Enforcement Agencies:**
Training judges, magistrates, and enforcement officers on recordal-related disputes.

6. Recommendations

As a way forward, the following intervention may be considered:

6.1. Extending recordation validity beyond one year to reduce administrative burden.
6.2. Developing a single-window platform linking BRELA registration and FCC recordation.
6.3. Launching nationwide sensitisation campaigns before July 2025.
6.4. Introduce tiered fees (lower for SMEs) to reduce compliance costs.
6.5. Build capacity at FCC and TRA(Customs) to avoid trade disruptions at borders.

7. Conclusion

The Recordal Regulations represent a significant step in Tanzania's efforts to combat counterfeit goods by enhancing border enforcement. However, without careful coordination between the FCC, BRELA, and customs, and without considering the practical burdens on traders, the system could become repetitive and unwieldy – hence a potential non-barrier to cross-border trade. The success of the recordal requirement will depend on institutional collaboration, digital integration, and intensive awareness among stakeholders prior to the effective date.

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Disclaimer:

This legal brief summarizes our reflections on the recently promulgated Merchandise Marks (Recordation) Regulations of 2025. It is not intended to serve as legal advice for any specific case you may be dealing with. For tailored legal guidance, please consult your preferred attorney or the undersigned.

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