

## THE IMPACT OF THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) ACT 2022 ON THE TRADE MARKS ACT: A CRITICAL EVALUATION\*

### Abstract

*The enactment of the Business Facilitation (Miscellaneous Provisions) Act 2022 (BFA) marks a significant and transformative reform aimed at enhancing the ease of doing business in Nigeria.<sup>1</sup> This paper provides a critical evaluation of the Act's impact on the Trade Marks Act 2004 (TMA), examining how its provisions modify trademark in concept, definition, registration, administration and enforcement in Nigeria. The Act introduces measures to simplify procedures, promote digitalization, and reduce bureaucratic hurdles that have historically impeded the trademark process.<sup>2</sup> The Act aims to make the country's business environment more attractive to both local and foreign investors by aligning Nigeria's trademark regime more closely with international standards. This paper discusses both the positive outcomes and potential challenges, including the implications for businesses' intellectual property rights and the legal framework's adaptability to evolving commercial needs. This critical evaluation provides a nuanced view of the Act's effectiveness in enhancing intellectual property rights protection and fostering a more favorable business climate in Nigeria. The methodology employed in this paper is doctrinal. Primary and secondary sources were used to collect data, this includes the constitution, federal legislation, case law, textbooks, journals, and internet sources. The paper concludes by providing policy recommendations aimed at addressing the potential challenges premised on the provisions of the BFA in light of the amendments to the TMA. This it does by advocating for a more enhanced and robust legal framework, proper enforcement measures, addressing conceptual and interpretational challenges among others. By addressing these issues, it submits, Nigeria can move towards a more robust business environment, ultimately contributing to sustainable development and improved socio-economic progress.*

**Keywords:** Business Facilitation (Miscellaneous Provisions) Act 2022, Trade Marks Act, Impact, Reform, Nigeria

### 1. Introduction

The Nigerian government recently introduced the Business Facilitation (Miscellaneous Provisions) Act, 2022, as part of ongoing efforts to improve the ease of doing business in Nigeria. The Act aims to modernize, streamline, and improve various business-related laws in Nigeria, ensuring alignment with international best practices.<sup>3</sup> Among the legislation impacted by this new Act is the Trade Marks Act,<sup>4</sup> which governs the registration, protection, and enforcement of trademarks in Nigeria. This article critically examines the changes brought about by the Business Facilitation Act on the Trade Marks Act, focusing on implications for businesses and the protection of intellectual property rights in Nigeria. In furtherance, this paper looks at the background of the Business Facilitation Act and the Trade Marks Act, juxtaposing 'trademark' definition under the BFA & TMA, exploring the key differences, implications, and broader impacts on intellectual property (IP) rights in Nigeria. The challenges and limitations of the BFA are also addressed.

### 2. Backgrounds to the Business Facilitation Act (BFA) and Trade Marks Act (TMA)

The regulatory framework for businesses in Nigeria has been evolving to create a more conducive environment for both domestic and foreign investment. Two key pieces of legislation that shape the business landscape in Nigeria are the Trade Marks Act and the Business Facilitation Act. While the Trade Marks Act provides the foundation for protecting intellectual property rights in Nigeria, the Business Facilitation Act (BFA) was introduced to address bureaucratic challenges and modernize the regulatory framework for businesses.

#### Trade Marks Act of Nigeria 2004

The Trade Marks Act, enacted first in Nigeria in 1965, has undergone various reforms to become the Trade Marks Act, Cap T13 Laws of the Federation of Nigeria 2004. This provides the legal basis for trademarks protection in Nigeria. Before the establishment of the 1965 Act, Nigeria relied heavily on common law principles derived from English trademarks law. However, as Nigeria's economy grew, so did the demand for local legislation to protect intellectual property rights effectively grew. The Trade Marks Act was introduced to formalize and streamline the registration of trademarks, ensuring that businesses could protect their brands against misuse and counterfeit products, which had become increasingly prevalent in the market.<sup>5</sup> The Trade Marks Act outlines the process for registering

\*By Mary Imelda Obianuju NWOGU, LLB, BL, LLM, PhD, FCARB, Reader, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Email: ujn3333@yahoo.com; and

\*Eric Efe UGHUMIAKPOR, LLB, BL, AICMC, LLM Candidate, Faculty of Law, Nnamdi Azikiwe University, Akwa, Anambra State, Nigeria. Email: ericefe16@gmail.com.

<sup>1</sup> The explanatory memorandum to the Act. See also Section 1 (1) (a) (b) of the Act.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid

<sup>4</sup> See Part xxi of the Schedule to Act made pursuant to Section 9 dealing with consequential amendments.

<sup>5</sup> Akintunde, T., History and Development of Trademark Law in Nigeria, *Journal of Nigerian Intellectual Property* (2015).

trademarks, the criteria for trademark eligibility, and the grounds on which a trademark may be refused or challenged. Key provisions include: *Registration Process*: The Act establishes the Nigerian Trademark Registry, which handles applications and maintains a record of registered marks. *Protection Scope*: It outlines the criteria that define a valid trademark, emphasizing distinctiveness and non-descriptiveness. *Enforcement*: The Act provides mechanisms for enforcing trademark rights, including the right to sue for infringement and the imposition of penalties for counterfeit activities.<sup>6</sup> Over the years, the Act has faced challenges due to outdated provisions and a lack of clarity in certain areas. For instance, Nigeria has had difficulties in keeping pace with global intellectual property standards, and there has been limited recognition of non-traditional trademarks like sound or smell marks. However, amendments have been proposed, comprehensive updates to align Nigeria's intellectual property laws with international conventions such as the TRIPS Agreement.<sup>7</sup> Critics have often noted that the present Trade Marks Act is outdated, lacking provisions for modern issues which are crucial for global commerce, consequently needs further amendment.

### **Business Facilitation Act, 2022**

The Business Facilitation Act is part of the Nigerian government's efforts to improve Nigeria's position on the World Bank's Ease of Doing Business Index. The Business Facilitation Act (BFA) is aimed at streamlining regulatory procedures, improve the ease of doing business, and attract foreign investment. Prior to the BFA, Nigeria's regulatory environment was perceived as cumbersome, often creating obstacles for both local and foreign entrepreneurs. The BFA was introduced as part of Nigeria's economic reform agenda, designed to enhance regulatory transparency, reduce administrative delays, and simplify compliance for businesses.<sup>8</sup> The BFA incorporates multiple reforms across key business-related sectors, with provisions aimed at: *Digitalizing Processes*: The Act mandates that agencies adopt digital platforms to improve efficiency in business registration, permits, and other regulatory processes. *Reducing Regulatory Bottlenecks*: It simplifies bureaucratic procedures, particularly in areas related to company registration, tax compliance, and regulatory approvals. *Improving Investment Climate*: The BFA includes provisions that facilitate a more business-friendly environment by eliminating redundant processes and shortening timelines for approvals.<sup>9</sup>

Since its enactment, the BFA has had a noticeable impact on Nigeria's business environment. By reducing the regulatory burden on businesses. The Act aims to enhance Nigeria's ranking in global ease-of-doing-business indexes, increase foreign direct investment, and promote small and medium enterprise (SME) growth. However, challenges remain, particularly regarding implementation at the state level and ensuring compliance among local agencies.<sup>10</sup> Notably, the Trade Marks Act and Business Facilitation Act serve as foundational pillars for Nigeria's commercial framework. While the Trade Marks Act provides critical protections for intellectual property, the BFA is designed to remove barriers to business operations and investment. Both acts are essential to creating a vibrant economic landscape in Nigeria, though further reforms may be necessary to ensure their long-term effectiveness in a rapidly changing global economy. Together, these laws signify Nigeria's dedication to fostering a robust and modern business environment that can attract investment, protect intellectual property, and support economic growth.

### **3. Evaluation of 'Trade Mark' Definition under the BFA & TMA**

#### **Meaning of Marks and Trade mark**

The definition of trademarks can hardly be divorced from an understanding of 'Mark' itself. This is so, because knowing what 'Marks' is, means understanding what trademark is. Hence, it becomes apposite and fitting to embark on an excursion into the concept and semantic undertone of 'mark' short of the word, 'trade'. Having this in mind, a peek into section 67 of the TMA gives a pointer and bearing on the meaning or conception of the word 'Mark'. It defines a mark to include: a devise, brand, heading, label, ticket, name, signature, word, letter, numerals, or any combination thereof.<sup>11</sup>

Banking this at the vault of the mind of the readers, recourse is now had to what a 'Trade mark' is? According to the Black's Law Dictionary,<sup>12</sup> trademark, is define to mean a word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others. The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), provides that a trademark is any sign or any combination of signs,

---

<sup>6</sup> Olumide, A., The Legal Process of Trademark Registration in Nigeria, *Lagos Law Journal* (2019).

<sup>7</sup> Ibrahim, R., Intellectual Property Challenges in Nigeria, *African Law Review* (2021).

<sup>8</sup> Nigerian Ministry of Trade, *Economic Reform and the Business Facilitation Act* (2023).

<sup>9</sup> Central Bank of Nigeria, *the Business Facilitation Act and Foreign Investment* (2023).

<sup>10</sup> World Bank, *Nigeria's Ease of Doing Business Report*, World Bank Publications (2024).

<sup>11</sup> A slogan can constitute a trademark if it is distinctive. Thus, the slogan HAVE IT YOUR WAY® is protectable. Alphanumeric symbols (letters and numbers) may be protectable as long as they are not merely descriptive. Thus, broadcast station calls letters such as NBC® or CNN® are registrable. Similarly, numbers (either alone or with letters) can function as marks. For example, Ford Motor Company received a registration for F-550® for automobiles after explaining to the USPTO that the letter and numbers had no significance in the automobile industry.

<sup>12</sup> Bryan and and Garner. (eds) (2009). *Black's Law Dictionary*: West Publishing Co.

capable of distinguishing the goods or services of one from those of other undertakings.<sup>13</sup> The Trade Marks Act on its part defines trade mark to mean:

Except in relation to a certification trademark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means in relation to a certification trademark, a mark registered or deemed to have been registered under section 43 of the Trade Marks Act.<sup>14</sup>

The Supreme Court in *Ferodo Ltd v Ibetos Industries Ltd*.<sup>15</sup>, ignored the opening and closing clauses of the Act (TMA) and stated simply that trade mark means: ‘mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark’.<sup>16</sup>

It then follows from the Trade Marks Act, that marks are used only in relation to trade in goods and not in relation to services.<sup>17</sup> The Trade Marks Act does not provide an exhaustive list of what ‘marks’ could also be registered as a trademark. This definition focuses specifically on visual symbols that denote the origin of goods, such as logos, brand names, or symbols. Distinctiveness is key to the Act, as the mark must be capable of differentiating one business's products from another.<sup>18</sup> The act's scope is narrow, focusing on goods and requiring an explicit link between the goods and the trademark owner in the course of trade. This restriction is significant because it leaves out businesses in the service sector, such as finance, hospitality, and technology, unable to register unique marks associated with their services.<sup>19</sup> The Act does not recognize non-traditional marks like sounds, colors, or scents, which are increasingly protected in many jurisdictions as brand identifiers.<sup>20</sup> This omission limits the range of IP protections that Nigerian businesses can access, affecting their competitiveness globally. Consequently, this definition has faced criticism for being somewhat outdated and restrictive in modern business settings, as it does not consider broader service categories and dynamic marketing contexts.<sup>21</sup>

#### Meaning and Concept of Trademark: A Focus on the BFA

The Business Facilitation Act 2023 (‘BFA’) however, has amended the definition of a ‘trade mark’ to include the shape of goods, packaging, combinations of colours and marks used in relation to services. Thus, Part xxi (21) Paragraph 69(b) of the BFA amends section 67 of the Trade Marks Act and provides thus:

trade mark means — (a) a mark used or proposed to be used *in relation to goods or services* for the purpose of indicating a connection between the goods or services and a person having the right, either as a proprietor or as a registered user, to use the mark, whether with or without any indication of the identity of that person, *and may include shape of goods, their packaging and combination of colours*; and (b) in relation to a certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act. (Emphasis mine)

To include both goods and services, the Act intended to fill a major gap in the Trademarks Act.<sup>22</sup> By including services, the BFA aligns with the intellectual property (IP) laws of various jurisdictions, such as the European Union and the United States, which also provide for service trademarks.<sup>23</sup> This shift aligns Nigeria's IP framework more closely with international standards, particularly those under the TRIPS Agreement, which requires member states to protect trademarks for both goods and services.<sup>24</sup>

The inclusion of packaging explicitly in the definition of a trademark acknowledges the dynamic nature of consumer tastes and the significance of visual components for brand recognition. This also extends to the shape of goods that may now be registered as trademarks. Thanks to amendments by the BFA, businesses that invest in unique and innovative packages and product designs may now protect these components, encouraging competition and innovation in the market. Additionally, the inclusion of a combination of colours further enhances the role and

<sup>13</sup> Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). (1995). Article 15(1).

<sup>14</sup> Trade Marks Act, Cap. T13, LFN, 2004 s. 67(1).

<sup>15</sup> (2004) 5 NWLR (pt 866) 317

<sup>16</sup> *Ibid*, C.A Ogbuabor and S.N Anya, *Jurisdiction in action for infringement of trade marks and passing-off*. Nigerian Juridical Review, Vol. 11(2003).

<sup>17</sup> *American Cyanamid Co. v. Vitality Pharm. Ltd.* (1991) 2 N.W.L.R Part 171 p 1-126. (SC)

<sup>18</sup> Intellectual Property in Nigeria: An Analysis of the Trademarks Act, *Nigerian IP Journal*, Vol. 29.

<sup>19</sup> ‘Trademarking Services in Nigeria: Effects of the Business Facilitation Act,’ *Journal of Business Law*, 2023.

<sup>20</sup> WIPO, ‘*Global IP Law and Non-Traditional Trademarks*,’ World Intellectual Property Organization (WIPO), 2022.

<sup>21</sup> Adebayo, O., ‘Modernizing Trademark Law in Nigeria,’ *Intellectual Property Journal*, vol. 12, no. 3, 2020, pp. 213-219.

<sup>22</sup> Business Facilitation Act, 2022, Nigerian Government Gazette, Para 69(b), Pt 21

<sup>23</sup> Lanham Act, U.S. Code Title 15, Chapter 22; Council Regulation (EC) No 207/2009 on the Community trademark.

<sup>24</sup> TRIPS Agreement, Article 15, World Trade Organization.

importance of creative distinctiveness through colour combination. This acknowledges the potential aesthetic effect and originality of a brand resulting from original colour combinations. Businesses that use certain colour schemes as a component of their brand identification may now benefit from legal protection, giving them a competitive edge.

The amendment by the BFA is consistent with the recent Supreme Court decision in *Intl Tobacco (Nig.) Ltd & Ors v. B.A.T (Nig.) Ltd & Anor*,<sup>25</sup> where the apex court recognised the significant role the colour(s) of a trademark plays in protecting its distinct identity. It is important to note, however, that this does not suggest that any one brand can decide to lay a monopolistic claim to a particular colour or common product shape. To qualify for trademark registration, the proposed trademark is still required to meet the set standard of distinctiveness under the Trade Marks Act.

Although first appearing minor, the amendments to the definition of ‘trademarks’ could have far-reaching implications for businesses operating in Nigeria. First, it provides businesses with broader protection for their brand elements, fostering creativity and innovation in product design, service offering, packaging, and colour schemes. This increased protection helps safeguard businesses against potential infringement and counterfeiting. Additionally, the expanded definition of trademarks promotes healthy competition by encouraging businesses to invest in distinctive and innovative elements. This creates a dynamic market environment where consumers are presented with a diverse range of unique products and services.

### **Service Marks**

The BFA has regularized the framework for the registration and protection of marks referred to as service marks.<sup>26</sup> Before the amendment of Section 67 of the Trade Marks Act Cap T13, LFN 2004 (‘Trade Marks Act’) by the BFA, there was no legislative framework in Nigeria recognizing service marks as a registrable category of intellectual property rights and outlining a procedure for the registration of such marks. Service marks are a category of trademarks used to identify services rather than tangible goods or products. As opposed to conventional trademarks, service marks refer to brand names, brand images, or logos that identify and distinguish the provider of a particular service or group of services. Paragraph 69 of the BFA, in amending the definition of ‘goods’ under the Trade Marks Act, extended the scope of the definition to include ‘services’. Under the same Paragraph 69, the BFA substituted the definition of ‘trade mark’ under Section 67 of the Trade Mark Act with a new definition of ‘trade mark’, which now includes – ‘services.’

It must be noted also that para. 69 have brought certification trademark within the 2022 BFA in a rather curious manner, it has provided for certification trademark as it were under 67 of the TMA in the following words... in relation to a certification trademark, a mark registered or deemed to have been registered under section 43 of the Trade Marks Act. What then does it purpose serve by mere repetition and inclusion in para 69(b) of the BFA? These writers believe, its inclusion as aforesaid, is an indication that it should be read in light of the amendment following from Para. 69 of the BFA. In order words, certification mark will now include certification service mark, which can also now be registered with respect to shape, packaging and combination of colours without prejudice to other implications attendant to goods consequent upon the amendments in the said Para. 69 of the BFA.

In terms of the benefits of the amendment, this will help businesses maintain consistency and uniformity across different markets, facilitate brand recognition, and allow customers to differentiate between similar services offered by different service providers with more ease than would otherwise be possible. However, an eagle eye looks at the amendment to the TMA by the BFA would reveal some obvious legislative gaps by the law makers. Firstly, in the 2022 Act the phrase: a connection in the course of trade was omitted which has a far and telling implication on business space in Nigeria.<sup>27</sup> A hypothetical situation better brings this gap to life. Traditionally, trademark have been afforded registration on the premise of being used in the course of trade, the Law profession for example, traditionally have been recognized as not been practiced as a course of trade and business, the poser then is, can a law firm by virtue of this amendment to the TMA without similar amendments to CAMA or under part 1 (section 9) of the BFA now offers or guarantee to law professionals or other professions or entities recognized as not being practice in the course of trade or business a route to register such profession’s or entity’s names as a trademark under the TMA? Is such registration an alternative or addition to registration under CAMA 2020?

One cannot forbear adding to the reasoning, an observation, which may, perhaps, be found of some importance, whether the categories of marks under the para. 69 of the BFA, create a close or open-ended class of registrable

---

<sup>25</sup> (2023) LPELR-60272(SC)

<sup>26</sup> *Fanmilk v Mandarin Hotels Ltd.* (2) FHC/CS/791/2020; FHC/CS/792/2020

<sup>27</sup> This omission of the draftsmen begs the question whether a Law Firm registrable as a business name under Companies and Allied Matters Act, 2020. (CAMA) can now register under the TMA by virtue of its amendment by the BFA.

marks? Again, it has been asked in some quarters whether ‘or’ as used in para. 69 in qualifying goods, should have been amended to read ‘and’ considering sub para (a) of para. 69, and be interpreted disjunctively or conjunctively?

I now turn, to attempt an answer to the posers above. Firstly, the verb *to include* introduces examples, not an exhaustive list.<sup>28</sup> In normal English usage, if a group ‘consists of’ or ‘comprises’ 10 lawyers, it contains precisely that number. If it ‘includes’ 10 lawyers, there may well be thousands of other members from all walks of life as well. That is, the word *include* does not ordinarily introduce an exhaustive list. The text of para. 69 is entirely clear, and its content so obvious as to be hardly worth the saying. The traditional, commonly repeated rule is that *shall* is mandatory and *may* is permissive<sup>29</sup>. Therefore, it is submitted, that when the drafters of the BFA wrote into para. 69 the phrase *and may include shape of goods, their packaging and combination of colours*, they intended to create an open-ended class of registrable marks other than be ones expressly enumerated.

Furthermore, and admittedly, the conjunctions *and* and *or* are two of the elemental words in the English language. Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives.<sup>30</sup> Competent users of the language rarely hesitate over their meaning. But a close look at the authoritative language of legal instruments, as well as the litigation that has arisen over them shows that these little words can cause subtle interpretive problems as now raised over the choice of ‘or’ in the BFA in view of sub para. (a) of para. 69. On the one part, the use of ‘or’ in qualifying *goods* under the BFA is preferable to ‘and’, this view is borne from the fact that when one considers the evident reality that goods sound in the nature of *tangibility* and services in *intangibility* creating a dichotomous parallel, it disjunctive interpretative clarity becomes self-evident and appropriately more fitting. Again, the intendment of the legislators it seems, was to bring services as if it was substituted for goods in the principal legislation to all intent and purposes and not an avatar or integral part of the word ‘goods’ regardless of para. 69 (a) that define ‘goods’ as including services’. This must mean that sub para. (b) of 69 coming later in time must be deemed to have modified sub para. (a) of 69 being its antecedent provision by rule of statutory construction, supporting and not derogating from the submission that ‘or’, is a more fitting interpretation under the relevant section, so too *disjunctively* constructed also. However, the provision of a text should be interpreted in a way that renders them compatible, not contradictory.<sup>31</sup>

#### 4. Summarized Comparative Look into the Definition under the Trade Mark Act and Business Facilitation Act

**Comparison on Scope: Goods and Services:** The BFA's inclusion of services in the definition allows businesses in Nigeria's growing service economy to trademark unique identifiers for their brands. This adjustment benefits sectors like IT, telecommunications, and hospitality, creating a more comprehensive IP framework.<sup>32</sup>

**Recognition of Non-Traditional Marks:** The BFA's broader language opens up the potential for non-traditional marks to be protected, aligning Nigeria with countries like the United States and the European Union, where such protections exist.<sup>33</sup> This change reflects the evolving nature of branding and allows businesses to secure distinctive brand features beyond traditional logos.

**Requirements for Recognition:** The Trademarks Act requires an identifiable ‘connection in the course of trade’ between the trademark and the goods it represents. This criterion could hinder new businesses from protecting emerging brand assets that are still being developed or marketed indirectly. In *Hospital World Trademark* (1967) RPC 595, it was held that the production of a free magazine containing matter of interest to prospective customers would undoubtedly aid the business as manufacturers of hospital supplies and create goodwill for the firm but it did not qualify as use in the course of trade. However, in *Golden Pages T.M* (1985) FSR 27, the compiler of a telephone directory who distributed it free but obtained income from advertisements in the directory was held to use the mark in the course of trade. The BFA, however, removes this connection requirement, focusing instead on whether the mark is ‘capable of distinguishing’ the goods or services, thus making it more flexible.<sup>34</sup> This change enables

<sup>28</sup> *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) (per Murphy, J.) (‘the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle’); *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1115 (D.C. Cir. 2009) (explaining that *including* indicates a nonexhaustive list but that ‘adding ‘but not limited to’ helps to emphasize the nonexhaustive nature’)

<sup>29</sup> *West Wis. Ry. v. Foley*, 94 U.S. 100, 103 (1876) (per Waite, C.J.). *Railroad Co. v. Hecht*, 95 U.S. 168, 170 (1877) (per Waite, C.J.). *Moore v. Illinois Cent. R.R.*, 312 U.S. 630, 635 (1941) (per Black, J)

<sup>30</sup> *Nze v N.P.A.* (1997) 11 NWLR (Pt. 528) 210, *Odua Investment Co Ltd. v. Talabi* (1997) 10 NWLR (Pt 523) 1

<sup>31</sup> *State v Bowsher*, 242 P.3D 1055(Ariz. 2010).

<sup>32</sup> ‘Protecting Service Marks in Emerging Markets: Nigeria's New IP Approach,’ *Policy Brief*, 2023.

<sup>33</sup> Recognition of Non-Traditional Trademarks in EU and US Law, European IP Office (EUIPO), 2022.

<sup>34</sup> Ajayi, T., ‘New Horizons in Nigerian Trademark Law,’ *Africa IP Law Journal*, vol. 5, 2022, pp. 144-157.

protection for distinctive brands even if they are not directly linked to trade immediately, reflecting a contemporary approach in IP law.<sup>35</sup>

**Implications for International Compatibility:** The expanded definition in the BFA is a step toward harmonizing Nigeria's trademark laws with standards under agreements like TRIPS. This alignment enhances Nigeria's global IP reputation and makes the country a more attractive destination for foreign investors, who value robust IP protections.<sup>36</sup> Furthermore, the updated framework supports Nigeria's commitments under the African Continental Free Trade Area (AfCFTA), promoting uniform IP standards across the continent.<sup>37</sup>

**Comparative Impact on International Standards: Limited Compatibility vs. Enhanced Compatibility:** The older Trademarks Act's restrictive definition limited the international enforceability of Nigerian trademarks, particularly in jurisdictions that recognize non-traditional marks and service marks. By expanding the definition under the BFA, Nigeria strengthens its international standing in IP law, supporting Nigerian brands looking to expand globally.<sup>38</sup>

**Alignment with International Standards:** By introducing the BFA, Nigeria has taken a step towards harmonizing its IP laws with international norms, which often include both goods and services under trademark protection, as well as a broad definition focusing on distinctiveness rather than strict trade linkage.<sup>39</sup> This shift aligns with the trend observed in the World Intellectual Property Organization (WIPO) guidelines, which recommend more inclusive IP frameworks in globalized economies.<sup>40</sup>

**Practical Implementation Challenges:** While the BFA's expanded definition is progressive, practical challenges may limit its immediate effectiveness. For instance, Nigeria's IP offices will need infrastructure improvements to manage the broader range of trademarks, particularly non-traditional marks. Current administrative processes are still largely manual, and shifting to digital processes will require time and investment.<sup>41</sup> Additionally, enforcement challenges remain, as Nigeria's IP enforcement mechanisms need strengthening to ensure effective protection for trademarks.<sup>42</sup>

**Comparative View on Practical Challenges: Traditional Framework vs. Modern Requirements:** The Trademarks Act's simpler framework, though outdated, was more manageable within Nigeria's existing IP infrastructure. The BFA's modernized definition introduces new demands on Nigeria's IP offices, highlighting the need for further investments in technology and training to fully implement the expanded trademark protections.<sup>43</sup>

## **5. Other Key Impact on the Trade Marks Act by the Business Facilitation Act**

**Streamlining Registration Procedures:** One of the primary reforms introduced by the Act is the digitization of the trademark registration process. Traditionally, Nigeria's trademark registration involved extensive paperwork, prolonged waiting times, and delays due to inefficiencies within the administrative system. The Business Facilitation Act mandates the use of online platforms to manage trademark applications and renewals, creating a streamlined, accessible process for applicants. Studies have shown that digitalization in IP systems significantly reduces processing time, thereby benefiting both domestic and international businesses seeking trademark protection in Nigeria.<sup>44</sup>

**Alignment with International Standards:** By aligning trademark registration practices with the World Intellectual Property Organization (WIPO) standards, the Business Facilitation Act enhances Nigeria's position within the global business landscape. This alignment fosters interoperability with international IP systems, making Nigeria's trademark processes more predictable and appealing to foreign investors. With increased accessibility to global markets, local businesses stand to benefit from enhanced IP protection outside Nigeria, while foreign companies are encouraged to secure their trademarks within the Nigerian jurisdiction.<sup>45</sup>

---

<sup>35</sup> WIPO Standing Committee on Trademarks, Industrial Designs and Geographical Indications, 'Expanding IP in the Digital Age,' 2021.

<sup>36</sup> Johnson, L., 'Nigeria's IP Standards: Aligning with International Norms,' *Journal of International Law and Policy*, vol. 22, no. 2, 2023, pp. 35-47.

<sup>37</sup> Nwankwo, R., 'AfCFTA and Intellectual Property Harmonization,' *African Business Review*, vol. 18, no. 1, 2023, pp. 120-128.

<sup>38</sup> Smith, M., 'Expanding Trademark Protection for Global Competitiveness,' *International IP Journal*, vol. 16, 2023, pp. 85-93.

<sup>39</sup> Okoye, N., 'The Impact of the BFA on Nigerian Trademark Law,' *Business Law Reports*, vol. 10, 2023, pp. 120-128.

<sup>40</sup> WIPO, *Guidelines on Trademarks for Goods and Services*, WIPO Publication No. 489.

<sup>41</sup> Akinyemi, J., 'Challenges in Implementing the Business Facilitation Act in Nigeria's IP Sector,' *African Journal of Business Law*, vol. 9, no. 4, 2023, pp. 60-68.

<sup>42</sup> Oluwole, P., 'IP Enforcement in Nigeria: Bridging the Gap,' *Journal of African Law*, vol. 14, 2022, pp. 112-120.

<sup>43</sup> Ekpo, D., 'From Manual to Digital: IP Infrastructure Challenges in Nigeria,' *West African IP Review*, vol. 12, 2023, pp. 30-39.

<sup>44</sup> Adeleke, T., 'Digital Transformation in Intellectual Property Administration,' *Nigerian Journal of IP Law*, 2023.

<sup>45</sup> WIPO, *Alignment of National IP Systems with International Standards*, Geneva, 2022.

**Reduction of Bureaucratic Delays:** Historically, trademark registration in Nigeria has been fraught with bureaucratic delays, which discourage applicants and weaken IP protections. The Business Facilitation Act introduces mandatory timelines for processing trademark applications, limiting the scope for undue delays. This reform not only aids in faster application reviews but also mitigates the administrative bottlenecks that have historically hindered trademark enforcement. Research on similar legislative reforms indicates that setting deadlines is a practical measure that reduces processing times and enhances public trust in IP institutions.<sup>46</sup>

**Enhanced Enforcement Mechanisms:** In addition to improving registration processes, the Business Facilitation Act strengthens enforcement provisions for trademark holders. By revising enforcement guidelines, the Act empowers authorities to take swifter action against infringement. This includes providing mechanisms for interim injunctions and stronger penalties for trademark violations, which is expected to deter counterfeiting and boost confidence in the Nigerian market.<sup>47</sup> The Act's focus on enforcement recognizes the crucial role IP protection plays in attracting investment, particularly in sectors vulnerable to counterfeit goods.

## 6. Challenges and Limitations of the BFA

**Implementation Bottlenecks:** Although the Act promises substantial improvements, implementation poses a significant challenge. Bureaucratic inertia within government agencies could slow the transition to digital processes, thereby hindering the intended efficiency gains. Further, lack of adequate training and resources among staff could impede the effective deployment of online systems, resulting in continuity of inefficiencies seen in previous regimes. Experience from similar reforms in other countries suggests that successful implementation often requires substantial financial investments, training, and infrastructure upgrades.<sup>48</sup>

**Legal Ambiguities and Interpretational Issues:** Certain provisions in the Business Facilitation Act regarding trademarks remain open to interpretation, potentially creating legal ambiguities. For example, definitions around trademark infringement and conditions for interim injunctions are broad, which could lead to inconsistent judicial decisions. Legal practitioners have raised concerns that the lack of specificity may complicate enforcement efforts, as courts may interpret the law differently, thereby creating uncertainty for trademark holders.<sup>49</sup>

**Need for Public Awareness:** The success of the Business Facilitation Act's trademark reforms heavily depends on public awareness and adoption. Many small businesses and local entrepreneurs may remain unaware of the new processes, thereby limiting the Act's impact. Increased public awareness campaigns and educational programs are essential to ensure that all stakeholders understand the new system and can take full advantage of it.<sup>50</sup>

## 7. Conclusion and Recommendations

The enactment of the Business Facilitation Act (BFA) has introduced significant amendments to the Trade Marks Act, which collectively aim to streamline and modernize trademark registration processes in Nigeria. By reducing bureaucratic procedures and enhancing digitalization, the BFA is expected to foster a more business-friendly environment for both local and international stakeholders. One of the primary impacts of the BFA on the Trade Marks Act is the promotion of efficiency and transparency in the registration process, addressing long-standing delays and reducing administrative burdens on trademark applicants. These reforms are particularly important for foreign investors and small businesses, who can now experience a smoother entry into the Nigerian market. However, while the changes brought by the BFA are a step forward, challenges such as technological infrastructure, regulatory capacity, and awareness of these reforms remain.

While the changes brought by the BFA are no doubt lofty, however, in order that this amendment and impact on the trade mark Act are not undermined, some recommendations are therefore proffered to wit: To fully realize the benefits of the BFA amendments, investment in digital infrastructure is essential. The Nigerian Intellectual Property Office should prioritize developing a robust online system that allows for seamless application, examination, and approval processes. Government should focus on training and up skilling personnel within the Trademark Registry to ensure that they are well-equipped to manage digital processes efficiently. This will help in minimizing any administrative bottlenecks that may arise from the transition to a digital platform. Given that many small business owners and foreign investors may be unaware of the new provisions under the BFA, a public awareness campaign is necessary. This could include workshops, seminars, and online resources aimed at educating the public on how to navigate the new

---

<sup>46</sup> Ibid.

<sup>47</sup> Ojo, A., The Role of Enforcement in IP Protection, *Journal of African Law*, 2022.

<sup>48</sup> Eze, M., Challenges of Implementing IP Reforms in Developing Economies, *Global IP Review*, 2021.

<sup>49</sup> Okafor, C., Legal Ambiguities in the Business Facilitation Act: Implications for Enforcement, *Lagos Law Review*, 2023.

<sup>50</sup> Bello, R., Public Awareness as a Key to IP Reform Success, *Nigerian IP Journal*, 2022.

trademark application processes. As the BFA is implemented, it is important to establish a framework for monitoring its impact on trademark registration. A periodic review will help identify any areas that require further amendments or policy interventions to ensure that the BFA meets its intended goals of easing business processes. For instance, it is advocated, that para.69 of the BFA be amended from reading: ‘*goods*’ includes *services*’ to appear in this order- a) ‘*Goods*’ includes tangible goods or products excluding *services*’; b) ‘*Services*’ includes intangible products excluding *goods*’. Similarly, para. 69( b) be amended to read: ‘*trade mark*’ means - (a) a mark used or proposed to be used in relation to goods or services for the purpose *of indicating a connection* between the goods or services and a person having the right, either as a proprietor or as a registered user, to use the mark, whether with or without any indication of the identity of that person, *and may include shape of goods, their packaging, scent, smell, odour, combination of colours among others provided it does not serve solely an aesthetic, functional or provide a technical result*; and (b) in relation to a certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act.’ (Emphasis mine). The Nigerian government should consider collaborations with international intellectual property organizations to align best practices and ensure that Nigerian trademarks are adequately protected and recognized globally.