



Companies and Intellectual
Property Commission

a member of **the dtic** group

INTRODUCTION TO INTELLECTUAL PROPERTY

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- **LEGISLATIVE FRAMEWORK**
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CIPC INTRODUCED

- CIPC was brought into existence by the Companies Act 78 of 2008.
- In terms of Section 185(1) of the Companies Act, the Commission is established as a juristic person to function as an organ of state within the public administration, but as an institution outside the public service.
- Other Acts such as Trademarks Act, Copyright Act, Designs Act and Patents Act compliment the Companies Act.
- The Commissioner assumed the functions of the Registrars.

CIPC INTRODUCED

- **Registration** of Companies, Co-operatives and Intellectual Property rights and the maintenance thereof
- **Disclosure** of information on its registers
- **Enforcement** of the relevant legislation
- **Promotion of education and awareness** of Company and Intellectual Property Law
- **Licensing** of business rescue practitioners
- **Monitoring** compliance on financial reporting standards
- **Research and advise** the Minister on matters of national policy relating to company and intellectual property law
- **Accreditation and regulation** of Collecting Societies in sound recording (music)

LEGISLATIVE FRAMEWORK

- CIPC exists to implement Intellectual Property policy and legislation as formulated by the Department of Trade and Industry
- Applicable Legal Framework:
 - Copyright Act No: 98 of 1978
 - Performers Protection Act No: 11 of 1967
 - Patents Act No: 57 of 1978
 - Designs Act No: 195 of 1993
 - Trade Marks Act No: 194 of 1993
- Berne Convention 1886, Trips Agreement 1994, Paris Convention 1883 and The Patent Cooperation Treaty 1970 (SA is a contracting member)

WHAT IS INTELLECTUAL PROPERTY ?

Intellectual property (IP) refers to **creations of the mind** such as **inventions**, **literary and artistic works**, **designs**, and **symbols, names and images used in commerce**.

Patents - Inventions

Copyright - literary and artistic works

Trade Marks - Symbols, names

Designs - Fashion Design used in commerce.



CASE STUDY : WHAT IS IP? : LUFEFE NOMJANA

- **Also known as the Spinach King**
- Is the 28-year-old South African entrepreneur
- Building a business empire around spinach in the Cape Town township of **Khayelitsha**



TYPES OF INTELLECTUAL PROPERTY

PATENT



DESIGN



COPYRIGHT



TRADE MARK



WHAT IS A TRADE MARK ?

- Trademark – is a brand name, slogan or logo that **identifies goods or services** and indicates that it is different goods from the goods or services from someone else.
- A trade mark **helps you to build your own, unique brand and to protect that brand** (exclusive right/monopoly) from someone else using your ideas or reputation to promote themselves or their goods and services

How can your company protect its Trade Mark?

- Trade mark protection can be obtained through registration with Companies and Intellectual Property Commission (CIPC).
- Check carefully to make sure that your company does not infringe the IP rights of others. It is advisable to **conduct trademark searches** before commercializing products and services which may conflict with IP rights protected by other persons or enterprises.

CASE STUDY: BAFANA BAFANA TRADE MARK SAGA

- Who owns the name Bafana Bafana ?

SAFA - South African Football Association

- Who is Stanton Woodrush ?

The team's nickname was registered as a brand by a private company, Stanton Woodrush in 1993 owned by **Wayne Smidt**.

Safa buy Bafana trademark for R5m.

A Football Association (Safa) will pay **R5 million** for the trademark to the national team's nickname, Bafana Bafana.



HOW MUCH DOES IT COST TO REGISTER A TRADE MARK?

- In order to get the benefits of Trade Mark rights one has to register it.
- **Trademark search**
Form TM2 – R190.00
- **Registration of a trade mark**
Form TM1 – R590.00
- **Renewal fee**
Form TM5 – R260, 00 (excluding cases where a penalty is payable)
- Visit our website on www.cipc.co.za

WHAT IS A PATENT?

- Patent - is **an exclusive right granted for an invention**, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.
- Patent protection is **20 years** provide it is renewed annually from the third year of its granting.



EXAMPLE OF A GRANTED PATENT

ZIESING, Dieter Andrew
PROVISIONAL PATENT APPLICATION

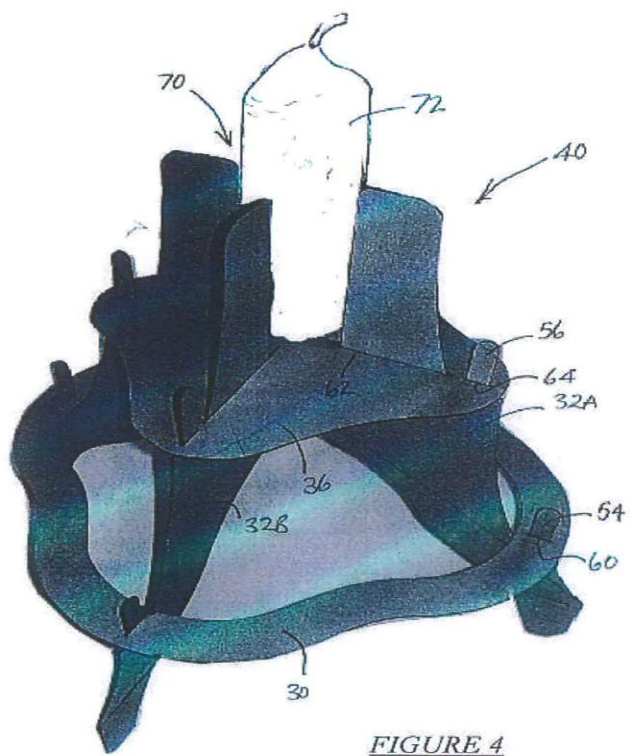


FIGURE 4

ADVERTISEMENT DRAWING

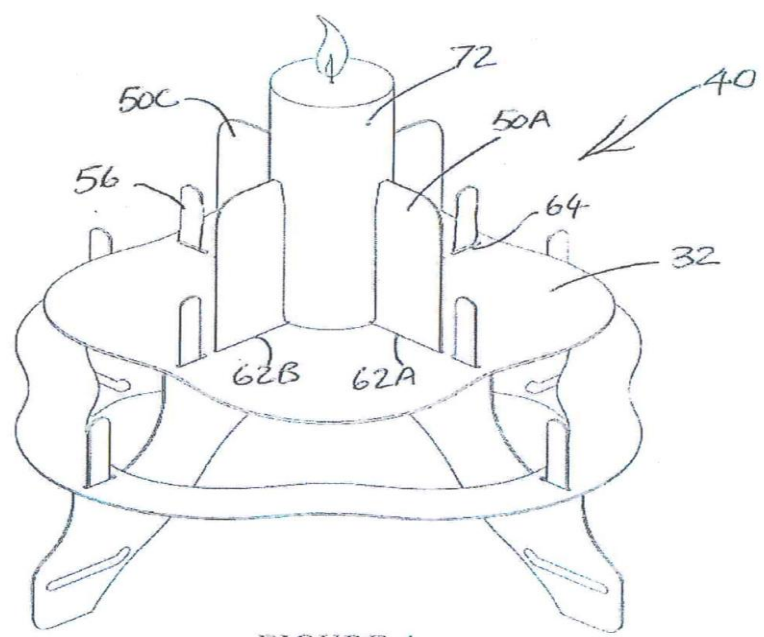


FIGURE 4

McCALLUM, RADEMEYER & FR
PATENT AGENTS
FOR THE APPLICANT

EXAMPLE OF A PATENT APPLICATION

McCALLUM, RADEMEYER & FREIMOND
Ref: P24892/RFT

FORM P8

REPUBLIC OF SOUTH AFRICA
PATENTS ACT, 1978

PUBLICATION PARTICULARS AND ABSTRACT

(Section 32(3)(a) – Regulations 22(1)(g) and 31)

Official Application No.		Lodging Date		Acceptance Date	
21	01	2017108034	22	27 NOVEMBER 2017	43
International Classification			Not for Publication		
51	F21V		Classified By: McCALLUM RADEMEYER & FREIMOND		
Full Name(s) of Applicant(s)					
71	ZIESING, Dieter Andrew				
Full Name(s) of Inventor(s)					
72	ZIESING, Dieter Andrew				
Earliest Priority Claimed					
33	Country	31	Number	32	Date
	ZA		2016/08319		02/12/2016
Title of Invention					
54	CANDLE HOLDER				
57	Abstract (not more than 150 words) .			Number of Sheets	

ABSTRACT

The invention provides a candle holder kit made from a sheet of a rigid material which includes a stand comprising a pair of stand members, each member integrally having, a base portion with a top edge, a pair of candle holding elements which extend from the top edge of the base portion, a pair of legs that extend from the base portion away from the support elements and an engagement formation on an outer facing edge and a rigidifying element for rigidifying the stand when the planar members are inter-engaged in assembly of the kit which is adapted to engage with each engagement formation.

REQUIREMENTS FOR A PATENT

- Novelty

Must not have been made public, in any way (e.g. by oral disclosure, use, trial, printed publication in any language) anywhere in the world, before the date on which an application for a patent is filed.

- Inventive

Not obvious to a person “skilled in the art”.

- Capable of application in trade, industry or agriculture

It must be **commercially useful**.

PATENTS CONTINUED.....

- Term of a patent:

20 years from filing date in exchange for disclosing invention to the public; renewal fees are payable to keep patent in force.

- Territorial Rights:

Patents are **territorial**. To stop someone making use of your invention in any particular country you must obtain a patent in that country.

- Infringing activities:

making
using/exercising;
selling or offering for sale;
importing.

NOVELTY AND INVENTIVE STEPS

- Novelty= New
- Inventive = Not obvious
- The Figure below provides a simplistic view of the difference between the two concepts:

Background IP



- A writing instrument, comprising:
 - a hollow wooden shaft;
 - a graphite core disposed in the shaft.

Foreground IP



- A writing instrument, comprising:
 - a hollow wooden shaft;
 - a graphite core disposed in the shaft; and
 - *an eraser attached to an end of the shaft.*

HOW TO REGISTER A PATENT?

- The following steps are crucial:
- **Patent search** which ensures novelty. This can be done using **a patent search tool**.
- File a provisional application at a cost of **R 60.00**.
- Forms to complete include **P1, P2 and P6**.
- Duration of provincial application is **12 months**
- File a complete application **within 12 months** after a provisional patent has been filed. This requires the intervention of a **Patent attorney**.
- A complete patent registration fee is **R 590.00**
- Patents are **territorial**. To stop someone making use of your invention in any particular country you must obtain a patent in that country.

WHY CONSIDER PATENTING?

- Strong market position and competitive advantage.

A patent gives the owner the exclusive right to prevent others from commercially using the patented invention.

- Higher profit or return on investment

Recover the costs & obtain higher returns on investment from the money invested in R & D

- Additional income from licensing-assigning the patent

License/assign your invention for lump sum of money / royalties

WHY CONSIDER PATENTING?

- Access to technology through cross - licensing

Negotiate cross-licensing agreements with other companies

- Access to new markets

Licensing of patents may provide access to new markets, which are otherwise inaccessible

- Diminished risks of infringement

The owners prevents others from patenting the same invention

- Positive image for your enterprise

TO PATENT OR NOT TO PATENT

- Not Always a good idea

A patent may be expensive & difficult to obtain

- It is strictly a business decision

The protection must be commercially useful

- Is there a market for invention?

- Are there potential licensees or investors?

- How likely are others, especially competitors, to invent & patent same

PATENT VS TRADE SECRETE

- If you have an invention ,you business will face a choice:

To patent it

To keep the invention as a trade secrete (Coca Cola)

- Advantages of a trade secrete includes

Trade secretes involves no registration costs

Trade secrete protection has no time limit

Trade secretes have immediate effect

Does not require disclosure/registration with a government office



HOW DO YOU COMMERCIALISE YOUR PATENT?

- Selling the patent to someone else

Assignment – transferring ownership

- Licensing the patent to others

Retain ownership

- Establishing a joint venture

Decide how you split the profit margins.

TYPES OF LICENSE

- Exclusive License

The licensee has the to use the patent technology, which cannot be used by the patent owner

- Sole License

Single license, the owners has the right to use the patent

- Non-exclusive license

Several licensees & the owner have the right to use it

WHAT IS A DESIGN?

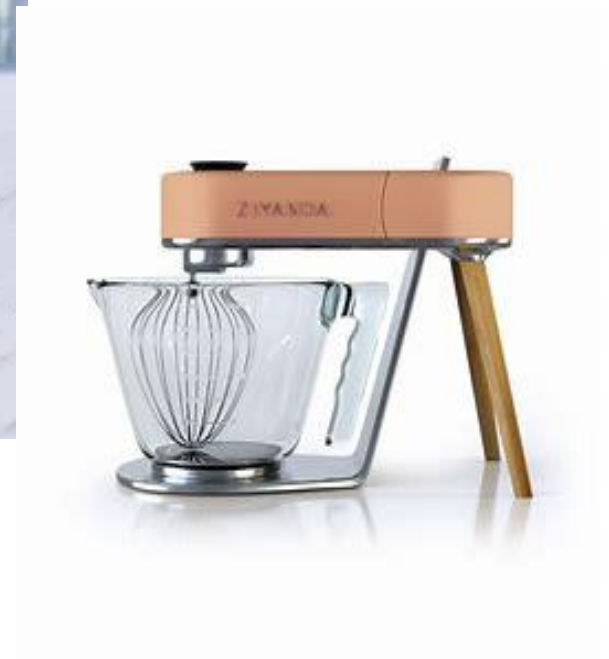
- Design is about the **shape, form, pattern, ornamentation and configuration of a product or article** for e.g. the design of a ring (Jewellery) is generally dictated by aesthetic features. There are 2 types of designs which can be registered:
- **Aesthetic Design** – protection last for 15 years
Beauty is in its shape. configuration or ornamentation
- **Functional Design** – protection lasts for 10 years
Shape or configuration is necessitated by the function



REGISTERED DESIGNS

Founded by Zonke Zama Ndaba

A2018/01264



REGISTERED DESIGNS



REGISTRATION REQUIREMENTS FOR DESIGNS

- A design registration costs **R 510**

- **Aesthetic design:**

New and original; beauty is in its shape, configuration or ornamentation; produced by an industrial process

Renewable **from 3rd year, yearly**, up to 15 years; Official renewal fee: R100.00 – R150.00

- **Functional design:**

New and not commonplace; shape or configuration necessitated by function; produced by an industrial process

Renewable **from 3rd year**, yearly, up to 10 years

To register a design ,please visit us on www.cipc.co.za

WHAT IS COPYRIGHT?

- Copyright is a **bundle of exclusive legal rights** concerned with the protection of **literary and artistic works**, often referred to just as **“works”**.
- Copyright gives an author/creator of work **a bundle of exclusive rights over his/her work** for a limited but lengthy period



CASE STUDY : ANTHONY BILA VS NADOS

- Global fast food brand **Nando's** were yesterday accused of intellectual property theft by young South African photographer **Anthony Bila** for allegedly using one of the artist's images without his permission.

Bila said in an angry Facebook post, “**So Nando's decided to take one of my photographs and use it in their menu. They decided to do this without my permission or the permission of the model, my friend Zano Skorzh Sithetho. This is beyond problematic.**”

Without paying him the use of the image is illegal in terms of **Section 23 of the Copyright Act, 78, 1978.**



WORKS ELIGIBLE FOR COPYRIGHT PROTECTION

- **Musical works** – compositions of music such as notes, beats, melodies
- **Literary works** – books, novels, scripts
- **Artistic works** – sculptures and paintings
- **Computer programs** – software applications
- **Published Editions** – latest editions in books
- **Broadcasts** – television and sound broadcasts
- **Programme carrying signal** – signals transmitting broadcasts or works such as music or films
- **Sound Recordings** – fixated music
- **Cinematograph films** - movies ,videos,documentaries

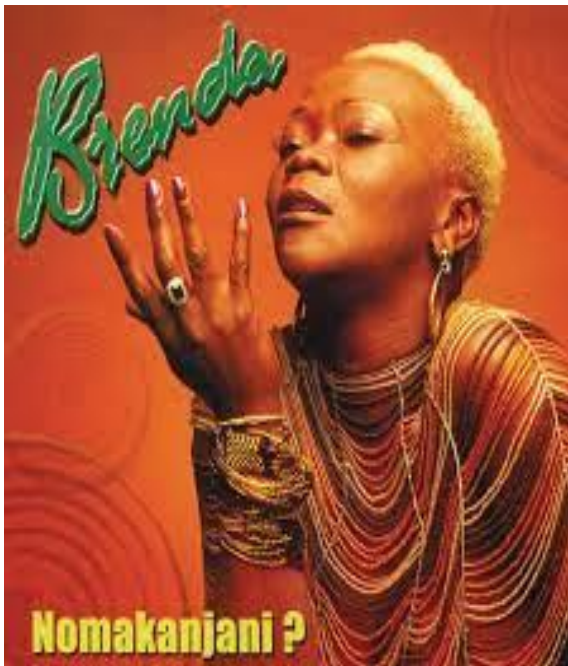
- **Performance** – a related or neighboring right

WHY IS IP PROTECTED ?

- IP is protected in law by, for example, **patents, trade marks, copyright and designs** .
- IP **enables** people to earn recognition or financial benefit from what they invent or create.
- By **striking the right balance** between the interests of innovators and the wider public interest, the IP system aims to **foster an environment** in which **creativity and innovation can flourish**.

FIXATED PERFORMANCE IN SOUND RECORDING

Owner of the
sound recording –
Record Company
/Producer



Right
holders (role
players)

Copyright in
musical
composition

Performance
by the singer
on
composition

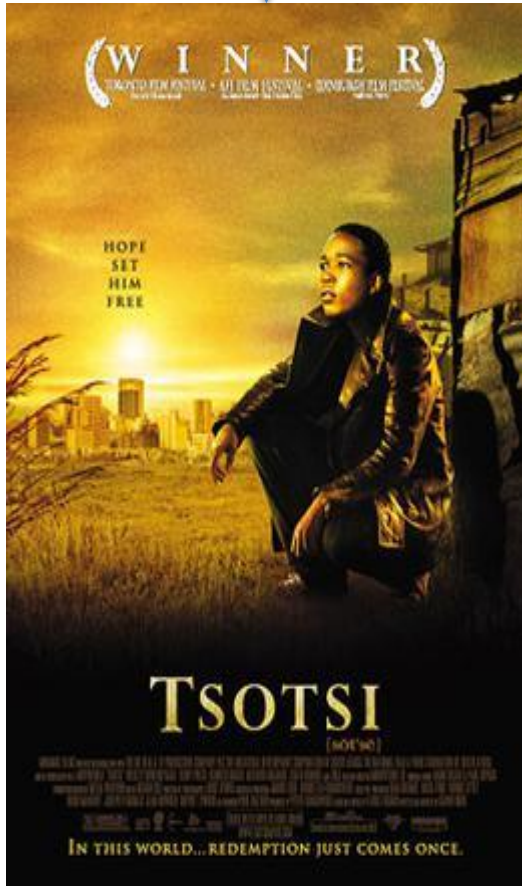
Trademark
– name of
the song

The law of
contract serves
as a catalyst to
facilitate this
arrangement of
sound recording:

1. Outright
selling
2. Licensing
3. Joint
ownership

FIXATED PERFORMANCE IN FILM

Owner of the film
– Film producer



Right holders
(role players)

Copyright in
film script

Performance by
the actor on
script

Trademark –
name of the
movie

Sound Track –
sound
recording

The law of
contract serves
as a catalyst to
facilitate this
arrangement of
film production:

1. Outright selling
2. Licensing
3. Joint ownership

COPYRIGHT AND PERFORMANCE DISTINGUISHED:



COPYRIGHT AND PERFORMANCE DISTINGUISHED:



COPYRIGHT AND PERFORMANCE DISTINGUISHED:



HOW COPYRIGHT AND RELATED RIGHTS OBTAINED:

- There is **no registration process** for attainment of copyright required , **except for films**, as per the provisions of Berne Convention.
- **CIPC registers films** in terms of Cinematograph Films Act to provide further statutory protection but **it is not a requirement** to obtain copyright protection
- CIPC can deliver a very focused session of Film registration to equip film makers / producers with knowledge
- As long as the copyright work meets certain requirements:
 - **Originality**
 - **Material form**
 - **Resident of the Republic**
- The copyright work is protected for a period of **50 years** from date of publication

THE BENEFITS REGISTERING A FILM

- What is the purpose of registering a film when it enjoys automatic protection like all copyright works?
- Films that are **unregistered** enjoy the same copyright as those which are registered
- Film registration provides a **prima facie proof of ownership** in the film (court proceedings)
- Film registration is also serves to categorically **clarify the roles of directors, actors and producers in the film**
- Film enjoys protection **for 50 years** from the year of publication

REGISTRATION OF A FILM

- **Step 1** – Register as a customer. The system will create a customer code and allow you to create your own password
- **Step 2** – Create password
- **Step 3** – Customer Code – system generated
- **Step 4** – Deposit the funds. Deposit an application fee of R 510.00 into the CIPC bank account using the customer code as your reference. CIPC bank account details will be found on the home page.
- **Step 5** – Go to Online Transacting
- **Step 6** – Go to IP –Services
- **Step 7** – Complete and submit the following forms to lodge your application online: <https://iponline.cipc.co.za>
- Film registration cost **R510**

To register a film, go to www.cipc.co.za

CAREERS IN IP

- **Have you ever considered a career in IP?**

IP Lawyer : Patents, Copyright, Trade Marks, Design

Music Composer, Owners of Recording Studio , Performer , Actor

Artists : Sculptor, Painting/Drawings

Publishers: Books/Music

Film Makers: Producers of Films

Researcher

CONTACT DETAILS

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THANK YOU





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THANK YOU

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