

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>1. INTRODUCTION TO INTELLECTUAL PROPERTY</b>				
1.1 Understanding intellectual property				
1.1.1 Defining intellectual property				WIPO website (web)
				The Advertising Standards Authority of South Africa website
				Section 1 of the Code of Advertising Practice;
				Section 2 of the Code of Advertising Practice;
				Section 3 of the Code of Advertising Practice;
				Section 4 of the Code of Advertising Practice;
				Appendix A;
				Appendix B;
				Appendix C;
				Appendix D;
				Appendix E;
				Appendix F;
				Appendix G;
				Appendix H;
				Appendix I;
				Appendix J;
				Guidelines Table of contents;
				Introduction to Guidelines;
				Guideline 1 Medicines;
				Guideline 2 Cosmetics;
				Guideline 3 Slimming advertisements;
				Guideline 4 Agricultural Product Standards Act;
				Guideline 5 Price Control Act;
				Guideline 6 Research;
				Guideline 7 Independent Communications Authority;
				Guideline 8 Miscellaneous; and

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
				Guideline 9 Acts affecting advertising.
1.1.2 The rationale for protecting intellectual property				
1.1.3 Types of intellectual property and protection	Form TM1 – Application for the registration of a trade mark			
1.1.4 The interplay between types of intellectual property			Koninklijke Philips Electronics NV v Remington Consumer Products Ltd [1999] RPC 809 (CA)	
1.1.5 The role of the CIPC and SAIPL				Uniform Domain-Name Dispute Resolution Policy (web)
				CIPCs legislative mandate (web)
				Membership requirements of the SAIPL (web)
				Domain names (web)

## 2. TRADE MARKS

### 2.1 Application and registration process of trade marks

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
2.1.1 Registrable trade marks and different kinds of registered trade marks				Trade Marks (web)
			Ball v Eden Project Ltd and another [2002] 1 BCLC 313	
			Libertel Groep BV v Benelux-Merkenbureau ECJ C-104/01	
			L'Oreal SA and others v Bellure NV and others [2009] All ER (D) 225 (Jun)	
			Open Country Trade Mark [2000] RPC 477	
2.1.2 Application for registration of a trade mark	General power of attorney	Procedure to file a trade mark		E- Patent and Trade Marks Journals (web)

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
	Form TM1 – Application for the registration of a trade mark			Nice Classification (web)
	Sample Form TM1 – Application for the registration of a trade mark			Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
	Form 1 – Notice of non-completion of registration			Trade mark search (web)
	Form 2 – Certificate of registration			CIPC on-line services (web)
	Template of letter requesting an extension			How to apply for a trade mark manually and electronically (web)
	Notice of acceptance			Guidelines with regards to the lodging non-traditional trade marks (web)
2.1.3 Opposition to trade mark application	Regulation 52(1) template			
	Notice of set down			
	Form TM3 – Notice of opposition/rectification			
	Form TM4 – Notice of intention to defend			
2.1.4 Effect, benefits and renewal of trade mark registrations	Form TM5 – Payment and certificate of renewal/restoration			
2.1.5 Restoring lapsed trade mark registrations	Form TM2 – Application, notification or request to the Registrar		Cromewells Madhouse Trade Mark [1998] RPC 511	Restoration (web)
	Form TM5 – Payment and certificate of renewal/restoration			
	Restoration affidavit			
<b>2.2 Protection for well-known trade marks</b>				
2.2.1 What is a well-known trade mark				
2.2.2 Ambit of protection afforded to well-known trade marks				

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>2.3 Enforcement</b>				
2.3.1 Infringement of a registered trade mark				
			Beecham Group Plc v Southern Transvaal Pharmaceutical Pricing Bureau (Pty) Ltd (1993) 1 SA 546 (A)	Trade mark search (web)
			New Media Publishing (Pty) Ltd v Eating Out WebServices CCand Another [2005] 5 SA 388 (C)	
			Impala Platinum Holdings Limited v Impala Warehousing and Logistics Africa (Pty) Ltd and Others (2013/22608) [2014] ZAGPJHC 410	
			British Sugar PLC v James Robertson and Sons Ltd [1996] RPC 281	
2.3.2 Infringement of a well-known trade mark				
2.3.3 Defences to trade mark infringement			New Media Publishing (Pty) Ltd v Eating Out WebServices CCand Another [2005] 5 SA 388 (C)	
			Second Sight Ltd v Novell (UK) Ltd and Novell Inc [1995] RPC 423	
			Jenni Button v Jenni Button (Pty) Limited & 4 others (case no. 12414/05)	
2.3.4 Remedies of trade mark infringement				
2.3.5 Trade mark infringement and passing off distinguished				

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>2.4 Rectification of the trade marks register</b>				
2.4.1 General power to rectify entries	Form TM2 – Application, notification or request to the Registrar			CIPC IP online services website (web)
	Form TM7 – Application for registration, variation, cancellation and maintenance of a registered user			
2.4.2 Alteration of a registered trade mark				
2.4.3 Removal or variation for breach of condition				
2.4.4 Removal for non-use of trade mark				
			Tool Wholesale Holdings (Pty) Ltd. v Action Bolt (Pty) Ltd. and Another [1991] 1 All SA 424 (A)	
			Electrolux Ltd v Electrix Ltd (1954) 71 (RPC) 37	
			Aktiebolaget Manus v R J Fullwood & Bland Limited	
			Viceroy Hotels LLC v The Van Ryn Wine & Spirit Company Ltd	
<b>2.5 Permitted use and transfer of a trade mark</b>				
2.5.1 Licensing of trade marks	Licence agreement	Checklist for a licence agreement		
	Form TM7 – Application for registration, variation, cancellation and maintenance of a registered user			
	Sample clause on licence to terminate			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
	Sample clause – licensee granted the right to sub-licence intellectual property rights			
2.5.2 Assignments and transmissions of trade marks	Form TM6 – Application to record a transaction affecting the rights in a trade mark – assignment, transmission, hypothecation or attachment.			
	Deed of assignment			
	Assignment or sale of intellectual property			
	Substitution of applicant			
	Form TM2 – Application, notification or request to the Registrar			
	Form TM6 – Application to record a transaction affecting the rights in a trade mark – assignment, transmission, hypothecation or attachment.			
2.5.3 Hypothecation and attachments of registered trade marks	Form TM6 – Application to record a transaction affecting the rights in a trade mark – assignment, transmission, hypothecation or attachment.		Oil Well (Pty) Limited v Protec International Limited and Others (44835/08) [2010] ZAGPPHC	
	Deed of security			
<b>2.6 Offences under the Trade Marks Act</b>				
2.6.1 Offences to be aware of				
<b>2.7 Treaties and conventions</b>				
2.7.1 The Paris Convention				Paris Convention for the Protection of Industrial Property

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
				List of contracting states to the Paris Convention
2.7.2 The GATT and TRIPS agreements				List of WTO members
				Trade-Related Aspects of Intellectual Property Rights Agreement

### 3. COPYRIGHT

3.1 Works protected by copyright				
3.1.1 Requirements for subsistence of copyright				
3.1.2 Types of works in which copyright subsists			Foschini Retail Group (Pty) (Ltd) and 9 (Nine) Others v South African Music Performance Rights Association (0003/2009) [2013] ZAGPPHC 304	
3.1.3 Authorship and ownership of copyright			Nottage and Another v Jackson (1883) QBD 627	Berne Convention for the Protection of Literary and Artistic Works (web)
			Donoghue v Allied Newspapers 1938 Ch106	
3.1.4 Exceptions from protection of copyright				Berne Convention for the Protection of Literary and Artistic Works (web)
3.1.5 Duration of copyright protection				
3.2 Infringement of copyright				
3.2.1 Direct infringement of copyright			Gomme Ltd v Relaxateze Upholstery Ltd [1976] R.P.C	
			Ravenroft v Hebert and New English Library Ltd 1980 RPC 193	
3.2.2 Indirect infringement of copyright				
3.2.3 Remedies for copyright infringement				

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
3.2.4 Offences under the Copyright Act				
3.3 Assignment and licensing of copyright				
3.3.1 Requirements for the assignment and licensing of copyright				
3.4 International copyright				
3.4.1 The Berne Convention				Berne Convention (web)  Berne Convention for the Protection of Literary and Artistic Works (web)
3.5 Films and performers rights				
3.5.1 Protection of Performers' rights			South African Broadcasting Corporation v Pollecutt (98/94) [1995] ZASCA 112	
3.5.2 Registration of copyright in cinematograph films	Form RF1 – Application form and acknowledgement of receipt			
	Form RF2 – Register of copyright in cinematograph films			
	Form RF9 – Sworn declaration in support of statement of case accompanying case Form RF 1, RF 8 OR RF 10			
	Form RF8 – Application for substitution of applicant or to register the assignee as subsequent owner			
	Form RF3 – Publication particulars and abstract			
	Form RF10 – Application for registration or cancellation of registration of a licence			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>4. PATENTS</b>				
<b>4.1 Requirements for patent protection</b>				
4.1.1 Legal requirements and exclusions			Roman Roller CC & Another v Speedmark Holdings [1995] ZASCA 78; 1996 (1) SA 405 (SCA)	Patents (web)
				What is a Patent (web)
<b>4.2 Application and registration process</b>				
4.2.1 Application for registration of patents	Form P1 – Application for a patent and acknowledgement of receipt			Paris Convention for the Protection of Industrial Property (web)
	Form P2 – Register of patents			Patent Regulations, 1978
	Form P3 – Declaration and power of attorney			How to apply for a patent (web)
	Form P6 – Provisional specification			
	Form P7 – Complete specification			
	Form P8 – Publication particulars and abstract			
	Form P26 – Statement on the indigenous biological resource, genetic resource traditional knowledge or use.			
4.2.2 Disputes regarding ownership				
4.2.3 Joint ownership of patents				
4.2.4 Grant, duration and effect of patent registrations	Form P10 – Payment and certificate of renewal			
4.2.5 Restoring lapsed patents	Form P19 – Notice of opposition			
	Notice of motion patent restoration			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
4.2.6 Rectification of register of patents	Form P4 – Application or request to the Registrar			
	Form P2 – Register of patents			
<b>4.3 Enforcement and revocation</b>				
4.3.1 Infringement of patents				
4.3.2 Revocation of patents	Form P20 – Application for revocation			
	Form P3 – Declaration and power of attorney		Roman Roller CC and Another v Speedmark Holdings (Pty) Ltd [1995] ZASCA 78	
<b>4.4 Licensing, assignments and related issues</b>				
4.4.1 Licensing of a patent	Form P10 – Payment and certificate of renewal			
	Form P16 – Application to record a transaction affecting the rights in a patent application or patent			
	Form P4 – Application or request to the Registrar			
4.4.2 Assignment of a patent or patent application	Form P16 – Application to record a transaction affecting the rights in a patent application or patent			
	Form P4 – Application or request to the Registrar			
4.4.3 Hypothecation and attachment of a patent	Form P4 – Application or request to the Registrar			
	Form P16 – Application to record a transaction affecting the rights in a patent application or patent			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>5. DESIGNS</b>				
5.1 Registered designs				
5.1.1 Types of registered designs			Ocular Sciences Ltd. & Anr. v Aspect Vision Care Ltd. & Ors.; Geoffrey Harrison Galley v Ccular Sciences Ltd 1997 RPC 395	
5.2 Application and registration process				
5.2.1 Application for registration of designs	Form D1 – Application and acknowledgement			Paris Convention for the Protection of Industrial Property (web)
	Form D2 – Register of designs			
	Form D3 – Declaration and power of attorney			
	Form D6 – Definitive statement and explanatory statement			
5.2.2 Joint ownership of designs				
5.2.3 Grant, duration and effect of design registrations	Form D10 – Payment and certificate of renewal (including a request for extension)			
5.2.4 Restoring lapsed designs	Form D11 – Opposition in proceedings before the Registrar			Renewing your design (web)
	Form D18 – Application for the restoration of a lapsed design registration			
5.2.5 Rectification of register	Form D4 – Application or request to the Registrar			
5.3 Enforcement and revocation of designs				
5.3.1 Infringement of designs			Homecraft Steel Industries (Pty) Ltd v S M Hare & Son (Pty) Ltd and Another (38/84) [1984] ZASCA 36	
5.3.2 Revocation of designs	Form D14 – Application for revocation			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
5.4 Licensing, assignments and related issues of designs				
5.4.1 Licensing of a design	Form D4 – Application or request to the Registrar			
	Form D7 – Application to record a transaction affecting the rights in a design application or registration			
5.4.2 Assignment of a design or design application	Form D4 – Application or request to the Registrar			
	Form D7 – Application to record a transaction affecting the rights in a design application or registration			
5.4.3 Hypothecation and attachment of designs	Form D4 – Application or request to the Registrar			
	Form D7 – Application to record a transaction affecting the rights in a design application or registration			

**6. UNREGISTERED INTELLECTUAL PROPERTY**

## 6.1 Types of unregistered intellectual property

6.1.1 Trade secrets and ideas	Confidentiality undertaking		Makate v Vodacom (Pty) Limited [2015] JOL 34657 (GJ)	
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## 6.2 Protecting unregistered intellectual property

6.2.1 Protecting unregistered intellectual property contractually	Confidentiality agreement		Makate v Vodacom (Pty) Limited [2015] JOL 34657 (GJ)	
	Sample clause – Limiting further harm/damage upon disclosure of confidential information			
	Sample clause – “entire agreement”			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>7. TRANSACTIONAL INTELLECTUAL PROPERTY</b>				
<b>7.1 Various intellectual property agreements</b>				
7.1.1 Examples of agreements embodying intellectual property	Sample clause – intellectual property definition			
	Sample clause – assignment of intellectual property			
	Sample clause – confidential information definition			
	Sample clause – non-disclosure of confidential information			
	Sample clause – exceptions to disclosure of confidential information			
	Confidentiality agreement			
	Deed of security			
	Memorandum of understanding			
	Franchise agreement			
	Sale of business agreement			
	Joint venture agreement to form a company to make use of intellectual property owned by the other party			
	Joint venture agreement to tender for a contract to supply goods			
	Joint venture agreement to implement a design and constructions contract following a tender award			
	Joint venture agreement to implement construction contract following a tender award			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
	Sample clause – ceding of intellectual property rights to an employer			
	Assignment or sale of intellectual property			
	Licence agreement	Checklist for a licence agreement		
	Sample clause – jointly developed know-how and ip rights			
	Sample clause – Background IP definition			
	Sample clause – trade marks definition			
	Sample clause – copyright definition			
	Sample clause – designs definition			
	Sample clause – patents definition			
	Sample clause – know-how definition			
<b>7.2 Intellectual property in the context of M and A transactions</b>				
7.2.1 Due diligence investigations and audits		Due diligence checklist		
7.2.2 Warranties and indemnities	Sample clause – Warranty			
	Sample clause – Indemnity/ limitation of liability			
7.2.3 Transfer of intellectual property offshore				Exchange Control Circular No. 12/2014

<b>8. RELATED AREAS</b>				
<b>8.1 Counterfeit Goods Act</b>				
8.1.1 Rights afforded to intellectual property owners by the CGA				

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
8.1.2 Procedures and remedies under the CGA	Form SC-CC-01-A2 – Application by owner of intellectual property right for detention and / or seizure of counterfeit goods			SARS Customs and Border Management External Standard Operating Procedure Counterfeit Goods
				SARS Customs and Border Management External Policy Counterfeit Goods
				How to lodge a complaint (web)
<b>8.2 Merchandise Marks Act</b>				
8.2.1 Rights afforded under the Merchandise Marks Act				Paris Convention for the Protection of Industrial Property
				RSA emblems
8.2.2 Ambush marketing				
8.2.3 Penalties and remedies				
<b>8.3 Domain name dispute resolution</b>				
8.3.1 Domain name dispute resolution regulations			Pepkor IP Proprietary Limited vs. PEP Application Software ZA2015-00193	Domain disputes website (web)
			Advtech Limited vs. Liese Le Roux ZA2015-00204	
			BHP Billiton Limited vs. Avaliani Sergi ZA2015-00206	
8.3.2 Dispute resolution procedure	Dispute template			AFSA website (web)
				.zadna website (web)
				Domain disputes website (web)
<b>8.4 Company names and trade marks</b>				
8.4.1 Provisions relating to company names	Form CoR 9.1 – Application to reserve a name			Name for a corporate entity (web)
8.4.2 Company name disputes	Form CTR 142 – Application for relief			

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>8.5 IP and the Consumer Protection Act</b>				
8.5.1 Registration and criteria for business names	Annexure H – Registration of a business name			
	Annexure L – Compliance notice			
	Annexure I – Notice to show cause why registration of business name should not be cancelled			
	Annexure J – Cancellation of registration of business name			
8.5.2 Product labelling and trade descriptions	Annexure E – Complaint form			Consumer Goods and Services Ombud (web)
8.5.3 Reconditioned and grey market goods				
8.5.4 Franchising	Template for disclosure documents			
<b>8.6 Protection of traditional knowledge</b>				
interplay				
8.6.1 Laws protecting traditional knowledge				
<b>8.7 IP rights from publicly financed research and development</b>				
8.7.1 Objects and application of the IPR Act				
8.7.2 Technology transfer offices and NIPMO				
8.7.3 Choice in respect of intellectual property – default position				
8.7.4 Recipient's management obligations and disclosure duties				
8.7.5 Rights of the creators of intellectual property to share in benefits				



Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
8.7.6 Conditions and restrictions relating to IP transactions	Form IP5 – Offshore assignment of intellectual property			
	Form IP6 – Offshore exclusive licence of intellectual property			
	Form IP4 – Local assignment of intellectual property			
	Form IP9 – Formulae and matrix for full cost calculation			
8.7.7 Development at full cost and rights of private entities	Form IP8 – Referral of intellectual property clauses in a collaborative agreement			
<b>8.8 Advertising</b>				
8.8.1 Guidelines for advertising			Tiger Brands Jungle Ultra Energy Instant Oats v L Gray & Another 2015 - 1645F	Advertising Code of Practice (web)
				ASA structure (web)
				ASA MoI
				About the ASASA (WEB)
				Codes (web)
				Guidelines (web)
				Rulings (web)
				Select a plan (web)
				Sponsorship Code
				Consumer Codes
8.8.2 Lodging a complaint to the ASA				Procedural Guide (web)

Guidance Note	Forms and Precedents	Checklists	Case Law	Other Resources
<b>8.9 Plant breeders' rights</b>				
8.9.1 What are plant breeders' rights				Plant breeders rights (web)
				Genetic resources (web)
8.9.2 Requirements for the granting of plant breeders' rights	Application for a plant breeder's right			Genetic resources (web)
8.9.3 Duration of a plant breeders' right registration				Plant breeders rights (web)
8.9.4 Obligations on the owner of a PBR registration				