

# EVIDENTIARY STATUS OF TRADEMARK CERTIFICATE OF REGISTRATION IN LEGAL PROCEEDINGS: COMMENTARY ON THE COURT OF APPEAL'S DECISION IN *ACCOR V. HOTEL IBIS ROYALE LTD* (CA/L/1215/2016)

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## Introduction

In today's globalized and competitive economy, trademarks have evolved to become more than just a word, logo or symbol. They now serve as “*brand identifiers*” and “*invaluable legal assets*”, embodying the goodwill, reputation and distinctiveness of the products or businesses they represent.

Under Nigerian law, once a trademark is registered, the Registrar of Trademarks (the “**Registrar**”) is statutorily obliged to issue a Certificate of Registration (“**CoR**”) to the applicant. The CoR constitutes *prima facie* evidence of the validity of the registration of the trademark.

Notwithstanding the foregoing, the admissibility of a CoR in legal proceedings remains doubtful. This evidentiary uncertainty arises from the annotation inscribed in the footnote of a CoR, which states: “**This certificate is not for use in legal proceedings or for obtaining registration abroad.**” This inscription has been interpreted, albeit loosely, to suggest that a CoR cannot be tendered in legal proceedings to establish registration of a trademark, and that only a certified copy of an entry in the Register of Trademark is admissible as evidence of trademark registration.

Significantly, on December 19, 2024, the Court of Appeal in *Accor v. Hotel Ibis Royale Limited* (“**Accor Case**”),

clarified the evidentiary status of a CoR. In this regard, the appellate court held that a CoR is admissible in legal proceedings as *prima facie* evidence of registration of a trademark, notwithstanding any inscription on the face of the CoR purporting to preclude its use in legal proceedings. This decision is a welcome development for trademark proprietors and legal practitioners, as it reaffirms the supremacy of statutory provisions over administrative annotations.

## Facts of the case

The Appellant, an international hotel group with operations in over ninety (90) countries including Nigeria, instituted a trademark infringement action against the Respondent, a Nigerian-registered hospitality company operating a hotel business under the name “*Hotel Ibis Royale Limited*” in Lagos. The crux of the Appellant's case was that the Respondent's use of the name “*Hotel Ibis Royale Limited*” in connection with its hotel business in Nigeria constituted an infringement of its exclusive rights in the “*IBIS*” trademark. In this regard, the Appellant alleged that it is the proprietor of the “*IBIS*” trademark in Nigeria, with Registration No. 67940 in Class 16 (registered in June 1998) and Registration No. 77444 in class 43 (registered on June 28, 2007). In proof of its registration, the Appellant tendered the CoR in respect of the “*IBIS*” trademark in both classes. In contrast,



the Respondent contended that it is the sole owner of the name “Hotel Ibis Royale Limited” in Nigeria having been duly incorporated by the Corporate Affairs Commission (the “CAC”) on August 19, 2002, prior to the Appellant’s registration of the “IBIS” trademark in Class 43 (relating to hotel and restaurant services).

### Decision of the Federal High Court

In its judgment, the Federal High Court (the “FHC”) held that the Appellant (as Plaintiff) failed to prove its registration of the “IBIS” trademark and ultimately dismissed the suit. The FHC rejected the CoR tendered by the Appellant in proof of its registration of the “IBIS” trademark on the ground that the annotation in the CoR excludes its use in legal proceedings.

### Decision of the Court of Appeal

One of the grounds of appeal was the FHC’s finding that the CoRs in relation to the “IBIS” trademark were inadmissible as proof of the Appellant’s proprietary interest in the mark. In determining this issue, the Court of Appeal construed the provision of **section 59 of the Trademark Act**, which provides as follows:

*“A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorized by this Act or the rules to make or do **shall** be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.”* (Emphasis added)

In construing the above provision, the Court of Appeal held that section 59 of the Trademarks Act recognizes the use of CoR as evidence of the registration of a trademark, emphasizing that an inscription on a certificate cannot exclude or determine the admissibility of a document not expressly excluded by statutory provisions. In other words, the inscription on the CoR to the effect that it cannot be used in legal proceedings, not being a statutory provision, cannot bar its admissibility.

Ultimately, the Court of Appeal held that the Appellant had proved the registration of the “IBIS” trademark and, accordingly, is the proprietor of the said trademark in Nigeria.

### Commentary

The Accor Case underscores certain points, namely: (i) a CoR constitutes *prima facie* evidence of both registration and ownership of a trademark; (ii) the admissibility of a CoR is determined and governed by statute, not administrative annotations or caveats; and (iii) the inscription on a CoR, not having the force of law, cannot override the express provisions of a statute.

Instructively, there is no provision under the Trademarks Act that precludes the admissibility of a CoR in legal proceedings. Indeed, by the tenor of section 5 of the Trademarks Act, registration of trademark is *prima facie* evidence of ownership of the trademark and the proprietor of such a mark is vested with the exclusive right to the use of the said mark and can institute an action for infringement against any unauthorized user.

The foregoing is reinforced by section 59 of the Trademarks Act which expressly provides that a certificate issued under the hand and seal of the Registrar “shall” constitute *prima facie* evidence of the relevant entry in the Register and the facts therein. Notably, the use of the word “shall” in section 59 underscores the mandatory nature of the provision. The mandatory tenor of the provision reflects the clear intendment of the legislature to ascribe evidential weight to a CoR in proving the registration of a trademark. Moreover, where the words of any document or statute are free from ambiguity in themselves, such document or statute should be construed according to the strict, plain and common meaning.

Nigerian courts have in plethora of cases, including *FIRS v. Halliburton (WA) Ltd* (2014) 9 ALL NTC 565 and *Warm Spring Waters & Ors v. FIRS* (2015) 13 ALL NTC 389, re-affirmed the position of the law on the legal status of administrative directive(s) in relation to a principal legislation. In both cases, the court held that an administrative directive does not have the force of law. Although the cases were decided within the context of administrative circulars issued by the relevant tax authority, the underlying principle remains the same: an administrative directive, whether in the form of circulars, or as in *Accor Case*, annotations inscribed on a CoR, cannot take the place of legal pronouncements that have the binding force of the law. Accordingly, it is contended that the Court of Appeal was right in holding that the inscription on the CoR purporting to exclude its use in legal proceedings cannot override the provisions of section 59 of the Trademarks Act, which unequivocally confers on the CoR *prima facie* evidentiary status.

Comparatively, under the Indian trademark regime, the legal framework expressly distinguishes between a CoR and the document admissible in legal proceedings, known as the Legal Proceedings Certificate (“LPC”). The LPC is a certified document issued by the Indian Trademark Registry pursuant to a specific statutory requirement under the relevant law. Indeed, while the Indian trademark certificate bears an inscription excluding its use in legal proceedings or for obtaining registration abroad, the requirement for a certified extract (i.e., the LPC) is not a matter of administrative directive but a statutory obligation. In contrast, there is no equivalent statutory provision in Nigeria mandating the use of a certified extract or precluding the admissibility of a CoR. In the absence of a legal regime akin to that of India, the inscription on the CoR purporting to preclude its admissibility, is without more, of no legal effect and cannot override the express provisions of section 59 of the Trademarks Act.

## Conclusion

The decision of the Court of Appeal not only provides a breath of fresh air in the evidentiary process of establishing trademark ownership in infringement actions but also represents the true position of law in Nigeria. Broadly



speaking, the decision has potentially impacted on trademark infringement actions in several ways:

- i) The decision has widened the evidentiary aperture and brings clarity to the admissibility of CoR in legal proceedings. The decision has also resolved the ambiguities and inconsistent practices at the Trademark Registry. By finding that a CoR is admissible, the Court of Appeal has strengthened the confidence of trademark proprietors and jettisoned the administrative and attendant bureaucracy in procuring a certified copy of the extract in the Register
- ii) The decision also serves as a cautionary tale to businesses that the mere registration of a company or business name with the CAC does not confer proprietary rights over an identical or confusingly similar registered trademark
- iii) By reinforcing the legal weight of CoRs, the decision contributes to the development of a robust and predictable Intellectual Property enforcement regime in Nigeria, encouraging both local and foreign trademark proprietors to assert their rights through the courts with greater certainty

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