

The background features a dark blue gradient with a subtle pattern of white dots. Overlaid on this are several circular and semi-circular elements in a lighter blue color. These include solid and dashed lines forming arcs and full circles, some with arrows indicating a clockwise direction. A prominent feature is a large circular scale on the left side, with numerical markings from 140 to 260 in increments of 10. The text is centered in the right half of the image.

BALANCING BETWEEN INTELLECTUAL PROPERTY RIGHTS PROTECTION & AFFORDABLE CLOTHING IN KENYA: A CASE OF “MITUMBA” CLOTHING

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INTRODUCTION

- Key-statistic: Did you know that 91.5% of households buy second-hands clothes worth Ksh 1000 and below?

EXPANDING THE DEBATE: BEYOND THE TEXTILE & GARMENT INDUSTRY

- While the majority of the debate on mitumba has focused on the textile and garment industry, this paper shifts the focus to the intellectual property perspective and the sustainability of the fashion industry.
- When discussing about IPR protection and affordable clothing in the context of mitumba, several key IPR issues come into focus: Here are seven key IPR issues to consider
- 1. Counterfeit goods 2. Trademark infringement 3. Copyright infringement 4. Design protection 5. Brand reputation 6. Licensing and royalties 7. Enforcement Challenges

UNDERSTANDING “MITUMBA”.

- The term “Mitumba” Originates from the Swahili Language , meaning “bundles” or “bales”.
- The bales contain a wide range of items such as garments, shoes and accessories, collected from individuals and organization in Western Countries.
- These clothings provide affordable pricing for budget-conscious individuals.
- They provide a wide variety of clothing options.
- Access to branded and high quality garments at lower prices.

IPR PROTECTION ISSUES WITH MITUMBA CLOTHING

- **Counterfeit Products-**The Presence of counterfeit or fake clothing items in the mitumba market raises concerns regarding intellectual property infringement, as unauthorized copies of branded clothing may violate trademark rights.
- **Trademark Infringement:** The unauthorized use of trademarks on mitumba clothing, including logos, brand names, and distinctive designs, may infringe upon the intellectual property rights of the original brand owners.
- **Copyright Infringement:** Mitumba clothing may sometimes feature copyrighted designs, patterns, or artwork without proper authorization, leading to potential copyright infringement issues.
- **Design Protection:** Fashion designs that are unique and original may enjoy design protection under intellectual property laws. However, mitumba market often deal with clothing items that replicate or imitate such designs, potentially infringing upon design rights.

LEGESLATIVE GAPS & LOOPHOLES

- Lack of specific regulations- There is deficiency in dedicated legislation addressing the protection of intellectual property rights in the context of the mitumba clothing industry. Existing intellectual property laws do not cover the unique challenges associated with counterfeit or infringing products in the secondhands clothing market.
- Ineffective enforcement mechanisms: Even if intellectual property laws exist, their enforcement may be weak or inconsistent.
- Ambiguity in liability: Determining liability in cases of IP infringement within the mitumba clothing trade can be challenging. It can be difficult to trace the origin of counterfeit or infringing items, especially when multiple actors are involved.
- Parallel importation: Mitumba Clothing often involves the importation of used garments from other countries. Parallel importation refers to the importation of genuine products without the consent of the intellectual property rights holder. This practice blurs the boundaries between genuine and counterfeit products.
- Informal nature of the market: The mitumba industry in Kenya is largely informal, with many small scale traders. This informal nature of the market makes it hard to monitor IP infringement.

ADDRESSING LEGISLATIVE GAPS FOR SUSTAINABILITY

- Review and strengthen existing laws
- Enhance enforcement efforts
- Collaboration with stakeholders
- Public awareness through education
- Encourage sustainable practices
- International cooperation

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END

The background is a gradient of blue, transitioning from a darker purple-blue at the top to a lighter blue at the bottom. It is filled with a pattern of small, white, star-like specks. Several technical diagrams are overlaid on the background. In the top right, there is a large circular diagram with concentric circles and radial lines, resembling a scale or a gauge, with numbers ranging from 80 to 210. In the bottom right, there is another circular diagram with concentric circles and a dashed outer ring, with an arrow pointing upwards. In the bottom left, there is a partial circular diagram with a dashed outer ring and an arrow pointing to the left. In the top left, there is a small circular diagram with a dashed outer ring and an arrow pointing to the left.