



ROLES OF IP ON SMES IN NIGERIA

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ABSTRACT

Intellectual property is a very important aspect of human life because it is the root of greatest innovations the world has ever experienced. Despite this, it has been recorded as one of the mostly-infringed human rights in this century. This is so because, although it usually come from unique perspective of people, it is nevertheless easy to steal without attracting much attention. The law, while performing its role of ensuring justice in the human society through protection of rights, attend to this problem by setting up some guidelines on how this property should be used. The impact of intellectual properties is mostly recognized in the economic aspect of human endeavour for it is the backbone of trading. In order to understand the importance of this property on businesses, Small and Medium Enterprises (SMEs) especially as this paper is concerned, and how the law has been seeking to protect it, this paper is written.

INTRODUCTION

Humans' intellect is the most sought-after source of creativity and innovation mankind has ever possessed. Behind every creation are some unique ideas (intangibles) which, in legal parlance, are known as Intellectual Property (IP), from which its creator enjoys some autonomy and credit. Small and Medium Enterprises (SMEs) as an integral part of the commercial sector, contribute significantly to the existence and thriving of the economy throughout the world, both in developing countries, such as Nigeria and the developed ones like the United States. To this effect, Nigeria has in place various legal frameworks for the protection of the recognized and protectable IP in the country. Because the important roles played by IP in maintaining the smooth running of SMEs cannot be overemphasized.

This article, therefore, seeks to discuss the roles of IP on SMEs. This is done by giving insightful explanations on; the meaning of IP in Nigeria, the importance of SMEs on the sustenance of the national economy, challenges facing SMEs in the course of protecting their intellectual assets, recommendations, and the author's final thoughts as the conclusion.

DEFINITION OF TERMS

Intellectual Property (IP): Creation of the human mind or product of intellectual creation.

Small and Medium Enterprises (SMEs): Entities with an asset base of N5 million and not more than N500 million excluding land and buildings with employees between 11 and 200.

RECOGNIZED IP UNDER THE NIGERIAN LAWS

At this point, Intellectual creations, rights, and regulations demand more attention than ever before. With the coming of the 21st century and all that it brought, countries' economies are becoming more of an idea based rather than resource-based¹ as they used to be in previous centuries. SMEs which are now running on the fuel of intellectual creations are believed to be the lifeblood of the national economy. According to a report from PwC, Nigerian SMEs contribute not less than 48% to the country's Gross Domestic Product (GDP).² And just like tangible properties, IPs are capable of being stolen if not properly safeguarded. On this note, no right is accrued to any IP which is not commercialized following relevant law of the land.

The recognized IP in Nigeria includes the following; Copyright, Trademark, Patent, and Industrial design, as briefly explained in the following paragraphs:

Copyright: This is an intellectual property that confers on the creator of original works, some exclusive rights to enable the doing of certain things or control such works. According to Copyright Act, the works³ under this category include; musical, literary, and artistic

¹ Oyinkansola Komolafe, 'Intellectual property, SMEs and economic recovery in Nigeria' (WIPO, September 2021) https://www.wipo.int/wipo_magazine/en/2021/03/article_0008.html# accessed 18 July 2022.

² 'Assessing current market conditions and business growth prospects' (PwC) <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> accessed 18 July 2022.

³ S. 1(1).

works among others. Once such works fulfil the twin requirements of “originality and fixation”, it's qualified for copyright protection.

Trademarks: Another intellectual property that has to do with labels, marks, signs, logos, and other designs that its owner ascribes to their products or services to distinguish them from other manufacturers.⁴ For any design to qualify for trademark registration, it must serve the right business purpose, be distinctive, and not be deceptive.

Patents: An exclusive right granted to the inventor of objects like machines, chemical composition, devices, and manufacturing processes. The purpose is to confer upon the inventor, a right to exclude others from transacting with such products without his consent for a definite period. For a subject matter to be deemed patentable it must be; new, result from inventive steps and be capable of industrial application.⁵ However, subject matters such as plants or animal varieties or ones that will be contrary to public order are not patentable.⁶

Industrial Designs: This is an IP that covers novel and original elements which are incorporated into mass-produced items to make their appearances attractive. Such elements serve as models to be multiplied,⁷ and therefore must be capable of mass reproduction. For an element to be registrable as Industrial design, it must fulfil the

⁴ Trademark Act, s. 67.

⁵ Patent and Designs Act, s. 1(1).

⁶ Patent and Designs Act, s. 1(3).

⁷ Patent and Designs Act, s. 12.

fundamental conditions of newness and not be contrary to public order.

Against this backdrop, for SMEs to enjoy the full benefits of IP rights, they need to register their IP under any relevant domestic IP law. The relevant IP laws⁸ in Nigeria include; the Copyrights Act, the Patents and Designs Act, and the Trademarks Act.

INSTANCES OF IP-RELATED DISPUTES

A review of the Sabinu's case,⁹ being one of the recent popular IP disputes in Nigeria has made the role of IP on SMEs in Nigeria more appreciated. The suit was instituted by the Talent management agency of the popular comedian and skit maker, Chukwuemeka Emmanuel, popularly known as Oga Sabinu, against the UAC Foods and Friesland Campina WAMCO Nigeria PLC, demanding from each of them, the sum of N1 million and N1 billion respectively, for infringing on his IP right.¹⁰ The management sued UAC Foods for using Sabinu's animated image in an advert for their Gala sausage roll without consent; while Friesland, for unauthorized use of "something hooge", a statement trademarked by Sabinu with the Federal Ministry of Trade and Investment.

⁸ Nosa J. Garrick, 'Intellectual Property In Nigeria: A Summary Of Protectable Rights In Nigeria' (Monday, date)

<https://www.mondaq.com/nigeria/trademark/1112730/intellectual-property-in-nigeria-a-summary-of-protectable-rights-in-nigeria> accessed 19 July 2022.

⁹ Joshua Adick, 'Mr Sabinu vs Friesland Foods and UAC Foods' *Punch* (Lagos, 8 June 2022) <https://punchng.com/mr-sabinus-vs-friesland-foods-and-uac-foods/>

¹⁰ Onu Stephen, 'opyright Infringement: Mr Sabinus slams N1 billion lawsuit against Friesland, UAC Foods' *Premium Times* (Lagos, 30 May 2022) <https://www.premiumtimesng.com/entertainment/naija-fashion/533682-copyright-infringement-mr-sabinus-slams-n1-billion-lawsuit-against-friesland-uac-foods.html>

Sabinu's sheds light on the practical meaning of IP, its importance to individual businesses, and the cost and kind of conflicts that may arise therefrom. The case is also a form of clarion call to other SMEs not to sleep on their rights. Apart from Sabinu's, there are hundreds of other decided Nigerian cases where the importance of the roles of IP on SMEs was affirmed. The like of them is the 2020 case of *Tv Xtra Production Limited & Anor v National Universities Commission & Zain Nigeria*.¹¹ In this case, the damages of N703 million were awarded to the plaintiff for infringement of his copyright. According to a review,¹² one of the important purposes of this case is that it shows the significance of IP on the existence of SMEs.

SOME ROLES PLAYED BY IP ON SMES

It is clear at this point that IP has a lot of roles to play in the day-to-day running of businesses. Some of the reasons the businesses' IP assets must be protected include the following;¹³

- IP enhances the growth of business entity, and promote economic development.
- Intellectual products like Trademarks can be licensed and therefore generate revenue for the owner's business in form of periodic royalty payments.

¹¹ Fhc/Abj/Cs/680/2008

¹² Femi Olubanwo, 'Nigeria: N703 Million Damages For Copyright Infringement: An Affirmation Or Miscarriage Of Justice?' (mondaq, 2 August 2021) <https://www.mondaq.com/nigeria/trademark/1098178/n703-million-damages-for-copyright-infringement-an-affirmation-or-miscarriage-of-justice> accessed 20 July 2022.

¹³ Similoluwa Oyelude and Fidelis Oguche, 'How intellectual property can help SMEs grow' *The Nation* (Lagos, 4 May 2021) <https://thenationonline.net/how-intellectual-property-can-help-smes-grow/>

- SMEs with a registered IP are perceived as competent and thus reliable to collaborate with. Such businesses won't find it difficult to attract prospective investors both locally and internationally.
- A well-maintained IP prevents unwarranted infringement of rights, as it keeps the competitors in check.
- It gives businesses certain exclusive rights which if breached will be assuaged.
- IP promotes innovative ideas, and at the same time, encourages more by recognizing and safeguarding the existing ones.
- Also, IP with its significance on businesses helps in alleviating poverty in the country by aiding economic sustainability.

According to a PwC report, SMEs "account for about 50% of industrial jobs and nearly 90% of the manufacturing sector, in terms of the number of enterprises".¹⁴ With standard IP maintenance and regulations, more of these can be achieved.

HINDRANCES RELATING TO THE ENJOYMENT OF BENEFITS OF IP IN NIGERIA

In Nigeria, many SMEs are seen running to Corporate Affairs Commission (CAC) to register businesses' names and companies, while giving little effort to the protection of their Intellectual properties. A report from the National Bureau of Statistics (NBS) shows that more than 70% of SMEs in Nigeria are yet to register their IP,¹⁵ and this may hinder them from enjoying the benefits attached

¹⁴ 'Assessing current market conditions and business growth prospects' (PwC) <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> accessed 18 July 2022.

¹⁵ Oyinkansola Komolafe, 'Intellectual property, SMEs and economic recovery in Nigeria' (WIPO, September 2021) https://www.wipo.int/wipo_magazine/en/2021/03/article_0008.html# accessed 18 July 2022.

to such registration. Some of the challenges facing IP commercialization for SMEs in Nigeria include;

- Lack of awareness;
- High cost of registration and legal services;
- Inadequate implementation of IP laws;
- Illiteracy and absence of layman-friendly registration procedure.

Recommended Solutions to the Challenges Facing IP Commercialization in Nigeria

Due to the challenges mentioned above, SMEs are losing the benefits attached to intellectual rights. According to a 2022 joint report¹⁶ by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) and NBS, between 2017 to December 2020, the number of Micro, Medium, and Small Enterprises (MSMEs) operating in Nigeria fell by 4.5%. To prevent the reoccurrence of such situations, the roles of IP in SMEs need to be more appreciated. The government and other stakeholders must be ready to take steps in addressing those hindrances. To do this, the following recommendations should be considered;

- Increase in the awareness of the available national IP strategy for SMEs;
- Availability of a conducive working environment, and other support to make it easier for SMEs to enjoy IP rights;

¹⁶ Anthony Otaru, 'Over 39.65m MSMEs operate in Nigeria, says report' *The Guardian* (Lagos, 13 January 2022) <https://guardian.ng/business-services/over-39-65m-msmes-operate-in-nigeria-says-report/>

- The registration procedure should be simple, and devoid of any technicalities that may scare a layman away;
- The cost of registration and other related expenses should be made affordable as much as possible;
- Stricter policy against forgery, plagiarism, and piracy, particularly in the entertainment industry, and other related fields;
- Adequate implementation of the existing IP rights protection laws;
- Lastly, the government should set up a network of support for SME affairs in each state of the federation.

CONCLUSION

Altogether, it is worth noting that IP being a product of intellect is only recognized with the expression of ideas, and not the idea itself. In other words, an unexpressed idea in the head is worth nothing in the IP market. And IP assets that are not duly registered are susceptible to infringement. Therefore, to ensure that IP performs its roles on individual businesses (SMEs), specialized legal services become a *sine qua non*. Because it has become glaring that just as SMEs are said to be the lifeblood of the national economy, IP is the lifeblood of SMEs.