

**THE COEXISTENCE OF BUSINESS NAMES AND TRADEMARKS IN THE NIGERIAN LEGAL
LANDSCAPE: WHAT IT MEANS FOR BUSINESSES AND TRADEMARK PROPRIETORS**

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ABSTRACT

Oftentimes, and even more so in recent times, registered business names tend to coincide or clash with registered trademarks, blurring the line between corporate identity and proprietary rights. While the Companies and Allied Matters Act, 2020 governs the registration of business names, the Trade Marks Act, 1967 protects distinctiveness in trade. Yet, the lack of a harmonised legal framework has allowed overlapping registrations flourish. Adopting a doctrinal legal research methodology, this article explores the legal and commercial implications of the co-existence of business names and trademarks under Nigerian law, drawing insights from recent judicial decisions. It finds that the “first-in-time” regimes adopted by both the Corporate Affairs Commission and the Trademarks Registry play a pivotal role in determining which gives way, the business name or the trademark. It also finds that although courts have, over time, lent preponderance to trademarks over and above business names, statutory provisions and the doctrines of passing off and prior use constitute lacunas for business names. Finally, it advocates practical reforms and provides actionable recommendations for business owners to navigate the existing landscape.

Key words: Trademark, business name, law, trademark registry, Corporate Affairs Commission

1. Introduction

The Punch newspaper reports that KPMG Nigeria triumphed over KPMG Professional Services in a recent dispute concerning the use of “KPMG” to indicate affiliation with the global consultancy company in Nigeria. The controversy started when KPMG Professional Services, registered in 2001 by the Corporate Affairs Commission (CAC), was found to conflict with the earlier registered KPMG Nigeria, which had operated since 1968 and built considerable goodwill and reputation. Although the 2001 registration was the result of a genuine belief that the earlier merger with Deloitte had rendered KPMG Nigeria an entirely new entity, the court held the registration invalid due to the obvious conflict.³

The case underscores a recurrent problem in corporate identity: conflicts arising from similar or identical names. While it reveals the clear position of the law with regards to conflicts in business names – when a business name conflicts with another, the first in time prevails⁴, the principle however becomes less clear when the conflict involves a trademark and a business name.

3 KPMG Nigeria v. KPMG Professional Services (Unreported) judgment delivered on July 10, 2025.

4 Collins Okpe, 'Exploring the Relationship between the Registration of Names with the Corporate Affairs Commission and the Trade Marks Office in Nigeria' (LinkedIn, 2023) <<https://www.linkedin.com/pulse/exploring-relationship-between-registration-names-corporate-okpe-xhw7f>> accessed 5 September 2025.

On the one hand, a trademark is used, quite obviously, in the course of trade to distinguish the goods or brand of a proprietor from those of others.⁵ It may consist of the name of a company represented in a particular way, so long as the name is distinctive,⁶ e.g. KODAK. It is in that sense that the word, trademark, shall be construed in this article. On the other hand, a business name is simply the name of style under which any business operates.⁷ Figuratively, the business name resembles a receipt of purchase, whereas the trademark is a certificate of occupancy. The importance of this metaphor becomes glaring in later pages, as when these two overlap, the implications are far-reaching and monumental for each side, costing fortunes and reputation alike.⁸

Against such a backdrop, this article properly brings to light exactly what happens when two separate businesses have identical or similar names, one registered and the other trademarked, and what that means for rights, reputation and survival in the marketplace.

2.0 Current Legal Framework Governing Trademarks and Business Names in Nigeria

There is no single legislative document regulating corporate cognomens in trade. Rather, there are two main laws: the **Trade Marks Act, 1967 (the TMA)**,⁹ and the **Companies and Allied Matters Act, 2020 (the CAMA)**.

1. The Trade Marks Act

Being the principal legislation for the regulation of trademarks, the TMA contains several key provisions with regards to the issue at hand. These shall be evaluated in two respects: the rights granted to registered brands and the mechanisms available to enforce those rights.

Generally, marks registered in the trademarks register grant the proprietor, the owner of the mark, in this essay, the exclusive right to use the mark.¹⁰ This means that no other person, except as authorized by the proprietor, or in situations permitted by law, can use the registered mark.¹¹ This is to prevent deception,¹² and to help consumers identify trusted brands. For example, if A's bakery, Loafables, produces loaves of very high quality, and "Loafables" is trademarked, no competitor can come into the market with a similar or identical name and intend to piggyback ride off of A's market success. This helps A's customers identify his high-quality loaves, even in a marketplace ridden with so many brands.

If, however, B was to enter into the loaf-making business and calls his bakery, Loafable, he quite likely will be hit with a lawsuit from A, or at least a cease-and-desist letter. This is because A's

⁵ Trade Marks Act, 1967, Cap. T13 LFN 2004, s. 67.

⁶ Ibid.

⁷ Companies and Allied Matters Act, 2020 (Act No. 3, 2020), s. 868.

⁸ See *KPMG v. KPMG Professional Services* (Unreported).

⁹ Cap. T13 LFN 2004

¹⁰ *ibid*, s. 5(1) - (2).

¹¹ *ibid*, ss. 5(2) - (4) and 6(1) - (2).

¹² *ibid*.

exclusive right to use the trademark is backed by **Section 13(1) of the TMA** which empowers a proprietor to sue for damages for an infringement on their trademark. This is corroborated by **Section 5(1) & (2), and Section 6(1) & (2) of the TMA**, which prevent use of existing, registered trademarks in a way that is deceitful or confusing.

The implication of this is that trademarks differ widely from traditional business names in that they are regarded as a proprietary right, a form of intellectual property that can only be employed by its creator. However, unlike copyright or trade secrets which do not require registration, trademarks are largely required to be registered before the rights they provide can be enjoyed. In fact, **Section 49 of the TMA** states that registration is to be taken as *prima facie* evidence of trademark validity in legal proceedings. Nevertheless, unregistered marks are also subject to limited protections under the Act.¹³

2. **Companies and Allied Matters Act, 2020**

On the other hand of this discourse, business names are governed wholly by the CAMA. This legislative instrument contains in its **Sections 36-42**, the generality of the provisions concerning the registration of business names in the country. This process encompasses the search for availability of a name, proposed name reservation, filling of a CAC form online, payment of relevant statutory fees and approval of registration by the CAC.¹⁴ A review of relevant provisions proves enlightening.

Section 30(1) stipulates that, if, after approval, it is discovered that the newly registered name conflicts or is very similar to a previously registered name (that is still on the register), then the newly registered company would be compelled to change its name. **Section 30(4)** takes it a bit further by stipulating that a conflict with a registered trademark, without consent of the proprietor, is also a basis for name change.

At the stage of name reservation, the CAC may also cancel a name if it finds that it conflicts with a trademark or business name.¹⁵ The gravity with which this is taken is represented by **Section 41(1)(e)** which forestalls the registration of a company's memorandum of association if the business name is found to conflict with an existing business name or trademark. **Section 852(1)(d)** seals the deal by prohibiting the registration of any business name which conflicts with an existing trademark or business name.

¹³ Ibid, ss. 3 and 7.

¹⁴ Similoluwa Oyelude, Oluwatosin Jinadu & Etseoghena Oboni, 'Trade Mark and Business Names Conflicts in Nigeria: FHC/L/CS/1295/2023 – Havells India Limited v. The Corporate Affairs Commission and MDC Havels Product Limited' (ICLG, 5 February 2025) <<https://iclg.com/briefing/22226-trademark-and-business-names-conflicts-in-nigeria-fhc-l-cs-1295-2023-havells-india-limited-v-the-corporate-affairs-commission-and-mdc-havels-product-limited/amp>> accessed 16 September 2025.

¹⁵ Companies and Allied Matters Act, 2020 (Act No. 3, 2020), s. 31.

These provisions at the pre- and post- registration stages highlight the unwillingness of the CAC to permit the co-existence of two conflicting names by preventing the registration of a name conflicting or closely resembling (enough to cause confusion) an already registered name, whether at the CAC or the Trade Marks registry. Only where such a conflict has been resolved can the CAC now permit the registration of the business name, and confer upon the business legal identity.¹⁶

3. Conflicts?

As we all know, reality is often different from what is captured on paper. Conflicts arise, and many times, they are only discovered after the latter business had amassed sufficient goodwill, reputation and a sustainable consumer base. Many times, the lack of a coherent database between the CAC and the Trade Marks Registry impede a cohesive name check and businesses suffer for it, losing millions in court-granted damages and loss of goodwill. These conflicts arise in several forms, many of which have made it to the national judicial stage.¹⁷

The crux of the issue typically lies in the registration date of the respective names. This is because both agencies operate a first-in-time registration scheme.¹⁸ For example, if A in the earlier example registered his business name, “Loafables”, at the CAC before B, then “Loafable” cannot be registered on account of the obvious conflict and similarity. But, there is nothing in the Trade Marks Act that makes CAC registration, or even recognition as a business entity, a prerequisite for the registration of a trademark. So, if B were to register “Loafable” as a trademark (assuming that A had not already done that), then it becomes quite interesting, especially in light of the fact that **Section 5(1)** grants exclusive rights to use a trademark, and the use of a confusingly similar or identical mark is met with sanction.^{19,20}

4. Business Implications of Conflict and Real-life Cases

Having your business name struck out for conflict with a pre-existing trademark is highly disruptive. In the recent *Fastest Cakes v. Fast Cakes* saga, the respondent lost the right to use the name even after a comprehensive search at the CAC database, filing of necessary documents, and payment of statutory fees, notwithstanding the additional legal fees.²¹ All of that, gone. Yet, that is not all!

16 *ibid*, ss. 30(1) and 41(1) (e).

17 For example, the fastest cakes IP saga.

18 Okpe (n 2).

19 Trade Marks Act, 1967, Cap. T13 LFN 2004, s. 13(1).

20 However, there are certain exceptions to this as specified above. See ss. 7 and 8 of the Trade Marks Act.

21 Olawolemi Ogidan, 'The Saga of the Fast Cakes: A Comparative Analysis of Trademark Registration and CAC Registration in Nigeria', 2025 ResearchGate <https://www.researchgate.net/publication/394624691_'THE_SAGA_OF_THE_FAST_CAKES'_A_COMPARATIVE_ANALYSIS_OF_TRADEMARK_REGISTRATION_AND_CAC_REGISTRATION_IN_NIGERIA_INTRODUCTION> accessed 5 September 2025.

About two years ago, the multinational giant, Sanofi S.A. successfully sued three smaller Nigerian companies which business names infringed on its 1987 trademark.²² Sanofi Nigeria Enterprises registered with the CAC in 1992, Sanofi International Services in 2011, and Sanofi Nigeria Enterprises Limited in 2013. The obvious conflict between the 1992 registration and the 1987 trademark notwithstanding, the fact that the CAC's automated portal, despite the statutory provisions contained in the CAMA, allowed the registration of two other business names that clearly conflicted with an existing business name is a cause for alarm in and of itself. The last of these businesses had operated for at least a decade, undoubtedly amassing goodwill, brand reputation, customer loyalty and other intangible assets that contribute to its overall profit.²³

And there is the amount that is paid in damages. Earlier this year, in a trademark dispute between Citilink Accesscorp and MTN Nigeria, the latter company was fined over ₦800 million in damages.²⁴

But, enough with the grim reality. What panacea does the law hold for businesses that fall victim to these conflicts? Before that, it would be exigent to consider the full impact of being on the other side – what is the position of the law when the business name is registered before the trademark?

5. The Effect of Trademarks on Existing Business Names

This question appears as one of the most complex aspects of this subject. Over the years, it has been left unanswered by the courts, and the legislature seems too shy to speak decisively on it. However, certain provisions of the TMA and judicial pronouncements prove enlightening.

As earlier noted, trademarks confer exclusive usage rights to the proprietor.²⁵ However, a dilemma arises when a business name, registered by another entity, conflicts with the trademark. The general assumption would be that if the business name is identical or confusingly similar to the trademark, it constitutes infringement.²⁶ However, while the TMA and CAMA seem silent on the precise effect of a prior registration of a similar business name on the trade mark, the exceptions provided in **Sections 7 and 8 of the TMA** are worthy of note.

Section 7 of the TMA protects the rights of prior users of a mark,²⁷ even when such marks or similar ones are subsequently registered as a trademark. Moreover, **Section 8 of the TMA** stipulates that a trademark registration does not interfere with a person's *bona fide* use of their name, the name of their place of business, or that of their predecessors in business. It also does not

22 Sanofi S.A. v. Sanofi Integrated Services Ltd, Sanofi Nigeria Enterprises Limited, Mrs Susan Namiji t/a Sanofi Nigeria Enterprise, and the Corporate Affairs Commission. Case number: FHC/ABJ/CS/188/2020.

23 Gaelyn Scott, 'Trade Mark Registrations v Company And Business Name Registrations' (Mondaq, 6 September 2023) <<https://www.mondaq.com/nigeria/trademark/1362808/trade-mark-registrations-v-company-and-business-name-registrations>> accessed 16 September 2025

24 Citilink Accesscorp v. MTN Nigeria. Case number: FHC/L/CS/1124/2014.

25 Trade Marks Act, Cap T13, Laws of the Federation of Nigeria 2004, s. 5(1).

26 Ibid, s. 5(2)

27 Perhaps, even when the mark is registered as a business name.

prevent the genuine use of words that describe the character or quality of goods, provided they are not deceptively suggest affiliation with an existing trademark. This provision provides a respite from trademark claims for persons who register these names as business names.

Moreover, aside business names qualifying under the aforementioned exceptions, the provisions of **Section 5(2) of the TMA** can be safely interpreted to apply even to other business names. In such cases, the trademark owner has the right to object to its use.

In the case of a registered business name, the CAMA enjoins the trademark proprietor to do so by petitioning the Administrative Proceedings Committee (APC) established under the Act.²⁸ On the other hand, the trademark proprietor may institute a lawsuit in the Federal High Court pursuant to the exclusive jurisdiction conferred by the Constitution.²⁹ The Sanofi case is an example. In this case, the court held that the registration of a company name that was identical to a registered trademark, though not prior to it, amounted to trademark infringement and ordered damages against the infringing party.

However, the courts have, over time, seemed to favour the pre-eminence of trademarks. For example, in the Sanofi case, the Learned Justice noted that “a trademarked name takes precedence over a business name.”³⁰

This pre-eminence notwithstanding, it is pertinent to consider the converse reality: what happens when the business name is first registered, and the conflicting trademark registered subsequently by a separate entity? Does the law, *stricto sensu*, prioritize first registrations or are there any considerations for the earlier entity’s goodwill in this instance?

4.0 The Principle of Prior Use vs. First Registration

Section 3 of the TMA contains the following words: “*nothing in this Act shall be taken to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof,*” effectively codifying the common law action of passing off,³¹ ensuring that it remains a remedy to persons who, not having registered trademarks, have been known to be in use of those marks.³² The effect of this provision on registrants who register names already in use by businesses is nothing short of profound.

28 Companies and Allied Matters Act 2020, s 857(2).

29 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 251(1)(f)

30 Ibid (n 19).

31 Patkun Industries Ltd. v Niger Shoes Ltd. [1998] NWLR (pt. 93) 138

32 Niger Chemists Ltd v Nigeria Chemists (1961) All NLR 180

Prior to this codification, passing off the false representation of one's brand, product or business as that of another person³³ was well known in Nigerian intellectual property law. As it did in *Niger Chemists v. Nigeria Chemists (1961)*,³⁴ it may take the form of using another person's trademark, and by virtue of **Section 3 of the TMA**, this trademark need not be registered. Provided the earlier business's use of the mark has produced sufficient goodwill, passing off may be relied upon.

However, as may have been deduced already, its reliability is contingent upon prior use. That is, the business intending to plead passing off (the prior user) against a business that has gone ahead to register the trademark (the registrant), must prove that it was using the mark before the registration and this mark has become known with the business. **Section 7 of the TMA** reinforces the principle, preventing the registrant from restraining the use of the same or similar trademark if the user (or their predecessor) has been using it continuously before the proprietor's own use or registration of the mark for those goods (whichever comes first).

The essence of this is that: the successful proof of this consistent and significant use amounts to a proof of goodwill, and hence permits the coexistence of both uses. This coexistence notwithstanding, the prior user has certain legal remedies against the registrant. These include: damages and even an account of profit made through the use of the name.³⁵ What remains in any case is that the registrant's use does not exclude that of the prior user.

The court, thus, retains the task of balancing consumer interests with honest use.

5.0 Importance of Trademark Registration

The importance of trademark registration cannot be overstated. While business name registration with the CAC in Nigeria is a legal requirement for companies, it does not provide the same breadth of protection that trademark registration offers. A registered trademark does not merely serve as a brand identifier; it carries enforceable legal rights that directly affect the way business names are registered, exploited, and protected.

Firstly, trademark registration plays a critical role in avoiding consumer confusion, misleading associations and offering brand protection. One of the core purposes of a trademark is to serve as a badge of recognition, whereas, business names gives a corporate identity. When an unrelated company registers a business name similar to a well-known or existing trademark, it may mislead the public into assuming a relationship or affiliation between the two entities. This kind of

33 KoriatiLaw, 'Brand Protection Law: Key Points on Passing-Off & Unregistered Trade Mark' (KoriatiLaw) <https://koriatiaw.com/brand-protection-law-key-points-on-passing-off-unregistered-trade-mark/> accessed 16 September 2025.

34 All NLR 180

35 Ibid (n 29).

confusion can significantly damage a brand's integrity and market reputation. Hence, the Nigerian law, particularly under **Section 852(1)(d) of the CAMA** attempts to curtail this by preventing the CAC from approving names that *"would violate or conflict with any existing trademark or business name registered in Nigeria or body corporate formed under the Act, unless the consent of the owner of the trade mark, business name... has been obtained."*

Moreover, a trademark extends its protection to all commercial uses of the name, including logos, slogans, product packaging, and advertising. Apparently, there is no provision in the TMA or CAMA that states that in the absence of registration with the CAC, enforcement endeavours would be futile. Hence, even if a company is not listed in the CAC register, the trademark owner can still pursue enforcement actions against entities that infringe upon its commercial identity.

In addition to protection, trademark registration enhances the commercial value and credibility of a business name. Trademarks are considered intangible assets that can be monetized through licensing, franchising, or sale.³⁶ This makes them valuable not just for legal protection but also for investment and expansion purposes. A prominent example is Kodak, one of the world's most famous and trusted brands, which in 2023 signed a perpetual worldwide license agreement with EssilorLuxottica granting them the exclusive right to use the Kodak trademark in connection with their business.³⁷ In fact, Kodak, like many large brands, maintains a dedicated brand licensing page or program as a strategic option to generate revenue and monetize their brand equity.

Moreover, companies with registered trademark also inspire greater investor confidence, as the brand is protected and less vulnerable to infringement or dilution.³⁸ Hence, trademarks are not just brand identifiers; they are powerful instruments of commerce and control.

6.0 Recommendations

The existing concurrent registration regimes generate, as earlier shown, considerable confusion in the corporate identity landscape, thus necessitating the consideration of pragmatic steps to resolve inconsistencies and prevent future reoccurrences.

Firstly, there should be strengthened coordination between the Corporate Affairs Commission (CAC) and the trademark registry, as these two bodies presently operate in silos. Improved

36 'Nigeria: Restrictions to Monetization of Intellectual Property Rights' (International Association of Lawyers, 6 March 2022) <<https://www.uianet.org/en/news/nigeria-restrictions-monetization-intellectual-property-rights>> accessed 8 September 2025.

37 Eastman Kodak Company, 'EssilorLuxottica and Eastman Kodak Company Sign Perpetual License Agreement' (Kodak, 27 July 2023) <<https://www.kodak.com/en/company/press-release/essilorluxottica-perpetual-license-agreement/>> accessed 16 September 2025.

38 Kodak, 'Brand Licensing Sign-Up' (Kodak) <<https://www.kodak.com?en/company/page?brand-licensing-signup/>> accessed 16 September 2025.

harmonization and collaboration between them both, including unified databases or integrated search systems, would help mitigate this issue.

In the meantime, a mandatory clearance search across both the CAC and the trademark registry database should be required before the approval of a business name or trademark application. This would ensure that applicants do not inadvertently infringe on existing rights, and would help both institutions detect conflicts before they ever arise.

Furthermore, it is crucial to sensitize business owners, especially start-ups, and Small and Medium-scale Enterprises (SMEs) on the distinctions existing between business names and trademarks, highlighting the uniqueness and importance of each. This is particularly important because many businesses have embraced the wrong notion that registering a business name with the CAC grants them proprietary rights akin to those of a trademark.³⁹ Regulatory institutions like the CAC, Small and Medium Enterprises Development Agency of Nigeria (SMEDAN), and other industry associations must step up to create awareness and clarify the scope and limitations of both regimes, overall empowering business to take full control of their brand identity.

7.0 Conclusion

In the final analysis, the persistent coexistence of identical or similar business names and trademarks in Nigeria reveals a fault line in the country's regulatory framework for business identity and brand protection. While the TMA and the CAMA each provide robust protections within their spheres, the absence of coordinated enforcement between the Trade Marks Registry and the CAC create loopholes that allow for conflicting registrations, often with significant legal and commercial consequences – borne especially by the business owners.

Cases like *KPMG Nigeria v. KPMG Professional Services*, *Sanofi S.A. v. Sanofi Nigeria Enterprises*, and that of the “Fastest Cakes” demonstrate that legal rights attached to a registered trademark often supersede those associated with a business name, particularly where confusion, deception, or passing off is established. However, the principle of prior use and the common law remedy of passing off remain beneficial for business name owners who have built goodwill over time, even in the absence of formal trademark registration.

Notwithstanding, to ensure a more reliable and favourable commercial environment, stronger harmonization between trademark and business name registrations is necessary both within regulatory frameworks and in day to day administrative practice. Until then, businesses must be proactive in protecting their brand identities by conducting thorough clearance searches both

³⁹ Syntax Legal Practitioners, ‘Why Every Nigerian Business Needs a Trademark’ (Syntax Legal Practitioners, 12 July 2025) <<https://syntaxlaw.com/2025/07/12/why-every-nigerian-business-needs-a-trademark/>> accessed 16 September 2025.

within the CAC and the trademarks registry's databases, understanding the limits of business name registration, and where necessary, securing trademark protection to avoid disputes that could diminish years of commercial goodwill.