

INTELLECTUAL PROPERTY LAW IN NIGERIA

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INTRODUCTION

Intellectual property is a term that describes works of art, inventions, designs, symbols, names, and other mental products. Different types of rights, including patents, copyrights, trademarks, and trade secrets, are used by the law to safeguard Intellectual Propertyⁱ. These rights allow Intellectual Property creators or owners to profit financially or otherwise from their creations.

Intellectual property law are the laws and the rules created to protect the rights of the owners and creators of intellectual property; these laws enforce the rights of the owners. The main objectives of intellectual property are to preserve the private interests of intellectual work owners by recognizing their ownership rights, and to promote public interest by giving access to a diversified range of works and ideas in various areas.

There are various laws in Nigeria that govern the protection of intellectual property however, the three main laws overseeing matters concerning intellectual property in Nigeria are: The Copyright Act, The Trademark Act, and the Patent & Designs Act.

COPYRIGHT ACT

The Copyright Act was first published in 1970 and then inaugurated on 19th August 1989ⁱⁱ and further amended twice. The Copyright Act is responsible for the commission and enforcement of all matters pertaining to copyright. Copyright

is a type of intellectual property that, for a specific period of time, grants the owner the sole authority to reproduce, transmit, modify, display, and perform a creative work. The creative work might be musical, artistic, educational, or literary in natureⁱⁱⁱ.

Section 1(1)(a) -(f) of the Copyright Act, 2004 states that the following works are eligible for an action in copyright when infringed on.

- Literary works
- Musical works
- Artistic works
- Cinematograph films
- Sound recordings
- Broadcasts

Section 2 states that a literary work will not be eligible for copyright unless sufficient effort has been put into the work, giving it an original character; or the work has been fixed in any particular medium of expression currently known or hereafter created, from which it can be perceived, reproduced, or otherwise communicated directly or by the use of any machine or device. For any work to be eligible for an action under copyright, such work must be registered under the Nigerian Copyright Commission.

In **Defacto Works Ltd v Odunmotun**¹, the defendants change their wrappers to a color very similar to that of the plaintiffs. The plaintiffs instituted proceedings against the defendants and the court held that they were entitled to injunction as well as damages.

Any literary, music or artistic works apart from photographs, will still be eligible for copyright seventy years from the year of the death of the artist. In the case of government establishments, such works will be eligible for copyright seventy years after publication.

Any cinematograph and photograph will still be eligible for copyright fifty years after the death of the owner. Any broadcast and sound recording will still be eligible for copyright fifty years after the death of the publisher.

INFRINGEMENT OF COPYRIGHT

Section 15 of the Copyright Act provides that a person is said to have infringed on copyright if without the license or authorization of the owner of the copyright^{iv}:

- does, or causes any other person to do an act, the doing of which is controlled by copyright;

¹(1959) 1 FSC 42.

- imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this section of this Act;
- exhibits in public any article in respect of which copyright is infringed;
- distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed;
- makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;
- permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

TRADEMARK ACT

A trademark, sometimes a written mark, is a type of intellectual property consisting of a recognizable symbol, design, or statement that identifies and

distinguishes a product or service from other sources. Trademark owners are individuals, commercial organizations, or legal entities. The brand can be found on packaging, labels, coupons or the actual product. A trademark is a service mark that is used to identify a service^v. The legislation for trademark in Nigeria is the Trademark Acts. Section 42 of the Trademark Acts² define trademark as a mark adapted in relation to any good to distinguish it from other goods in the course of trade.

A trademark distinguishes a product from other similar products in the industry, acts as an abbreviation for that product, and also acts as a deterrent to buying inferior products. Trademarks are registered by the Registered Trade Mark Act and thus when the owner's goods have been infringed upon, he can bring an action under this act. A trademark is registered for a period of seven years, but can be renewed as provided by the Act.

INFRINGEMENT OF TRADEMARK

Section 5(2) of the Trademark Act states:

“Without prejudice to the generality of the right to the use of a trade mark given by such registration as aforesaid, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using it by way of the permitted use, uses a mark identical with it or so nearly

² Cap 436 LFN 1990

resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either-

- as being use as a trade mark; or
- in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.”

In **Niger Chemists Ltd v Nigeria Chemists & D.K. Brown**³ where the defendants change their name to fit that of the plaintiffs, the court awarded the plaintiffs injunction to restrain the defendants to continue using that name.

PATENT & DESIGNS ACT

A Patent is a form of intellectual property that gives its owner the legal right, for a limited period of time, to exclude others from making, using, or selling the invention^{vi}. The Patent and Designs Act is the law that governs matters concerning patents.

Section 1(1) states that any invention is patentable if it is new, results from inventive activity and is capable of industrial application; or if it constitutes an

³ (1961) 1 All NLR 171

improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application.

Section 12 of the Act defines design as “Any combination of lines or colors or both, and any three-dimensional form, whether or not associated with colors, is an industrial design, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result.”^{vii}

Registering an industrial design gives the registered owner the power to prevent others from subsequently copying the design or manufacturing goods. Posting, selling or using products that imitate the design for commercial purposes. Possession of the product for the purpose of sale.

A patent lasts 20 years from the filing date. However, if the annual membership fee is not paid, it will be invalid. A registered design is valid for 5 years immediately after the application for registration and can be renewed for 2 consecutive terms by paying the necessary fees.

CONCLUSION

Intellectual property describes the inventions and creations of various persons and it was created to safeguard these persons from their work being claimed by another person by recognizing their ownership of such materials and enforcing their rights against other people claiming ownership over their creation.

The main laws guiding Intellectual Property in Nigeria is are: The Copyright Act, The Trademark Act and The Patent and Designs Act.

Each law provides for the description and infringement of intellectual property and when a person can bring action under that act and for how long a person can continue to enjoy exclusive ownership over that invention.

The remedies available to an infringed party are: damages, injunction, account of profit, delivery up or destruction of goods.

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ⁱ What is Intellectual Property?. <https://www.wipo.int/about-ip/en/>.

ⁱⁱ O.M Atoyebi. Nigeria's Copyright regime: Shortcomings and Recommendations

ⁱⁱⁱ What is copyright? | The British Library. <https://www.bl.uk/business-and-ip-centre/articles/what-is-copyright>.

^{iv} <https://lawcarenigeria.com/overview-of-intellectual-property-in-nigeria/>

^v Trademark, copyright & branding. Trademark, Copyright & Branding - News (polsinelli.com)

^{vi} Patents - WIPO - World Intellectual Property Organization. <https://www.wipo.int/patents/en>.

^{vii} Patent and Designs Act Cap 344 LFN 2004