

RELEVANCE OF INTELLECTUAL PROPERTY RIGHTS TO BUSINESS; A NUTSHELL

INTRODUCTION

In today’s world we struggle to establish businesses and start petty trades especially in this part of the world (Africa) without the necessary protection to our business ideas or identity with the excuse that what we have is a small enterprises or medium business. When a business is establishing its presence in the market place, protecting and managing its intellectual property is critical as it can mean the difference between success and failure.[[1]](#footnote-1)

Intellectual Property Law protects business through any of the three (3) core areas as follows:

Copyright

Patent

Trademark

**Copyright** simply means the exclusive and assignable legal right given to an originator or author of a work for a fixed number of years to print, publish, perform, film or record literary, artistic or musical works etc.[[2]](#footnote-2)

**Patent** is a license or government authority conferring a right or title to the exclusion of others over an invention.[[3]](#footnote-3)

**Trademark** is a mark used or proposed to be used in relation to goods for the purpose of indicating or so soon to indicate a connection in the course of between the goods and a proprietor or registered used to use the mark. [[4]](#footnote-4) In **Society Bic S.A & Ors Vs. Charzin Industries Ltd**[[5]](#footnote-5), The Supreme Court per **Rhodes-Vvour, JSC** defined Trade Mark as a distinctive mark of authenticity through which the product of a particular manufacturer maybe distinguished from those of others by word, name or symbol or device.

Some of the relevance of Intellectual Property to your business are mentioned below:

* BRANDING:

For any business to survive in a competitive market there must be a brand image. A brand simply is a powerful tool for marketing and a key asset for creating value for businesses which can be a trade name, a sign, symbol, slogan or anything that is used to identify and distinguish a specific product, service or business.[[6]](#footnote-6)

A brand is not just a mark or a logo; it is more or less a promise of service and quality image, recognition, investment, vision, mission and pride. Under Intellectual Property Law your brand (mark or logo) can be registered and same gives an exclusive right of use. Some example of company brands are : Mercede Benz with three Star, Rolls Royce with Flying lady etc. A car manufacturer who fixes or inscribes on his cars the three pointed star is infringing the Mercedes Benz Trade Mark. Also, affixing the flying lady on a car constitute an infringement on Rolls Royce Trade Mark. These companies have exclusive rights over the use of their brand. Any wrongful use of another company or business brand, constitute an infringement.

In 2018 a content producer who specializes in events management, production, promotion and marketing with focus on comedy, Femi Edwards took MTN Nigeria Ltd to a Federal High Court in Lagos for alleged wrongful use of his brand identity and demanded that the telecommunications giant account for the N112.5 billion it allegedly generated from the venture.[[7]](#footnote-7)

* RAISE CAPITAL OR SECURITY FOR LOAN

Intellectual Property rights assets such as patents, copyrights, trademarks help businesses gain more access to financing by acting as collateral or security for loans. An Intellectual Property owner may choose to license, assign or sell the rights to other enterprises in exchange for lump sum, payments or royalties, in order to generate additional income for the enterprise.[[8]](#footnote-8)

Startup and/or small business can raise capital by licensing out its intellectual property rights to a third party; as collateral to raise capital or security for debt finance.[[9]](#footnote-9)

* ENHANCING COMPETITIVENESS

Intellectual Property enables businesses and or startup to have exclusive use over the exploitation of their innovative ideas, products, creative designs and brands, thus putting them in a vantage position amidst competition.[[10]](#footnote-10)

Intellectual Property rights help prevent competitors from copying or closely imitating a company’s product or services, avoid wasteful investment in research and development and marketing, create a Corporate identity through Trademark and branding strategy negotiating licensing, franchising or other IP-based contractual agreement, increase market value of the company, acquiring venture capital and enhance access to finance and obtain access to new markets.[[11]](#footnote-11)

* CONFIDENTIAL INFORMATION AND TRADE SECRETS

Information is one of the most valuable assets of a business which can be stored in any form. Examples include a new product design, a marketing strategy and software code etc. with Intellectual property rights companies and business as seen below protects their product, innovations, and know-how using trade secrets. Some companies with trade secrets and confidential information duly protected are:



Kentucky fried Chicken (KFC) recipe is kept a secret and only a few employees are aware of the contents and they are bound by a confidentiality agreement. [[12]](#footnote-12)



Coca-Cola formula is protected as a trade secret.[[13]](#footnote-13)



McDonald’s secret Big Mac sauce recipe is coveted that it was allegedly leaked online in 2017.[[14]](#footnote-14)

Intellectual Property Law helps protects these information and makes them remain confidential.[[15]](#footnote-15)

To qualify as a trade secret or confidential information, the information must be: commercially valuable, be known only to a limited group of persons and be subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements or a non-disclosure agreement (NDA) for business partners and employees or with third parties.[[16]](#footnote-16)

* PROTECTION FROM IDENTICAL OR SIMILAR CREATION

Owing Intellectual Property helps protect brands from others using identical or similar works to your creation, brand or product etc. without protection, you could end up spending a lot more money in defending against someone else or even rebranding and miss out on commercial opportunities.

In **Niger Chemists Ltd Vs. Nigeria Chemists & Anor**[[17]](#footnote-17) the Court granted an injunction against the defendant (Nigeria Chemist) on the grounds that their use of the name Nigeria Chemists was intended to deceive the members of the public into believing that there was a relationship between Nigeria Chemists and Niger Chemists. Quoting **Lord Cozens-Hardy** in **Ewing v Buttercup Co**.[[18]](#footnote-18) **Palmer J** held:

“I know of no authority, and I can see no principle, which withholds us from preventing injury to the plaintiff in his business as a trader by a confusion which will lead people to conclude that the defendants are really connected on a brand of the Plaintiff’s business”

* OWNERSHIP AND LICENSING

Intellectual Property law helps you have ownership and licensing rights over the tangible and intangible assets of your business.[[19]](#footnote-19)

Conclusion

Intellectual Property is one aspect of law entrepreneurs fail to exploit, yet it is vital for business growth and development as it protects business investment of promoters, shareholders and stakeholders. More awareness has to be created of its benefit as many Nigerians do not even understand or have knowledge of its benefits and scope.

By Emmanuel Agherario, Esq

Email: Agherarioemmanuel@gmail.com

Phone No: 08065757650

1. Asein J.O 2012 Nigerian Copyright Law and Practice. Book and Gavel Ltd. 2 [↑](#footnote-ref-1)
2. Section 1 of the Copyright Act, Cap 28 L.F.N 2004. [↑](#footnote-ref-2)
3. Ohieze, I.M. (1998) Nigerian Copyright Law, Appa Megalink International Ltd, P.86, while Section 1 of the Patents and Designs Act, Cap P2 L.F.N (2004) stipulates the circumstances under which an invention may be considered patentable. [↑](#footnote-ref-3)
4. Section 67 of the Trademark Act Cap T 13, L.F.N. 2004 [↑](#footnote-ref-4)
5. (2014) 4 NWLR (Pt.1398) 497 [↑](#footnote-ref-5)
6. Lom, H. Branding: How to use IP to Create value for year Business retrieved on July 12th , 2020 from [www.wipo.int/sme/en](http://www.wipo.int/sme/en)  [↑](#footnote-ref-6)
7. Adepetun A. and Ayobami Y 2018 MTN in N112.5b copyright infringement suit over wrongful use of brand. The Guardian Nigeria News June 25th , 2018 retrieved from https://m.guardian.ng [↑](#footnote-ref-7)
8. Section 10 of the Copyright Act, Cap 28 L.F.N 2004 [↑](#footnote-ref-8)
9. Garcia, J.M. (2014) Using IP to Raise Finance for Innovation. World Bank Publication No. 4 p.3 [↑](#footnote-ref-9)
10. See the Copyright Act Cap 28 L.F.N 2004, Trade Mark Act Cap T 13, L.F.N. 2004 and Patent and Designs Act Cap P2 L.F.N (2004) [↑](#footnote-ref-10)
11. ICC 2017 Intellectual Property: Source of Innovation, Creativity, Growth and Progress. Retrieved on August 17th 2020 from www.iccwbo.org [↑](#footnote-ref-11)
12. # The Telegraph News 2016 KFC KFC's recipe: Has one of the biggest trade secrets in the world been revealed? Retrieved on August 17th, 2020 from https://www.telegraph.co.uk/news/2016/08/27/kfcs-recipe-has-one-of-the-biggest-trade-secrets-in-the-world-be/

    [↑](#footnote-ref-12)
13. Coca-cola’s formula is at the world of coca cola. Retrieved on August 17th 2020 from https://www.coca-colacompany.com/news [↑](#footnote-ref-13)
14. Barns S 2017 McDonald’s secret Big Mac sauce recipe allegedly leaked online. Fox News August 25th , 2017 retrieved on August 17th , 2020 from https://www.foxnews.com [↑](#footnote-ref-14)
15. IPOS Confidential Information and Trade Secrets retrieved on August 17th , 2020 from https://www.ipos.gov.sg [↑](#footnote-ref-15)
16. https://www.investopedia.com/terms/t/trade-secret.asp [↑](#footnote-ref-16)
17. 4 NIPJD (SC.1961) [↑](#footnote-ref-17)
18. (1917) 2 Ch 1 [↑](#footnote-ref-18)
19. Koller C 2018 IP licensing: how to get it right for your business. Retrieved on July 17th , 2020 from https://www.novagraaf.com [↑](#footnote-ref-19)