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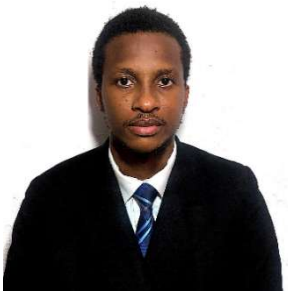

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SAFEGUARDING INTELLECTUAL PROPERTY RIGHTS IN NIGERIA: AN ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

1. Introduction

Over the years, Nigeria has seen a number of successful initiatives to advance intellectual property (IP) rights. However, a number of obstacles have impeded these efforts, such as a lack of public awareness regarding the legal protections for intellectual property rights, ineffective enforcement and protection mechanisms, insufficient penalties for violations, official corruption, and a lack of coordination among government agencies involved in IP development and protection. In contrast to real or personal property, intellectual property rights are exclusive proprietary rights that are legally awarded to owners of creative works of the mind. The set of laws that control the establishment, acquisition, and defense of these rights as well as the adjudication of claims of infringement is known as intellectual property law.

In the 1960s, Nigeria's indigenous IP regime started to take shape, but it is still in its early stages of development. Inadequate intellectual property protection persists in the nation even after numerous laws and regulations, including the Copyright Act, Patents and Designs Act, and Trade Marks Act, were passed.

The legal and institutional foundation for intellectual property rights protection in Nigeria are examined in this article.

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2. Trade Marks Act, 2004.

Africa's most populous country, Nigeria, has the continent's largest economy and a rapidly expanding services industry, driven by rising consumer demand. This factor makes trademark registration important.[2] The Trade Marks Act, is the pertinent legislation that regulates trademarks in Nigeria. This Act explains the procedure for the registration of trademarks, enforcement, and remedies for the infringement of trademarks in Nigeria. These procedures are briefly analyzed below:

2.1 **Registration:** In Nigeria, a person who wants to be a proprietor of a trademark will first conduct an availability search to ensure that there are no marks in conflict with the proposed mark.[3] Once that is done, he can then apply in writing to the registrar in the required manner for either registration in Part A or Part B of the register.[4] A trademark registration typically takes between 18 to 24 months to complete.[5] The trademark of the product or business must be registered in Nigeria in order for the owner to have the exclusive right to use it in Nigeria when the owner of a foreign product plans to import it into the local market or when a foreign company plans to operate in Nigeria.[6] It is necessary to note that an application for a trademark does not automatically confer trademark rights on the applicant, the trademark has to be registered first.[7]

The requirement for the registration of a trademark are: Applicant's details (i.e., name, signature, nationality, and address); Details of the trademark; A representation of the mark; The classification of goods and/or services (Nigeria uses the Nice Classification of Goods and Services) and a signed Power of Attorney.[8] Where there are no third party objections to the registration of a trademark within the opposition period or where the objections are resolved in favor of the applicant, the Registrar shall issue the

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2 Ifeyinwa Ufondu, 'Nigeria: A Guide To Trademark Registration In Nigeria' *Benchmac &Ince* (21 November 2018) available at <https://www.mondaq.com/nigeria/trademark/757232/a-guide-to-trademark-registration-in-nigeria#:~:text=The%20laws%20governing%20trademark%20in,numeral%2C%20or%20any%20combination%20thereof.> accessed 27 February 2025.

3 See, Collin Egemonye, 'Trademarks in Nigeria: Registration, Infringement and Enforcement' *Goldsmith* (2023) available at <https://goldsmithsllp.com/trademarks-in-nigeria-registration-infringement-and-enforcement/> accessed 27 February 2025.

4 Section 18 of the Trade Marks Act, (TMA) LFN 2004.

5 See, Yetunde Okojie and Oluwasolape Owoyemi, 'How Do I Register a Trademark In Nigeria' available at https://spaajibade.com/wp-content/uploads/2019/01/How-do-I-Register-a-Trademark-in-Nigeria-by-Yetunde-Okojie-and-Oluwasolape-Owoyemi.pdf accessed 27 February 2025.

6 Ibid.

7 Section 3 of the Trade Marks Act, (TMA) LFN 2004; *DykTrade LTD v. Omnia (NIG) LTD* (2000) LLJR-SC.

8 See,Maryam Abdulsalam, 'Registration of Trademark And It's Benefits' (2022) available at <https://spaajibade.com/registration-of-trademark-and-its-benefits> accessed 27 February 2025.

applicant with a certificate of registration. The registration of a trademark takes effect retrospectively from the application filing date and shall subsist for a period of seven years in the first instance but may be renewed from time to time for a period of fourteen years.

2.2 **Enforcement:** The owner of a registered trademark can enforce his rights by; opposing similar trademarks within 60 days of publication, applying for cancellation with evidence of prior registration, sending cease and desist letters to infringers, and obtaining search and seizure orders for infringing goods, in addition to instituting an infringement action.

2.3 **Trademark Infringement and Remedies:** A trademark is infringed when a person without consent from the trademark owner uses the mark or an identical mark in a way that is likely to deceive the public or cause confusion. In cases of infringement, the Federal High Court has the authority to entertain infringement actions. On the other hand, the registrar's role is limited to hearing oppositions and cancellation proceedings.[9] Also, a court enjoys the same discretionary powers conferred upon the registrar by the Act and can exercise them upon an administrative review.[10] The court with jurisdiction for trademark proceedings in Nigeria is the Federal High Court.[11] The burden of proof lies on the proprietor of the trademark to show that his right has been infringed upon. Section 5 (2) of the Trade Marks Act provides that:

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 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.

The owner of an unregistered trademark on the other hand may institute an action for passing off where there is an infringement. Where the owner of the trademark seeks compensation for losses suffered in relation to infringement of the trademark, injunctive reliefs may be sought and granted.[12] An Anton Piller order can be sought to give access

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9 Section 46 of the Trade Marks Act, (TMA) LFN 2004.

10 Section 55 of the Act.

11 Section 23 of Trade Marks Act; Federal High Court Civil Procedure Rules, Order 2. in the judicial division where the defender resides or where the infringement took place.

12 See, Collin Egemonye, 'Trademarks in Nigeria: Registration, Infringement and Enforcement' *Goldsmith* (2023) available at <https://goldsmithsllp.com/trademarks-in-nigeria-registration-infringement-and-enforcement/> accessed 27 February 2025.

to the owner to enter the premises where the infringed goods are kept and take possession of it and finally, the court can also grant an order for an account of profits to recover all the profits made by the infringer from the unauthorized use of the trademark where such act amounts to significant loss of profit on the part of the owner.

Furthermore, the Trade Marks Act provides for assignment and transmission of registered trademarks either in connection with the goodwill of a business[13] or not, provided that every assignment of a registered mark must be recorded at the Trade Mark Registry.[14] It also provides for revocation of a trademark on application for certain grounds as well as several other stipulations that contribute to the regulation of trademarks in Nigeria.[15]

3. <u>The Trade Mark Regulations, 1962.</u>

This is another relevant legislation governing the registration of trademarks in Nigeria. The regulation is a foundational piece of legislation that governs the registration and protection of trademarks in Nigeria. Just like the Trade Marks Act, it provides a framework for the registration of trademarks, certification marks, and collective marks, as well as the protection of rights related to these marks.

4. <u>The Trademark Malpractice (Miscellaneous Offences) Act, 2004</u>.

This is a significant legislation in Nigeria aimed at combating various forms of malpractice related to trademarks. This Act was enacted to address the rising concerns over counterfeiting, piracy, and other illicit activities that undermine the integrity of trademarks and intellectual property rights. By virtue of this Act, the Special Trade Malpractices Investigation Panel was established for the purpose of investigating whether any offence has been or is being committed.[16]

5. <u>Copyright Act, 2022.</u>

Copyright is a legal protection that shields the owner of intellectual property from exploitation. It prevents unlawful copying and dissemination of an author's work, thereby protecting it from indiscriminate use.[17] The Copyright Act of 2004 was repealed, unrecognized copyright treaties were ratified, and new sections were added to the Act when General Muhammadu Buhari, the former president of the Federal

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13 Section 26 of the Trade Marks Act, (TMA) LFN 2004.

14 Section 21 of the Act.

15 Section 11, 12 and 13 of the Act.

16 Section 1 of the Trademark Malpractice (Miscellaneous Offences) Act.

17 Esegi Maureen, 'Nigerian Copyright Act 2023: An In-Depth Overview ' *Mondaq* (31 May 2023) available at <https://www.mondaq.com/nigeria/copyright/1323108/nigerian-copyright-act-2023-an-in-depth-overview> accessed 27 February 2025.

Republic of Nigeria, signed the Copyright Bill, 2022, into law on March 17, 2023.[18] Some noteworthy stipulations of this Act are; a comprehensive explanation of copyright, encompassing various forms of creative works such as audiovisual, musical, artistic, literary, and broadcast[19]; the policy approach in tackling concerns related to digital and online usage of copyrighted works by enhancing author rights and imposing stricter punishments for criminal violations and the safeguarding of audio-visual works in digital content. The Copyright Act declares it unlawful to utilize any form of internet content, including images, films, sound recordings, and other outputs, without the creators' consent. The Act[20] also contains clauses that give copyright owners the authority to send out notifications of infringement for the removal or deactivation of links to illegal content.[21] It also gives the Nigerian Copyright Commission the authority to prohibit websites where there has been a violation of copyright and makes it easier for those who are blind or visually impaired to access published works. This signifies a big step forward in the development of a society where everyone can benefit from education.[22]

The Act effectively tackles the formidable challenges faced by copyright holders in the digital domain by granting them the authority to take legal action against online infringements of their works.[23] This Act represents a courageous endeavor to address the imminent perils associated with technological advancement.

6. Patents and Designs Act, 1970.

The Patent and Designs Act makes comprehensive provisions for the registration and proprietorship of patents and designs in Nigeria and other matters ancillary thereto.[24] The current version of the Act of 1970 is contained in the 2004 compilation of Nigerian laws.[25] A patent is an authority or grant that confers on an inventor, the monopoly right

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18 WIPO, 'Nigeria Passes New Copyright Act 2022' *WIPO* (May 12,2023) available at <https://www.wipo.int/about-wipo/en/offices/nigeria/news/2023/news_0011.html#:~:text=On%20March%2017%2C%202023%2C%20the,the%20new%20Act%20is%20available.> accessed 27 February 2025.

19 Section 2 (1) (a-f) of the Copyright Act 2022.

20 Copyright Act 2022.

21 Section 54 and s 55 of the Act.

22 Section 26 of the Act.

23 Esegi Maureen, 'Nigerian Copyright Act 2023: An In-Depth Overview ' *Mondaq* (31 May 2023) available at <https://www.mondaq.com/nigeria/copyright/1323108/nigerian-copyright-act-2023-an-in-depth-overview> accessed 27 February 2025.

24 Patents and Designs Act 1970, preamble.

25 WIPO,'Patents and Designs Act' *WIPO* (2023) available at <Nigeria.https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.wipo.int/edocs/mdocs/africa/en/ompi_inn_cas_16/ompi_inn_cas_16_t_6_k.pdf&ved=2ahUKEwiA_caNxKiEAxVBXEEAHX7kA0sQFnoECC0QAQ&usg=AOvVaw1X2vZvqjK8xFZOyVORV6n-> accessed 27 February 2025.

for a set period of time, to exclude others from making, using, or selling a patented invention without consent.[26] The Act provides the conditions that must be met before an invention can be patentable in Nigeria.[27] It spells out the restrictions on areas where patents for an invention cannot be validly obtained (such as plant or animal varieties),[28] the procedure for patent application,[29] form of grant of patent,[30] rights conferred by patent[31] and many more. Infringement of patent or design rights is actionable by the patentee or design owner concerned. A successful claim for any infringement of a patent in Nigeria could lead to the award of substantial damages against the infringer in addition to injunctions to prevent further infringement.[32] A patent is usually valid for 20 years from the filing date of the application, but will expire if the required annual renewal fees are not paid on time.[33] Before expiration, a grace period of six months is allowed for fee payment and where an expiration or lapse of a patent takes place, it is registered and notified accordingly.

7. Cybercrime (Prohibition, Prevention) Amendment Act 2024.

Cybercrime can be defined as any proscribed act that deploys computers, networks, electronic devices, or the internet to continuously perpetuate criminal activities such as illegal access to data,[34] data interference,[35] systems interference,[36] computer related fraud and forgery,[37] misuse of devices for crime,[38] illegal interception, intellectual property violations, terrorism and viral attacks. The Cybercrime (Prohibition, Prevention) Act, 2015[39] was enacted to provide a unified legal, regulatory and institutional framework for the prohibition, prevention, detection, investigation, and

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26 Olusola Jegede and Winifred Idiaru, 'Overview of Patent Law in Nigeria', *Lexology* (12 April 2021) available at <https://www.lexology.com/library/detail.aspx?g=5b2fa6e1-4ae5-47e4-8687-a5f08a389a8f> accessed 27 February 2025.

27 Section 1(1) of the Patents and Designs Act 1970.

28 Section 1(4) of the Act, See, Plant Varieties Protection Act 2021.

29 Section 3 of the Act.

30 Section 5 of the Act.

31 Section 6(1) of the Act.

32 Pelumi Akoni, 'Patent Infringement in Nigeria- When Can it be Excused' (2018) available at <https://www.mondaq.com/nigeria/patent/729250/patent-infringement-in-nigeria-when-can-it-be-excused> accessed 27 February 2025.

33 Section 7 of the Act

34 Section 6, 28(3), 5 and 31 of the Act.

35 Section 16 of the Act.

36 Section 8 and 16 of the Act.

37 Section 13 and 14 of the Act.

38 Section 18, 24 and 25 of the Act.

39 Cybercrime (Prohibition, Prevention) Act, 2015

prosecution of cybercrimes in Nigeria.[40] It is a legislative response to the increasing rate of fraudulent activities in the cyberspace for which there had never been any specific statutory or regulatory regime in the country. These fraudulent activities are prohibited under the various sections of this law and violations attract a wide range of sanctions, including monetary fines and terms of imprisonment. A good example of this is seen in section 24[41] which makes it an offence for a person to be engaged in cyberstalking, that is, the act of sending offensive materials to cause fear by means of computer systems or networks. The court may make an order to stop the harassment of the person concerned.[42]

Furthermore, the Cybercrime Advisory Council[43] (the "Council") is established with the mandate to co-ordinate and work with existing law enforcement, security and intelligence agencies in the administration and enforcement of its provisions. The Act also places the responsibilities of its stipulations on the activities of ICT-related service providers. For example, service providers have the duty to preserve information pertaining to traffic data and subscriber information for a period of 2 years, and to disclose any such information as may be requested by any law enforcement agency.[44] A breach of this duty is punishable by a term of imprisonment of not more than 3 years, or a fine of not more than N7 million, or both the fine and imprisonment.[45]

8. **The Merchandise Marks Act, 2004**.

In contrast to previous intellectual property legislation passed in Nigeria, the Merchandise Marks Act (MMA)[46] does not enjoy so much popularity. In order to stop the increasing number of trademark forgeries and falsifications and other related offenses, Nigeria adopted the Act, which was initially introduced in the United Kingdom to prohibit non-British nationals from selling their goods in Britain and Europe under the false pretense that they were manufactured in Britain and had a royal warrant. The Merchandise Marks Act, which was created in 1916 during the colonial era, forbade the importation and sale of goods subject to forfeiture in Nigeria and made it illegal for

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40 Templars, 'The Reach and Impacts of the Cybercrime Act, 2015 on providers of ICT services' *Templars* (July 2018) available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.templars-law.com/app/uploads/2018/07/The-Reach-and-Impacts-of-the-Cybercrime-Act->accessed 27 February 2025.

41 Cybercrimes (Prohibition, Prevention) Act 2015.

42 Section 24 (3) of the Act.

43 Section 43 of The Merchandise Marks Act, 2004.

44 Section 38(1) and (2) of the Act.

45 Section 38(6) of the Act.

46 Cap M10, LFN 2004.

unauthorized individuals to forge or falsify registered trademarks. It also penalized trademark counterfeiters. It imposes heavy penalties on offenses such as applying a trademark incorrectly to goods that are so similar to an existing trademark as to be intended to deceive and/or confuse the market by forging trademarks, and providing deceptive commercial descriptions of goods.[47] The Acts' penalties for these kinds of actions include incarceration, fines, or both, as well as the confiscation of any property or tools used in furtherance of the crime. Although the legislation has undergone multiple adjustments in the UK when it was first passed, no changes have been made since it was enacted to better reflect our changing times. The penalties that were previously in place are no longer adequate to effectively prevent the commission of the specific offenses listed in the Act and have become outdated. A person found guilty upon summary conviction in the Magistrate court, for example, faces a meager fine of one hundred naira or only six months in prison. There is an urgent need to review this legislation because one hundred Naira is nearly worthless these days.

9. The Institutional Framework For Protecting Intellectual Property Rights in Nigeria

9.1 The Industrial Property Tribunal (IPT).

Concerted attempts to comprehensively amend the laws relating to industrial property go as far back to 1991 and although these efforts have gained some traction over the years, nothing of tangible substance has been accomplished in terms of effecting these proposed changes.[48] In 2016, efforts were renewed in the form of the Industrial Property Commission Bill (IPCOM) presented to the National Assembly with the aim of harmonizing all current intellectual property laws and governing bodies by providing for the establishment of the Industrial Property Commission of Nigeria, repealing of the Trade Marks Act,[49] the Patents and Designs Act,[50] and to make comprehensive provisions for the regulation of trademarks, patents and designs, plant varieties, animal breeders and farmers rights and for other related matters. The Bill has now passed the second reading at the House of Representatives and is awaiting further legislative action.

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47 Section 18 of The Merchandise Marks Act, 2004.

48 See the Report on the Reform of Industrial Property Law, published by the Nigerian Law Commission 1991.

49 Cap T13, LFN 2004.

50 cap 344, LFN 2004.

9.2 **National Office for Technology Acquisition and Promotion (NOTAP).**

The Federal Ministry of Science and Technology established the National Office for Technology Acquisition and Promotion (NOTAP) as the National Office of Industrial Property (NOIP).[51] It is a corporate body with a mandate to implement the acquisition, promotion and development of technology and at the same time correct certain imperfections in the acquisition of foreign technology into the country. In 1992, it was renamed the National Office for Technology Acquisition and Promotion (NOTAP). In addition to ensuring that the name accurately conveys the full range of the office's responsibilities, this was done to eliminate any potential confusion or misunderstanding regarding any other government agency.

NOTAP's activities encapsulate the evaluation and registration of Technology Transfer Agreements; Promotion of Intellectual Property; Technology Advisory and Support Services; Commercialization of R&D Results; Research Industry Linkage; Maintenance of a Compendium on R&D activities in the country; Production and Publication of Industrial Project Profiles on SMEs, etc.[52]

9.3 **Nigerian Copyright Commission (NCC).**

This Commission was established under section 34 of the Copyright Act,[53] The Nigerian Copyright Commission was first known as the Nigerian Copyright Council.[54] It was elevated to the position of a Commission in April 1996, and the Copyright (Amendment) Decree 1999 affirmed this administrative shift. Under the Copyright Act, the Commission is the government agency in charge of managing, regulating, enforcing, and prosecuting copyright issues in Nigeria. The following are among its legislative powers: the oversight of all issues pertaining to copyright in Nigeria as stipulated by the Act; keeping an eye on Nigeria's stance on international agreements, monitoring it, and advising the government on it. Others are ascertaining whether a copyrighted work may be protected by copyright due to an international responsibility, verifying countries that are party to treaty obligations;[55] regulating the conditions for the exercise of the right of an author of graphic works, three-dimensional works and

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51 NOTAP, 'History' *NOTAP* (ND) available at < https://notap.gov.ng/new_dev/history/> accessed 27 February 2025.

52 National Office of Industrial Property (NOIP) under Decree No. 70 of 1979 available at <https://notap.gov.ng/new_dev/welcome-notap/> accessed 27 February 2025.

53 Cap C28, Laws of the Federation of Nigeria, 2004.

54 On August 19 1989, the Nigerian Copyright Commission was established.

55 Section 5 of the Copyright Act 2022.

manuscripts to share in the proceeds of any sale of that work or manuscript by public auction or through a dealer.[56]

9.4 Trade Marks, Patents, and Designs Registry

The Trade Marks, Patents and Designs Registry, situated in the Commercial Law Department of the Federal Ministry of Industry, Trade and Investment, is the principal regulatory body that enforces the provisions of the Patent and Designs Act. The Trade Marks, Patents, and Designs Registry is where trademarks in Nigeria are registered ("Registry"). The procedure below shows the Trademarks, Patents, and Designs Registry's involvement in registering the trademark:

9.4.1 The availability search: This helps to determine whether the mark is available under the relevant class. The accredited agency may proceed with trademark registration if the mark does not conflict with any already-existing trademarks in the relevant class.

9.4.2 Application and Acknowledgement: Once the trademark availability is confirmed, the accredited agent must complete a statutory application form with personal details of the mark owner and the logo or mark intended for registration. After submitting the form and paying fees, the Registry will provide an acknowledgement confirming receipt of the application.

9.4.3 Acceptance: receiving the application, the Registry will examine the trademark for distinctiveness and potential conflicts with existing registrations. If deemed satisfactory, an acceptance form will be issued by the Registry.

9.4.4 Publication of the Trademark: after the issuance of the acceptance form, the trademark application is published in the Trade Marks Journal for public notification. Objections must be filed within 2 months. If no objections are filed or if resolved, the Registry issues a certificate of registration. As stated earlier, trademark registration is initially valid for 7 years, renewable every 14 years. In addition, Section 32 of the Plant Variety Protection provides that Breeders' rights generally enure for a period of twenty (20) years from the date of grant, except in the case of trees and vines which expire after twenty-five years (25) from the date of grant. In both cases, the rights may be renewed for a further period of five years, provided the application for renewal is received within at least six (6) months to the expiration of the right.[57]

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[56] Section 13 of the Act.

[57] Section 32 of the Plant Varieties Protection Act 2021.

10. Conclusion

Nigeria's intellectual property landscape, while demonstrating progress, faces persistent challenges. The legal framework, encompassing trademarks, patents, copyrights, and designs, provides a foundation, but effective enforcement remains crucial. Strengthening the institutional capacity of agencies like the Nigerian Copyright Commission and the Trade Marks, Patents, and Designs Registry is paramount.

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