

**INTELLECTUAL PROPERTY PRACTICE IN NIGERIA: OPPORTUNITIES FOR LAWYERS
BEING THE LECTURE DELIVERED BY BOLUWATIFE SANYA ON THURSDAY, THE 4TH
DAY OF NOVEMBER, 2021 AT IJEBU-ODE NIGERIAN BAR ASSOCIATION MEETING**

1.0 PRELIMINARIES

- 1.1 I wish to first express my heartfelt gratitude to the entire Ijebu-Ode Bar especially Alhaji Oduwole for inviting me to grace the bar meeting.
- 1.2 On the 1st of October 2021, I had featured on Super F.M here in Ijebu Ode where I discussed the use of intellectual property as a tool of development in Nigeria. This interview has led to my lecture here today.
- 1.3 Before proceeding into the substance of this lecture, it is pertinent to mention that I am an Ijebu indigene and as such even though I do not have a physical office in Ijebu Ode, I regard myself as a member of the Ijebu Ode bar.
- 1.4 On this foundation laid, permit me to greet my people in our dialect; “Eweso dede omo alare”. Forgive me, I might have not pronounced the Ijebu words properly, I hope to do better as I grow.

2.0 INTRODUCTION

- 2.1 Before the discovery of crude oil in 1956, the Nigerian budget was serviced mainly through proceeds gotten from the export of agricultural produce i.e export of cocoa, palm kernel etc.
- 2.2 Nigeria immediately had a sharp change of source of revenue from agriculture to crude oil. According to the Nigeria Extractive Industries Transparency Initiative (NEITI), crude oil contributes 65% of the total revenue to the Nigerian government.
- 2.3 Few years from now, our crude oil will no longer be able to service our national budget because automobiles which are the major consumers of crude oil will depend on electricity and solar.
So, the question is; how do we survive as a nation?

- 2.4 I agree with Mark Getty who had previously stated that intellectual property is the crude oil of the 21st century and my reason for stating this will be addressed as I proceed.
- 2.5 I am not a soothsayer or a mind-reader but I am aware that when the words “Intellectual property” are mentioned, what resonates in many minds are; patent, trademark and perhaps copyright.
- 2.6 Truly, this is not far from the truth but there is more to intellectual property.
- 2.7 Our world is now moving to a knowledge-based economy wherein intangible assets are more valuable than tangibles. Have you ever wondered why the richest men remain rich? This is because they invest more in intangible assets.
- 2.8 We can recall sometimes last month when Facebook, Instagram and WhatsApp were shut down for 6 hours based on technical issues, it was reported, that the company lost about \$7 billion within that short period.
- 2.9 This buttresses the point that intellectual property as a form of intangible asset is no longer the future, but it is now the present.
- 2.10 So what then is intellectual property? Simply, intellectual property is defined as a creation of the mind such as inventions, literary and artistic works, designs and symbols, names and images used in commerce. The rights that accrue from these creations of the mind are broadly referred to as intellectual property rights.
- 2.11 Intellectual property is broadly divided into two, namely; Industrial property and Copyright. Industrial properties are; patents, industrial design, trademarks and geographical indications. Intellectual property also extends to traditional knowledge.

3.0 LEGAL FRAMEWORK AND REGULATORY BODIES FOR THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN NIGERIA

- 3.1 In Nigeria, there are several laws for the protection of intellectual property. Although, I must say that a handful of the laws are archaic and the national assembly have not amended these laws probably because they feel it is not needed.
- 3.2 It will interest most persons to know that intellectual property right is a fundamental right guaranteed by the Constitution of the Federal Republic of Nigeria (as amended).
- 3.3 A community reading of sections 43 and 44 of the Constitution of the Federal Republic of Nigeria (as amended) establishes my position.
- 3.4 Going forward, several European courts have held this position and of specific mention is the case of Anheuser-Busch Inc. v. Portugal, Application No. 73049/01 (11 January 2007) decided by the European Court of Human Rights Grand Chamber wherein five of the justices held that Intellectual property is a fundamental right.
- 3.5 Specifically, the laws that govern intellectual property in Nigeria are; Copyright Act 1988, Patents and Designs Act 1971, Trademarks Act, National film and video censors board act, National Broadcasting commission Act, Trade Malpractices Act, Consumer Protection Council Act.
- 3.6 However, there are regulatory bodies or agencies that see to the registration and administration of the laws. The table below shows the regulatory agency and the law establishing same.

| Establishing law/Subject matter | Regulatory agency |
|---------------------------------|--|
| Copyright and Related rights | Nigerian Copyright Commission National Film and Video censors board National Broadcasting Commission |
| Industrial Property | Patents and Designs Registry, Trademarks Registry |

4.0 INTELLECTUAL PROPERTY RIGHTS

4.1 COPYRIGHT

- 4.2 Copyright are rights that protect literary and artistic works. That is; rights that creators have over their literary, artistic, musical, broadcasts, cinematographic and sound recordings.
- 4.3 These rights are categorized into economic and moral rights. Economic rights include the right to reproduction, distribution to the public for commercial purpose, publication, performing the work in public, making a translation or an adaptation of the work, broadcast of the work and rental. See section 6 of the Copyright Act, 1971.
- 4.4 Moral rights are the rights to integrity and paternity. Integrity right means that the author can prevent anyone from mutilating, distorting or modifying his work which appears derogatory. The rationale for the integrity right is that a work is deemed to be a reflection of the author's personality.
- 4.5 Economic rights can be transferred or assigned whereas moral rights can never be assigned. See section 12 (2) of the Copyright Act.
- 4.6 To enjoy copyright protection, **a work does not need to be registered**. All that is required is that the work be **original** and **fixed in a tangible medium**. See section 1 (2) of the Copyright Act, 1971.
- 4.7 Worthy of mention is the recent case of Banire v. NTA-Star TV Network Limited (2021) LPELR 52824 CA, where the court of Appeal sitting in Abuja held that it is the photographer that owns the copyright in the photograph and not the person who was photographed.
- 4.8 Moral rights do not expire but economic rights expire after a specified period of time. See the first schedule to the Copyright Act.

4.9 **TRADEMARK**

4.10 A trademark is a sign that distinguishes goods or services in a market.

4.11 A trademark could be a word, sign, logo, smell or a combination of all of these.

4.12 A principal requirement for the registration of trademark is that the mark must be **distinct, not descriptive of what it is meant for and not misleading**. Unlike copyright, a mark must be registered to enjoy trademark protection.

4.13 For example, the words “Cocacola” and “Fanta” is a trademark owned by the Nigerian Bottling company.

4.14 A trademark lasts for seven years upon registration and can be renewed indefinitely.

4.15 **INDUSTRIAL DESIGN**

4.16 Industrial design refers to the aesthetic view of a product. For example, the cocacola bottle, lucozade bottle, Toyota car shape, Hyundai car shape and many more are all examples of industrial design.

4.17 By virtue of section 13 of the Patents and Designs Act, 1971, a design is registrable if it is **new** and it is **not contrary to public order or morality**.

4.18 An industrial design lasts for five years and can be renewed twice. See section 20 of the Patents and Designs Act.

4.19 **PATENT**

4.20 A patent right is like a social contract wherein an inventor approaches the government to protect his invention so that another person will not commercially exploit it, the government grants the inventor protection for a specific period of time (twenty years and not renewable) while the inventor in exchange for that, discloses the step by step procedure of arriving at his invention so much so that anyone skilled in the industry of such invention can independently recreate the invention with the disclosure as a guide.

4.21 To enjoy patent protection, an invention must be **new**, it is a result of an **inventive step** and capable of an **industrial application**. See 1 (1) of Patent and Designs Act.

4.22 There are subject matters that cannot be patented. These include; things that exist in nature which are discovered not invented i.e existence of a new planet, machines that defy laws of nature, Scientific theories or mathematical methods. Schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games. Methods of medical treatment for humans or animals or diagnostics methods (but the products used in the diagnosis could be patented) Plants and animals other than micro-organisms, and essentially biological processes for the production of plants other than non-biological and microbiological processes.

4.23 **TRADE SECRETS**

4.24 A trade secret is any information (either process or practice or documents) that is used for the running of a business and not known to competitors.

4.25 There are three yardsticks for an information to qualify as a trade secret.

They are;

- i. The information must be commercially valuable
- ii. It must be known to only a limited group of person
- iii. Reasonable steps have been taken by the owner of the trade secret to keep the information secret either by confidentiality agreement amongst business partners or contract of employment.

4.26 A prominent example of the use of trade secret system is formular of Cocacola and their products.

4.27 The procedures for protecting the formula for Coca-Cola (a.k.a. "Merchandise 7X"), according to an affidavit deposed to by a senior vice-president and general counsel for Coca- Cola in a court case, are as follows: The written version of the secret formula is kept in a security vault

at the Trust Company Bank in Atlanta, and that vault can only be opened by a resolution from the Company's Board of Directors. It is the Company's policy that only two persons in the Company shall know the formula at any one time, and that only those persons may oversee the actual preparation of Merchandise 7X. The Company refuses to allow the identity of those persons to be disclosed or to allow those persons to fly on the same airplane at the same time. The same precautions are taken regarding the secret formulae of the company's other cola drinks: diet Coke, caffeine-free diet Coke, TAB, caffeine-free TAB and caffeine-free Coca-Cola.

4.28 **GEOGRAPHICAL INDICATION**

4.29 Geographical indication is a sign that links a product (or service) to a given place, which may be a country, a region, or an area. Products such as Ijebu garri, Benue yam, ofada rice and many more are examples of products that can pass as geographical indication.

4.30 Several nations now rely heavily on their geographical indications to provide jobs and service their national budgets.

4.31 Examples are the Argane oil from Morocco and Darjeeling tea from India. It was reported that the Darjeeling tea industry in India employs over 52,000 people on a permanent basis yearly. They also export this tea same as the argane oil.

4.32 I recently saw a news report that about 200 billion cup of coffee was sold all over the world in the year 2020 alone. Countries such as Ghana and Ivory Coast are the exporters of the Cocoa being used for this coffee.

4.33 These countries have protected their geographical indications through sui generis laws and when they export their products, it is easy for the international market to know its from them.

4.34 It is pertinent to mention that Nigeria is yet to enact any sui generis law to protect its geographical indications.

4.35 Asides geographical indication, Nigeria has also failed to protect its traditional knowledge and even plant varieties.

5.0 **OPPORTUNITIES IN INTELLECTUAL PROPERTY FOR LAWYERS**

5.1 Entertainment

5.2 Technology

5.3 Agents: Law firms should ensure to be accredited agents of Copyright commission, Patents and designs registry.

5.4 Intellectual property valuer and auditor

5.5 Lecturing

5.6 Arbitrator, Negotiator and mediator

5.7 IP portfolio manager

6.0 **WHAT SHOULD YOU DO TO PLACE YOURSELF IN A POSITION TO GET THESE OPPORTUNITIES?**

6.2 Continuing legal education: This does not have to be with the Nigerian Bar Association. The World Intellectual Property Organization, African Regional Intellectual Property Organization and many other institutions offer courses for free on intellectual property.

6.3 Attend workshops and seminar

6.4 Write frequently on intellectual property

7.0 **CONCLUSION**

7.1 This is a convenient juncture to conclude.

7.2 Learned silks, seniors and colleagues, we might not have any excuse ten years to come when majority of the briefs in the corporate world will center on intellectual property. This is the best time for us to invest in learning and developing ourselves on intellectual property.

Thank you.

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