

INTELLECTUAL PROPERTY PROTECTION IN NIGERIA – RECENT DEVELOPMENTS.

With a population exceeding 120 million people, Nigeria represents by far the largest single market for the distribution goods and services in Africa. As a developing economy with a modest industrial base, her economy has remained largely dependent on imports. Consumer goods, machinery and industrial items are imported on a large scale from all over the world. Conversely, goods manufactured in Nigeria are exported, on a relatively small scale, to other countries, particularly within the West African Sub-region.

The re-introduction of democracy in Nigeria over tow years ago has encouraged investment in the economy by multi-national organizations, as part of their strategy to develop potential markets and outlets for their goods and services. Most of these investors have already acquired intellectual property rights and protection in the various markets or jurisdictions in which they operate and would naturally be interested in security the maximum possible protection against product faking and dilution of product/brand names.

Currently, IP rights can be protected in Nigeria through registration of such rights with the various IP registries maintained by the Nigerian Government, e.g. the Trademarks Registry and Copyright Commission, and other related offices such as the National Office of Industrial Property. All these offices run their independent registries, hence the importance of investors security legal advice s to the relevant office to approach in Nigeria for protective registration purposes.

The Nigerian courts also entertain passing off actions against producers and/or marketers of fake products. A range of reliefs, which are similar to those that can be granted by Common law courts in England, including remedial injunctions, delivery up of offending articles and specialist orders, such as Mareva Injunctions and Anton Pillar Orders, are available to aggrieved litigants.

Nigeria is also party to a number of internal conventions on IP rights, such as the Paris Convention for the Protection of Industrial Property (as amended at Lisbon, Portugal in 1953). Such Convention signatories to ensure that their own national laws include statues or statutory provisions, which reflect the intent behind the provisions of the Convention. These Conventions are formally recognized as part of the laws of Nigeria, although the equivalent provisions in local statutes do not in all cases fully reflect the position under these Conventions.

Applicable local statutes such as the Trademarks Act, the Patents and Designs Act and the Copyright Act are fairly dated statutes that, in certain respects, do not provide adequate protection of IP rights in the modern environment. Most of these statutes were re-enacted in 1990 and currently from part of the Laws of the Federation of Nigeria (LFN) 1990.

Existing IP registries in Nigeria, such as the Trademarks Registry, operate from different host Ministries and are therefore not centralized. These Registries are also not fully computerized, as filing and certification processes, including execution of certificates/regulatory documents, continue to be manually done. Certification of Trademark applications in the Nigerian Trademark Journal. The Journal, which is published by the Nigerian Government, suffers from infrequent publication, thereby lengthening the registration process for Trademark applications.

Given the above circumstances, and frequent complaints by companies operating within the system, the establishment of an effective regime of protection of the IP rights of companies operating within the Nigerian market is a current priority of the Nigerian Government.

In order to improve upon the current IP rights protection regime, Government is in the process of streamlining the existing IP registries, by bringing them under the control of a single body or host Ministry. This should assist in reducing or eliminating incidences of duplication of efforts by applicants.

ABUJA CONFERENCE – 2001

An international conference styled: ***TOWARDS THE REGIONAL DEVELOPMENT OF INTELLECTUAL PROPERTY IN AFRICA: “THE TRIPS AGREEMENT AND NEW ISSUES IN THE DIGITAL AGE”*** was held at the ECOWAS Secretariat, Abuja from 4th-6th April 2001. The Conference was organized by the United States Department of Commerce, the Economic Community of West African States (ECOWAS), the African Regional Intellectual Property Association (ARIPO) and the Intellectual Property Law Association of Nigeria (IPLAN).

Speakers at the Conference, including the Director-General of ARIPO, the Deputy Commissioner for Trademarks in the U.S. Patents and Trademarks Office (USPTO), the Attorney-Advisor, Legislative and International Affairs of the USPTO and a representative of the International Intellectual Property Alliance (IIPA) deliberated upon the following issues, as they affect Africa:

- i. IP protection in the digital age;
- ii. Improvement of IP enforcement regimes;
- iii. Development of the IP sector in the Nigerian context; and
- iv. Technical documentation prepared in accordance with the Trade Related aspects of IP agreements (TRIPS) standard.

Numerous related issues were also discussed. The host country, Nigeria was represented by official from both the Trademarks Registry and the Nigerian Copyright Commission, local members of IPLAN and interested persons from the Nigerian private sector, including performing artistes, musicians and producers of audio-visual entertainment and materials.

The Deputy Commissioner of the USPTO, who dealt extensively with development of local industries and IP protection on the internet, caused quite a stir amongst participants when he revealed that the USPTO generated internal revenue of US\$1 billion in a single year, with 5% of that total being derived from the domestic IP industry, encompassing music, movies, books and products protected by copyright!

The message, which emanated from deliberations at the conference, was that an improved system of IP protection in any society could only lead to development of all aspects of the economy.

Recent Developments

Recently, local media reports quoted senior Nigerian government officials as advising that plans are well underway to link the economies of up to six ECOWAS member states as a single market in the near future. One implication of this development would be that companies operating in the single market will require adequate IP rights protection throughout the region to combat dilution of product/brand names.

Most of the ECOWAS member countries are signatories to international conventions on IP rights, and as can be expected, statutes applicable within the region will need certain adjustments in order to achieve an acceptable level of standardization, or at least similarity, throughout the single market.

Discussions between the six ECOWAS member Governments have remained peripheral in nature. We do expect that as the economic integration proceeds, companies operating within the single market will pressurize the respective member Governments into putting into place the necessary statutes and/or amendments to the existing body of laws within each member state.

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