

Some Bottlenecks to Effective Enforcement of Intellectual Property Rights in Nigeria

The purpose of intellectual property law is to protect intellectual property rights and ensure that there is no infringement of same. These Laws often stipulate penalties for infringement of Intellectual Property rights.

However, certain problems are encountered in a bid to enforce intellectual property rights. Some of these problems would be examined under two main headings, viz:

- a) Inadequacy of statutory provisions; and
- b) Administrative problems.

A. Inadequacy of Statutory Provisions

- (i) Under Nigerian Law, eligibility for registration of a Trademark is more restrictive than the position in other jurisdictions. Registerable marks under Nigerian Law are presently defined only in relation to goods. This definition is detrimental to service-oriented businesses. In other jurisdictions, like the United Kingdom, Trademark is defined as any sign capable of distinguishing goods and services.

Under Nigerian law, Trademark is defined thus:

*“Trademark means, except in relation to a certification trademark, a mark used or proposed to be used in relation to **goods** for the purpose of indicating or so as to indicate a connection in the course of Trade between the **goods** and some person having the right either as a proprietor or registered user to use the mark whether with or without any indication of the identity of that person and means in relation to a certification trademark a mark registered or deemed to have been registered under Section 43 of this Act.”*

In AKESAN (NIG.) LTD -V- UBN LTD. Suit No. FHC/L/95/81 (unreported) in which judgement was delivered on 14/5/84, it was held inter alia that the Plaintiff's registration of a white stallion for electrical goods was not infringed by the defendant's use of a similar mark for its banking services. It is possible that if service marks were registrable under Nigerian Law, the defendant would have registered its logo as a service mark.

There is thus a need to expand the meaning of a mark to include symbols, pseudonyms, presentation or packaging of goods and services and shapes. Such an expansion would give applicants for Trademark registration broader protection.

Some of these inadequacies could be rectified by some International Laws such as the Paris Convention For The Protection of Industrial Property 1883 as revised in Lisbon in 1953, which allows for registration of service marks. However, because of the provision of Section 12(1) of the 1999 Constitution, which provides that “no treaty between the Federation and any other Country shall have the force of Law except to the extent to which such treaty has been enacted into law by the National Assembly”, international law or convention cannot be invoked to fill the lacunae in our law.

(ii) Furthermore non-registration of a mark under Nigerian Law leaves the mark unprotected. This problem may be solved by inserting a provision for the recognition of “well known marks” which will enjoy a measure of protection independent of registration.

B. Administrative Problems

The administration of trademarks is not without problems. Some of these problems include:

- (a) Files are sometimes lost or misplaced in the Registry.
- (b) Some of the staff of the registry are unskilled and untrained.
- (c) The facilities in the Registry are poor.
- (d) The Trademarks journal is not published regularly.
- (e) Again there is need to computerize the Trademarks Registry and establish a network that will co-ordinate the activities of the associated ministries that impact upon its operations.

However, a joint action by intellectual property practitioners in Nigeria have resulted in the formation of a pressure group aimed at ensuring the improvement of services rendered by the Trademarks Registry. In recent times, the publication of the Journal has become more frequent. Also, a stakeholders forum, aimed at providing the Registry with an opportunity of discussing these problems and working out a joint solution for them is in place. It is hoped that the dividends from these efforts will be felt in the not too distant future.