

## INTELLECTUAL PROPERTY LAW NEWSLETTER

6-04-17 Volume 3

## **EDITOR'S NOTE**

In this quarter's newsletter we are taking a look at some of the new trends in Intellectual Property Rights Enforcement Cases that G.O. Sodipo and Co has recently encountered. Do have a pleasant read.

## **NEW TREND OF IP CASES**

This Newsletter is meant to bring to the knowledge of companies and advertisement agencies, new line of IP cases that have arisen from the unauthorized use of photographic pictures. This bulletin, will review two cases;

- i) Where a company was sued for the unauthorized use of somebody's picture to advertise its product.
- ii) An action against a telecommunication company for the use of someone's picture on a recharge card.

The interesting part of these cases is the cause of action under which they were commenced.

Generally, either of these scenarios above is an infringement of Copyright under Section 6(1) (b) and 51 (1) (d) of the Copyright Act. It is instructive to note that the unauthorized use of one's picture is Copyright infringement. The cause of action which the Claimant's used in the above cases (that is breach of privacy) was decided in the first case to be the wrong procedure while in the second case it was decided to be the right procedure.

In the first case, the Defendant, a manufacturer, purportedly used the photograph of the Plaintiff to advertise its products to the public. The Plaintiff sued for breach of her fundamental right to privacy.

G.O. Sodipo and Co successfully raised an objection to the Jurisdiction of the Court to try the matter on the ground that the unauthorized use of the Claimant's photograph was not one of the constitutionally guaranteed rights which could be infringed upon. It is worthy to note that this decision was given by the High Court of Akure, Ondo State.

In the second case as stated earlier, a telecommunication company used the photograph of the Plaintiff on its recharge card. Like in the other case, the Plaintiff did not sue for copyright infringement, rather he sued for breach of confidence and the fundamental right to privacy. Again, an objection to the Court's

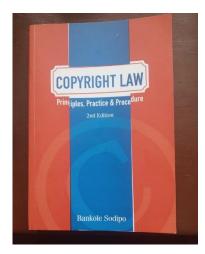
Jurisdiction was raised by G.O Sodipo and Co on the ground that the reliefs claimed do not fall under the relief stated by law for the unauthorized use of picture. The High Court of Lagos State overruled us on this objection.

The second case is paramount because the Plaintiff actually licensed the Defendant for the use of his picture but did not renew the contract on its expiration. The Plaintiff did not sue for breach of contract because he believed that an action for breach of contract will not move as swiftly as an action for fundamental right violation, which the Courts give priority to.

Basically it should be noted that companies and agencies who use people's photograph for adverts should always ensure that a valid and subsisting licence is obtained from the licensor at all material times in which the product is in circulation. Failure to ensure such a license exits can make the companies open to liability for a breach of such person's fundamental human rights.

Finally since court verdicts are seldom predictable, it's best to know and obey the laws. Underscoring this point, is the recent Court of Appeal decision in the IP case against Musical Copyright Society of Nigeria (MCSN), where the Court held that MCSN was acting as a collecting society and therefore needed the approval of the Nigerian Copyright Commission to operate as such. Being without that approval, they have no rights that can be enforced in a Court of Law. If the latter had known and understood this fact, it would have saved itself from numerous adverse court decisions.

We also wish to use this medium to inform our esteemed readers that our Prof. Bankole Sodipo has released a second edition of his book on Intellectual Property entitled "Copyright Law: Principles, Practice and Procedure, kindly see below.



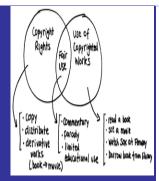
The GOS Newsletter has been prepared for clients and professional colleagues as a general guide to the subject matter, it is not meant to substitute specialist legal advice about your specific circumstances.

G.O. Sodipo and Co disclaim any liability for the decisions you make based on this information. Please let us know if you would like to discuss any issue in more detail;

E-mail: b.sodipo@gosodipo.com

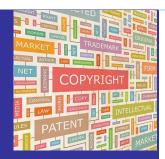
All Photo Credits: Google Search Engine.

Copyright © 2017 G.O. Sodipo & Co. All rights reserved.



"Speedy resolution of legal issues is the hallmark of G.O Sodipo and Co"-Barrister B.V Enwesi, LLB, BL, LLM (E-Commerce Law)





G.O SODIPO & CO Tel: +2348023198641

Email:b.sodipo@gosodi po.com We're on the Web! www.gosodipo.com





G.O SODIPO & CO Tel: 08023198641

We're on the Web! www.gosodipo.com

