

INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN NIGERIA: RECENT LANDMARK CASES

G.O. SODIPO AND CO.

NEWSLETTER

August, 2020 Edition

INTRODUCTION:

With the rise in the impact of Information and communication technology, there is equally an increase in the invention and creativity the rights in which have to be protected. Intellectual property refers to any product of human mind or intellect that the law seeks to protect from unauthorized use by other members of the public. The jurisprudential bases for the protection of the intellectual property rights include encouragement of invention and creation of a major income stream for inventors and creatives. This newsletter takes a look at some of the recent landmark infringement of intellectual property rights in Nigeria.

NATURE OF INTELLECTUAL PROPERTY:

As stated above, intellectual property refers to a product of human mind or intellect that is protected by the law from unauthorized use or appropriation by other members of the public. The various intellectual property rights which the law protects include copyright, trademarks, industrial designs, patents and trade secrets.

Copyright has been defined a bundle of distinctively divisible rights that crystallise and clutch on to and protect a work that satisfies some condition enabling the author either directly himself or through his licensees, assigns, successors in title or heirs to restrain third parties from dealing with the work by the exercise of the distinctively divisible rights either for the whole work or for a substantial part of the work that could be recognised to have been derived from the original work¹. The unauthorised use or reproduction of copyright-protected work will amount to infringement².

Trademark is any name, mark or sign which is used to distinguish goods or services of any undertaking from another. Upon registration, the law permits only the proprietor in

¹ B. Sodipo, "Copyright Law, Principle, Practice & Procedure" (Lagos, SWAN, 2007) 6

² See *Adenuga v. Ilesanmi Press & Sons Ltd* (1990-1007) 3 IPLR 138

whose name a mark is register to use the registered trademark. Any unauthorized use of the trademark constituted an infringement thereof.

While patent deals with protection given to an invention with regard to the solution it provides, industrial design protect the appearance of a new product arising from features like texture, shape or colour.

Recent Landmark Cases on Infringements of Intellectual Property Rights in Nigeria:

In spite of the general efforts to protect and solidify intellectual property rights in the country, there is an increase in the infringement of the IP rights, most especially by corporate entities. Below are some of the recent landmark breaches according to the courts.

1. In Suit No. FHC/ABJ/CS/680/2008, the plaintiff approached the Federal High Court, Abuja Division in 2008, and asked the court to hold amongst others that the approval by the Nigerian University Commission of the programme called “Zain African Challenge” in favour of Zain Nigeria Ltd, is an infringement of his copyright in respect of Nigeria Universities Challenge quiz programme, which he had earlier submitted to the Commission for approval.

The plaintiff’s case against the second defendant is that the second defendant developed a similar programme, Zain African Challenge, which is similar to the plaintiff’s Universities Challenge in all material particulars. The court on Wednesday May 6 2020, held that the totality of the actions of the Defendants amounted to infringement of the copyright of the Plaintiff in the work Universities Challenge and awarded the damages of the cost of ₦703 million against the defendants and perpetual injunction against further infringement.

2. Similarly, on Tuesday 28 January 2014, the Federal High Court in Abuja awarded N17.3 billion damages to a private company, Bedding Holdings Ltd, BHL, against the Independent National Electoral Commission, INEC. The court was of the view that the plaintiff actually owned a subsisting patent right over the process, application and the use of Direct Data Capture machines for voters’ registration, and that the INEC and its then chairman infringed on the Plaintiff’s patent right on the process and application of DDC machines for the compilation and collection of various bio-data. They awarded the contracts for the purchase and deployment of the DDC machines for the compilation of the voters register without the consent of BHL.

Justice Ibrahim Auta, in the judgment, held that INEC and its then Chairman, Attahiru Jega, infringed on the patent rights of BHL in the contract purchase of DDC machines in 2010.

3. Lastly, in an eight year old case, Suit No: FHC/L/CS/1091/11 between Musical Copyright Society of Nigeria Ltd/GTE and Multichoice Nigeria Limited, the Federal High Court, Lagos Division held that Multichoice infringed on the Defendant/Counter Claimant's copyright in 18 songs in its repertoire including UEFA Cup thematic music and UEFA Championship League Thematic music. According to the court, the defendant to the counter-claim engaged in the infringement in the course of and to promote their businesses and to make profit without the authority or licence of the MCSN which had suffered loss and damage.

In its judgment on Friday 8 May 2020, the court awarded the sum of ₦5.9 billion “special damaged” against the South-African giant while ₦200 Million and N309 Million were also awarded as general and aggravated damages against Multichoice.

It is believed that Nigerian courts will keep protecting the IP rights of creatives, inventors, and business owners which will go a long way in improving the economy.

CHIGOZIE NWANETI

ASSOCIATE

c.nwaneti@gosodipo.com

chigozienwaneti45@gmail.com

G.O SODIPO AND CO.

27/29 King George V Road, Onikan, Lagos

Info@gosodipo.com

b.sodipo@gosodipo.com

+234 813 881 6290