



# **IP WEST AFRICA – PROTECTION, INFRINGEMENT AND COUNTERFEITING WATCH**

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## IP West Africa – Protection, Infringement and Counterfeiting Watch <sup>1</sup>

Intellectual Property (IP) encompasses creations of the mind, including inventions, literary and artistic works, designs, and symbols, names, and images used in commerce<sup>2</sup>.

The Madrid System/Protocol is an internationally recognized system through which trademarks are registered, managed and protected across multiple jurisdictions simultaneously through a single application in the same language, and administered by the World Intellectual Property Organisation (WIPO). The system currently makes this possible in 128 countries around the world<sup>3</sup>. For an applicant to qualify under the Madrid system, they must first be a national of a member country to the protocol; be resident in one of the member countries; and have a commercial establishment domiciled in one of the member countries. While the simultaneous registration, management and protection of a trademark across multiple jurisdictions sounds appealing, African countries have not been able to leverage the system in their favour. Currently there are 38 African countries that are member states to the Madrid Protocol<sup>4</sup>, however, the Protocol is only enforceable in 9 of these countries, and only 2 of these countries<sup>5</sup>, namely Ghana and Gambia, are in West Africa.

Notably, Nigeria being one of Africa's and certainly West Africa's largest economy, is not a member state, hence the Madrid Protocol is not available, making the Nigerian and West African IP protection subject to national Law and specific framework.



1. IP West Africa – Protection Infringement & Counterfeiting Watch<sup>1</sup> is a publication of the Technology Media & Telecommunications [TMT] practice of Africa Law Practice NG & Company [ALP NG & Co]

2. What Is Intellectual Property (IP)? <https://www.wipo.int/about-ip/en/>, accessed on 18 January 2024

3. World Intellectual Property Organisation (WIPO) <https://www.wipo.int/madrid/en/members/> accessed at 16:56 on 26 March 2024

4. Algeria, Botswana, Egypt, Eswatini, Gambia, Kenya, Lesotho, Liberia, Madagascar, Malawi, Morocco, Mozambique, Namibia, OAPI (The African Intellectual Property Organization countries, namely, Benin, Burkina Faso, Cameroon, The Central African Republic, Chad, Comoros Islands, Republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Ivory Coast, Mali, Mauritania, Niger, Senegal and Togo), Rwanda, Sao Tome and Principe, Sierra Leone, Ghana, Sudan, Tunisia, Zambia and Zimbabwe.

5. Botswana, Ghana, Gambia, Kenya, Liberia, Malawi, Mozambique, Namibia and Zimbabwe.

Primary legislation governing and providing for IP rights in Nigeria, comprises the Copyright Act, the Patents and Designs Act, and the Trade Marks Act. In addition to relevant laws and treaties, the courts in their role of interpreting the law recognise and may extend the scope of IP in Nigeria.<sup>6</sup> The Federal High Court of Nigeria has the exclusive jurisdiction to adjudicate upon both criminal and civil cases on IP rights in Nigeria. Matters originating from the Federal High Court are subject to appellate review by the Court of Appeal and, ultimately, the Supreme Court<sup>7</sup>.

**In Nigeria, intellectual property is covered under four[4] categories: copyright, trademarks, patents and industrial designs.**

a. Copyright is the right to control the reproduction in any material form, the communication of a work to the public and the broadcast of it.<sup>8</sup> Rights available to the holder of copyright largely depends on the type and nature of work. Works protected under the Copyright Act include:

- literary and musical works such as novels, stories, poetical works, plays, stage directions, broadcasting scripts, choreographic works, musical compositions computer programs, lectures, sermons, law reports (excluding the decisions of the courts) and written tables and compilations;

- artistic works such as paintings, drawings, etchings, lithographs, woodcuts, engravings, prints, maps, plans, works of sculpture and works of architecture in the form of building models;

- audiovisual works comprising of aggregate of a series of related visual images with or without sound, which is capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material on which the visual images and sounds are carried and includes the soundtrack;

- sound recordings comprising the fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a soundtrack in an audiovisual work; and

- broadcasts, which refers to the transmission by wireless means of sounds or images or both, in such a manner as to cause such images or sounds to be received by the public.

b. Trademark is a word, phrase, logo or other graphic symbol used by a manufacturer or seller to distinguish its products from those of others and guarantee its genuineness<sup>9</sup>. A trademark can be a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination of the above. It requires distinctiveness which will reflect uniqueness and peculiarity and impact the protection scope and validity of the trademark.

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6. Adeokin Records v. Musical Copyright Society of Nigeria (LTD/GTE) SC336/2008

7. Ukaoha v. Broad-Based Mortgage Finance Ltd. & Anor (1997) F.H.C.L 477

8. Adenuga v Ilesanmi Press (1991) 5 NWLR (Pt. 189) 82

9. I.T. (Nig) Ltd v. B.A.T. (Nig.) Ltd (2009)6 NWLR (Pt. 1138) 477

c. A Patent is a right granted over an invention that is “new, results from inventive activity and is capable of industrial application; or if it constitutes an improvement upon a patented invention”<sup>10</sup>. For the patent to be secured, it must be an innovation, either as a significant development of a pre-existing invention or a completely nuanced creation of itself.

d. Industrial Design is a model or pattern to be multiplied by industrial process!<sup>11</sup>This form of IP focuses on the appearance of the product and not the functionality or technicality. For instance, patterns or print designs used by creatives (fashion designers, graphic illustrators, painters, graphic designers etc).

e. Trade secrets are also recognised as a form of IP. They are rights associated with confidential information which provide competitive advantage that can be sold or licensed.<sup>12</sup> In line with Article 39 of TRIPS, a trade secret is classified as undisclosed information that meets three criteria: it is not generally known or readily accessible to those in relevant circles, it has commercial value because it is secret, and the owner has taken reasonable steps to keep it secret.<sup>13</sup> Unlike other intellectual property rights, trade secrets lack disclosure, registration, a defined timeline, and periodic renewals. Trade secrets are highly concealed and vulnerable, making them challenging to regulate and protect due to their secrecy. While Nigeria recognizes and utilises trade secrets, there is no specific legislation governing them. Entities often safeguard their trade secrets in Nigeria through non-compete and/or non-disclosure agreements with employees and partners.



## **VIOLATION/INFRINGEMENT OF AN IP RIGHT.**

An intellectual property right is infringed when the intellectual property which is protected by law, is leveraged, manipulated and exploited without the prior or initial approval of the right holder. For the different types of copyright, infringement occurs at varying points.

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11. N.B. Plc v P.B. Ltd (2010) 14 NWLR (Pt 1214) 529

12. “Trade Secrets” <https://www.wipo.int/trademarks/en/>, accessed on 22 January 2024.

13. The Agreement on Trade-related Aspects of Intellectual Property Rights 1995.

10. Section 1 (1) Patents and Designs Act

Infringement occurs when someone makes, uses, sells, or offers to sell a patented invention without the patent holder's permission during the term of the patent. It occurs when an unauthorised party uses a trademark belonging to another party in connection with similar goods or services in a way that causes confusion among consumers; or reproduces, distributes, performs or displays a copyrighted protection work without permission of the copyright owner; or gains unauthorised access to or uses confidential business information that provides a competitive advantage; or makes, uses or sells a product with a design that is substantially similar to the design protected by the patent.

## **MARKET CONDITIONS IN NIGERIA AND WEST AFRICA**

Nigeria is recognised as a prominent market with a large population that exhibit a robust appetite for various products. With the expansion of consumer markets in Nigeria and West Africa, there is a growing demand for branded goods and innovative products. This demand creates opportunities for both legitimate businesses and counterfeiters.

However, Nigeria and its West African neighbours experienced an average inflationary rate of 20.9% in 2023<sup>14</sup>. Resultantly, the overarching effect on the region is an increase in the price of goods and services which leads to less than usual demand for these goods.

There are many opportunities for IP in the Nigerian and West African market. These opportunities are tied to the growing technology and digital sectors, the thriving entertainment and creative industries with great IP potential in addition to potentials in the agricultural and extractive industries.

Overall, market conditions in Nigeria reflect a complex interplay of economic factors, consumer behaviour shifts. With the continued interest in the implementation of the African Continental Free Trade Area Agreement which will expand the earning potential of contracting countries, the market conditions in Nigeria and West Africa is expected to improve in the coming years.

## **COUNTERFEITING**

Intellectual property (IP) counterfeiting is a significant issue in Nigeria, affecting various industries such as pharmaceuticals, software, entertainment, and consumer goods. With reduced purchasing power and rising costs of essential commodities, consumers turn to more affordable options, both in open markets and on e-commerce platforms, including counterfeit products.<sup>15</sup>

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14. Annual consumer price inflation rate of countries in the Economic Community of West African States (ECOWAS) from 2022 to 2023. <https://www.statista.com/statistics/1236461/annual-inflation-rate-of-ecowas-member-countries/#:~:text=The%20annual%20inflation%20rate%20of,percent%20and%2042.2%20percent%2C%20respectively%20.> Accessed at 10:34 am 19 January 2024.

15. The supply chain: Marketing, transport and distribution <https://www.oecd-ilibrary.org/sites/ba95db92-en/index.html?itemId=/content/component/ba95db92-en> accessed 5:30 on 19 January 2024

Regrettably, enforcement of IP protection in the region is generally weak due to factors such as limited resources, inadequate legal frameworks, and corruption. As such, counterfeiting is pervasive across various sectors, including pharmaceuticals, consumer goods, electronics, and software. Additionally, the availability of cheap counterfeit products undermines the competitiveness of genuine businesses and poses serious risks to public health and safety.

A recent operation in Aba in South Eastern Nigeria, by the National Agency for Food and Drug Administration and Control (NAFDAC), uncovered a substantial volume of counterfeit items<sup>16</sup>.

## IP RIGHTS ENFORCEMENT STRUCTURES

Enforcement of intellectual property (IP) rights in Nigeria faces significant challenges, resulting in occasional inefficiency. Inconsistent implementation of international treaties, limited public awareness, protracted judicial process and inadequate financial and staffing resources for regulatory agencies contribute to the difficulties<sup>17</sup>, emphasizing the need for qualified and experienced advisers in the market.

### REGULATORS:

Various entities and agencies are empowered to regulate activities related to IP and counterfeiting in Nigeria by enforcing the law (by imposing penalties and fines) on persons that contravene the laws relating to IP in Nigeria. These regulators include:

- **Trademarks Registry:**

The trademarks registry is responsible for maintaining a register of registered trademarks within Nigeria.

- **Nigerian Copyrights Commission:**

The Commission is primarily charged with the enforcement of copyright protection in Nigeria. Its officers are empowered to conduct searches at premises suspected to be used or involved in contravention of the provisions of the Act and arresting persons reasonably suspected of perpetrating these offences or both.

- **National Agency for Food and Drug Administration and Control (NAFDAC):**

Under the enabling National Agency for Food and Drug Administration and Control Act, there are several sanctions which may be imposed on persons that have contravened the law to produce drugs which are fake and intended to imitate real products which are the intellectual property of another.

These include the imposition of a fine of N50,000 or imprisonment for a term of one year or to both such fine and imprisonment for offenses which the Act did not impose any other punishment for. A body corporate is liable to pay a fine of N100,000 and liable to conviction once found guilty of an offence under the Act.

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16. "Menace of Counterfeit Products" (Punch Newspapers, December 26, 2023) <https://punchng.com/menace-of-counterfeit-products/>, accessed on 18 January 2024

17. Experts GL, "Enforcing Intellectual Property Rights In Nigeria: Navigating Towards Arbitration And Specialised Courts -" (Global Law Experts, August 20, 2023) <https://globallawexperts.com/enforcing-intellectual-property-rights-in-nigeria-navigating-towards-arbitration-and-specialised-courts/>, accessed on 19 January 2024. .

- **Nigeria Customs Service:**

This agency is imbued with the mandate of monitoring and regulating trade across all borders in Nigeria. They are empowered to conduct searches, issue fines and arrest suspected persons for negating the provisions of its originating Act and any other supporting legislation. The agency counteracts the trade of counterfeit goods through the prevention of smuggling and customs fraud; carrying out all border enforcement and regulatory activities required by law in collaboration with relevant agencies.

- **Standards Organisation of Nigeria:**

This regulator is charged with the responsibility in the event of default, issuing fines ranging from N500,000 to N1,000,000 liable to be paid by persons found to meet regulatory thresholds. Terms of imprisonment are also contained in the Act between 9 months to one year.

- **Corporate Affairs Commission:**

At the very basic level, the Commission's role in this instance would be to ensure compliance by companies and other business entities with the provisions of the Companies and Allied Matters Act and such other regulations as may be made by the Commission.

- **Federal Competition and Consumer Protection Commission:**

The FCCPC is responsible for advising the federal government on national policies and matters pertaining to all goods and services for subsequent determination of national norms and standards relating to competition and consumer protection, which would be of great benefit to reorienting the minds of Nigerians towards counterfeit goods, especially as these goods are often sold at cheaper price points than their original counterparts.

17



## **OTHER KEY IP ENFORCEMENT STRUCTURES:**

- **Collective Management Organisations (CMO):**

The new Copyright Act introduced Collective Management Organisations (CMOs), empowering them to issue licences for works of copyright owners. An example of such an Organisation in Nigeria is the Copyright Association of Nigeria (COSON). Typically, COSON is empowered by the artist or creative to pursue the unlicensed use of their creation, for compensation. Practically, COSON has been accredited for being aggressive in its pursuit of accountability for its members<sup>18</sup>.

- **Anti-Counterfeiting Collaboration (ACC):**

The ACC is a collaboration between regulatory agencies, law enforcement, and the private sector to combat counterfeiting and piracy. It involves agencies such as NAFDAC, Standards Organisation of Nigeria, and the Nigerian Police. The National Agency for Food and Drug Administration Control (“NAFDAC”), The Nigerian Police (“NPF”) and The Nigerian Customs Service (“NCS”).

## **ENFORCEMENT MEASURES**

Regulators empowered by existing legislation may employ different enforcement measures toward enforcing intellectual property rights. These include:

- **Criminal Action:** Criminal offences pertaining to IP infringement in Nigeria are the Criminal Code Act (for the Southern states within Nigeria except Lagos State which has enacted a the Criminal Law), the Penal Code for the Northern region of Nigeria, the Nigeria Police Act and the Copyright Act (2022) that take on the authority to apprehend criminal violations of IP rights

- **Civil Action:** In Nigeria, the Federal High Court has exclusive jurisdiction over civil matters relating to copyright, patent, design, trademarks and passing off. The following enforcement measures are available to the holder of IP Rights through a noncriminal lawsuit in the event that IP right is infringed:

- i. An order for inspection and seizure
- ii. An order of injunction such as a perpetual injunction, an interlocutory injunction, a Mareva injunction or an Anton Pillar injunction.
- iii. Award of damages.

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18. Collective Management Organisation in Nigeria (Music Fous) <https://www.linkedin.com/pulse/collective-management-organisations-music-focus-adetayo-okunaiya/> accessed 8:30 am on 23 January 2024



## **CHARACTERISTICS IN ANTI-COUNTERFEITING POLICY AND FRAMEWORK**

An effective anti-counterfeiting policy and framework is an essential component in combating the proliferation of counterfeit goods. Such framework must encompass the following:

- a. Intellectual property protection and enforcement
- b. Tracking and tracing services
- c. Protective and safety features on products
- d. Market surveillance and observation of services
- e. Punishment and stringent deterrent measures to discourage repeated acts.

Several countries around the world have adopted frameworks and policies that champions these characteristics. For instance, the European Union’s Anti-Counterfeiting Trade Agreement (ACTA)<sup>19</sup> which focused on establishing international standards, incorporating legal measures, fostering cooperation between participating

countries, and leveraging technological tools for enforcement. The United States of America on its part implemented laws like the Combating Counterfeit Products Act and the Stop Counterfeiting in Manufactured Goods Act<sup>20</sup>, emphasizing collaboration between the government and the private sector, stringent penalties, and supply chain interventions.

Nigeria is positioned to create and benefit from similar frameworks by benefitting from initiatives of international organizations like the World Intellectual Property Organization (WIPO) such as the WIPO Anti-Counterfeiting Tool Kit, providing resources for member states to enhance legal frameworks, enforcement capabilities, and public awareness campaigns<sup>21</sup>.

While we currently have laws geared toward tackling counterfeiting, Nigeria currently lacks a comprehensive anti-counterfeiting framework that adequately tackles the issue.

## **PATRONAGE OF ILLICIT AND PARALLEL GOODS**

Unfortunately, within Nigeria, the patronage of illicit and parallel goods is considerably high. The following factors contribute to this:

Poverty/low-income levels- illicit and parallel goods are often significantly cheaper than authentic products and are therefore more accessible.

19. “Anti-Counterfeiting Trade Agreement (ACTA)” (European Data Protection Supervisor, January 25, 2024) [https://edps.europa.eu/data-protection/our-work/publications/opinions/anti-counterfeiting-trade-agreement-acta-0\\_en](https://edps.europa.eu/data-protection/our-work/publications/opinions/anti-counterfeiting-trade-agreement-acta-0_en), accessed on 19 January 2024.

20. “Congressional Record (Bound Edition), Volume 152 (2006), Part 2 - STOP COUNTERFEITING IN MANUFACTURED GOODS ACT” <https://www.govinfo.gov/content/pkg/CRECB-2006-pt2/html/CRECB-2006-pt2-Pg1845-2.htm>, accessed on 19 January 2024.

21. “The Role of Authentication Technologies in Combating Counterfeiting” [https://www.wipo.int/wipo\\_magazine/en/2006/02/article\\_0004.html](https://www.wipo.int/wipo_magazine/en/2006/02/article_0004.html), accessed 19 January 2024.

ORIGINAL

FAKE



- Rising costs of commodities
- Nigeria does not currently have a comprehensive nationwide anti-counterfeiting policy.
- Out-dated intellectual property legislation
- Inefficient enforcement mechanisms.
- A large informal economy

## IMPORTANT LEGISLATION

- **Business Facilitation (Miscellaneous Provisions) Act**

Section 69 of the Business Facilitation Act amends section 67 of the Trade Marks Act to include “services” in the definition of goods.

- Additionally, this section also substitutes the definition of ‘trade mark’ to mean “a mark used or proposed to be used in relation to goods or services for the purposes of indicating a connection between the goods or services and a person having the right, either as a proprietor or as a registered user, to use the mark whether with or without any indication of the identity of that person, and may include the shape of goods, their packaging and combination of colours”.

- **Copyright Act**

Section 44 of the Copyright Act identifies several acts of copyright infringement that amount to offences under the Act. These include but are not limited to:

- Making or causing to be made, any infringing copy of a work for sale, hire or for the purposes of trade or business.
- Importing or causing to be imported into Nigeria, not for private or domestic use, a copy of any work which if it had been made in Nigeria would be an infringing copy.
- Having possession of any plate, master tape, machine, equipment, device or contrivance for the purposes of making any infringing copy of a protected work.
- Selling, letting for hire or for the purpose of trade or business, exposes or offers for sale any infringing copy of a work.
- Having possession, for any use other than private and domestic use, any infringing copy of a work.

The punishment for these offences ranges between a fine or an imprisonment term, or both.

Section 49 of the Copyright Act provides that it shall be an offence punishable by a fine of N1,000,000 (One Million Naria) or imprisonment for a minimum term of 5 (five) years, or both for any person (without the permission of the Nigerian Copyright Commission) to import into Nigeria or have in their possession any machine or instrument that is intended to be used for producing anti-piracy devices.

Section 86 empowers the Nigerian Copyright Commission to appoint Copyright Officers who shall have the power to engage in activities, without a warrant, geared toward enforcing the provisions of the Act. These activities include but are not limited to the inspection of premises where they reasonably suspect that activities amounting to copyright infringement may be taking place; arresting any person reasonably believed to have committed an offence under the Copyright Act; and sealing up premises.

Lastly, section 87 extends the powers of the Nigerian Copyright Commission to include maintaining a Register of Works. As Under Nigerian law, copyright subsists in a work automatically, registration of a work in the Register of Works shall not confer copyright, rather registration shall serve as evidence of the work.

Section 89 states that there shall be a levy on any material that is used or can be used to infringe on copyright subsisting in a work

- **.Companies and Allied Matters Act 2020 (CAMA)**

Section 30 (4) of the Companies and Allied Matters Act empowers the Corporate Affairs Commission (CAC) to force a company to change its name where the CAC discovers that such name conflicts with a pre-existing trademark or business name registered in Nigeria and the consent of the owner of the trademark or business name was not obtained.

The Act under Section 857 provides that an applicant may object to the registered name of a company, limited liability partnership, business name or incorporated trustees (registered entity) if it's the same as a name associated with the applicant in which he has goodwill or the name is sufficiently similar to such a name that its use in Nigeria would be likely to mislead by suggesting a connection between the registered entity and the applicant. The section goes on to state that the objection shall be upheld where the applicant shows that the main aim of the name registration was to obtain money (or other consideration) from the applicant or to the applicant from registering the name.

- **Federal Competition and Consumer Protection Act (FCCPA)**

Section 3 of this Act establishes the Federal Competition and Consumer Protection Commission (FCCPC). The officers of the FCCPC are, under section 27, for the purpose of ascertaining whether any undertaking has engaged, is engaging or is likely to engage in conduct constituting or likely to constitute a contravention of the FCCPA authorised to enter and search any premises, inspect and remove from the premises any article, document or extract in the possession or under the control of any person.

The FCCPC is empowered under Section 18 to seal any premises where there is reasonable suspicion that such premises contain or are being used to produce or disseminate fake, substandard or hazardous goods or services.

Section 125 of the Act prohibits the presentation of false, misleading or deceptive representations (or the failure to correct an apparent misapprehension on the part of the consumer) concerning material facts to a consumer or prospective consumer. Where this occurs, the person/undertaking is liable for damages to any person damaged and must make monetary restitution to the damaged person(s).

- **Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act**

This Act under Section 1 provides for the offence of sale and distribution of counterfeit, adulterated, banned, or fake, substandard, or expired drugs or unwholesome processed food.

- **Criminal Code**

In Section 147, the act of counterfeiting gold or silver coins is a felony, and the punishment is imprisonment for life.

Under Section 465, making a counterfeit seal or mark or making an impression of a counterfeit seal knowing the seal to be counterfeit or makes a counterfeit representation of the impression of a genuine seal, with the intent that the thing so made may in any way be used or acted upon as genuine is an offence under this Act.

Section 491 provides that any person who knowingly makes for sale or hires any infringing copy of a work, or sells or hires any infringing copy of any such work or distributes infringing copies of a work for trade or to such an extent as to prejudicially affect the owner of the copyright shall be guilty of a simple offence and is liable to a fine for every copy dealt and in the event of a second or subsequent offence, either to such fine or to imprisonment for 2 (two) months.

Any person who knowingly makes or possesses any plate for the purpose of making infringing copies of a copyright-protected work or for his private profit knowingly causes any such work to be performed in public without the consent of the copyright holder is guilty of a simple offence under Section 492 and is liable to a fine of N100.00 and in the event of a subsequent offence is liable to such fine or imprisonment for 2 (two) months.

Under section 493, where proceedings in relation to any offence under sections 491 and 492 are brought before a court, the court may whether the alleged offender is convicted or not, order all copies of the work which appear to be infringing copies or all plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright. Alternatively, the court may also deal with these items as it may think fit.



- **Criminal Law of Lagos State**

Under section 159 of the Criminal Law of Lagos State, any person who adulterates any article of food or drink to make such article unfit for food or drink with the intention to sell such article as food or drink or knowing that it is likely that same will be sold as food or drink commits a felony and is liable on conviction to imprisonment for seven (7) years.

Under section 160 any person who adulterates any product including any manufactured or processed product as to affect or change materially the quality, substance, nature or efficacy, to affect or change materially the quality, substance, nature or efficacy of the product, commits a felony and is liable on conviction to imprisonment for seven (7) years.

Additionally, any person who deals in, sells, offers or otherwise exposes for sale, any product including any manufactured or processed product which is not of the quality, substance, nature or efficacy expected of the product or preparation which the seller represents it to be or has in any way been rendered or has become noxious, dangerous or unfit, commits a felony and is liable on conviction to imprisonment for seven (7) years

- **Customs and Excise Management Act – This has been repealed by the Nigeria Customs Service Act 2023**

Section 52 of this Act provides that in order to verify the accuracy of a good declaration, the Nigeria Customs Service may examine some or all of the goods. They may also take samples of the goods for detailed examination and analysis.

Section 168 empowers the Nigerian Customs Service to detain, arrest, or seize any importation or exportation infringing the Copyrights Act. Offences related to counterfeiting or falsifying documents under customs and excise laws are dealt with under Section 231, which imposes fines of N10,000,000, imprisonment for 10 years, or both, for individuals engaged in such offences.

- **Cybercrime (Prohibition, Prevention, Etc.) Act**

Under Section 14, it is an offence for a person to send a misleading electronic message for which he expects the recipient to rely on and such message causes damage or loss.

Section 25 creates the offence of Cybersquatting which is where a person makes use of the name of a pre-existing business name, trademark or other registered mark without the authority of the right holder.

- **Merchandise Marks Act**

Section 3: criminalises any act that involves:

- Trademark forgery;
- False trade description;
- The manufacture, sale or possession of equipment used to forge trademarks; or
- The deceptive application and use of trademarks.

This section also provides that every person who sells, or exposes for sale any goods or things with a forged trademark or false trade description applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, shall be guilty of an offence, unless they are able to prove either:

- a. having taken all reasonable precautions, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things;
- b. or that otherwise he had acted innocently.

- **Nigeria Police Act**

Section 4 of this Act empowers the Nigerian Police Force to act in respect of any crimes committed in Nigeria and to enforce all laws of the Federal Republic of Nigeria.

- **Patent and Designs Act**

Section 1 provides that in order for an invention to be patentable, it must either not form part of the state of the art or constitute an improvement upon a patented invention.

Under Section 2, the right to a patent is vested in the statutory inventor, the first person to file whether or not he is the true inventor. However, the true inventor is entitled to be named as such on the patent. This entitlement cannot be modifiable by contract.

Pursuant to Section 6, a patent confers upon the patentee the right to preclude any other person from:

In respect of a product: making, importing, selling or using the product, or stocking it for the purpose of sale or use.

In respect of a process: applying the process or doing in respect of a product obtained directly by means of the process, any other acts mentioned above.

Pursuant to Section 7, a patent shall expire at the end of the twentieth year from the date of the filing of the relevant patent application.

Per Section 13, an industrial design shall be registrable if it is new and is contrary to public order or morality. Under the Act, registration confers upon the registered owner the right to preclude any other person from reproducing the design in the manufacture of a product; importing, selling or utilising

for commercial purposes a product reproducing the design; and holding such a product for the purpose of selling it or utilising it for commercial purposes.

- **Penal Code**

Section 378 provides that whoever makes any false mark upon any case package containing goods in a manner to cause a person to believe that the case contains goods that it does not contain or that the goods contained there in are of a nature or quality different from the real nature or quality thereof shall be punished with a term of imprisonment for up to five (5) years or both, unless they are able to show they acted without intent to defraud.

- **Standards Organisation of Nigeria (SON) Act**

Pursuant to Section 29, if satisfied that the quality, purity or potency of any product is detrimental or hazardous to life, property and the national economy, the Director-General may:

- Seize and detain such products
- Prohibit any person from selling or offering for sale the suspicious product
- Apply to court for an order of forfeiture of such product

Seal up the premises where such product is manufactured



- **Trade Marks Act**

Under Section 3 of this Act, no person is entitled to institute proceedings to prevent, or to recover damages for, the infringement of an unregistered trademark. However, no portion of the act shall affect the rights of action against any person for passing off goods as the goods of another person.

Section 5 of the Act provides that the right given by the registration of a trademark shall be deemed to be infringed by any person who not being neither the proprietor of the trademark or a registered user, uses a mark identical or so nearly resembling the trademark that is likely to deceive or cause confusion in the course of trade, in relation to any goods in respect of which it is registered.

Pursuant to Section 23, the registration of a trademark shall be for an initial period of 7(seven) years but may be renewed for 14 (fourteen) years from time to time.



Trademark registration may be revoked for non-use under Section 31

### **Sectors with high rate of Counterfeit Products**

In Nigeria, the sectors/range of goods that have a high rate of counterfeit products include:

- Packaged foods.
- Alcoholic beverages.
- Automotive parts.
- Luxury fashion including but not limited to clothing, footwear, and accessories.
- Cosmetics.
- Electronics
- Pharmaceutical products
- Entertainment/Optical media.

### **Public Awareness and Orientation Campaigns**

Within Nigeria and across West Africa, there is undoubtedly a rise in the need for brand owners/IP rights holders to implement strategies aimed at raising awareness and generally enlightening the public on the hazardous potential side effects of patronising and consuming counterfeited goods. These campaigns ought to be carried out in tandem with the relevant government agencies.

It is possible for an overseas brand with no business operations within but with products available in the country to get protection. This can be done by retaining professional service providers based in Nigeria and the wider West Africa community to register and/or monitor these rights on their behalf.

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