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INTELLECTUAL PROPERTY RIGHT: A SYNOPSIS OF THE VARIOUS RIGHTS¹

Intellectual property rights are intangible rights; intangible because they are products of critical thinking expressed in tangible forms to enable persons other than the progenitor to identify with them and they are largely categorized into Copyright, Trademark, Patent and Designs. The law does not in itself protect the conception of the mind but its expression, whether it is copyright, trademark, patent, or industrial design. Where an idea remains within the purview of the mind, it is not a right properly so called that can be afforded any protection.

We will examine the categories of Intellectual Property Rights: first, it is necessary to state that Intellectual property law came into existence by reason of the inventive creation of the human mind which cuts across various fields of practice: Medicine, Engineering, Agriculture, Aviation, Science, Information Technology etc.

INTELLECTUAL PROPERTY RIGHTS

Copyright

Copyright is an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic production whereby he is invested for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them²

Basically, Copyright protects literary works, artistic works, musical works, cinematograph films, sound recording, broadcast, and neighboring rights. For a work to qualify for protection under copyright, it must be the original creation of the author's mind and not a copy of an existing work. Originality does not mean that the work must be novel, it simply means that the work should be not a product of plagiarism. Secondly,

¹ Ogechukwu Ologwu LL.B (university of Lagos), B.L (Nigerian Law School)

² Sarg Aims Aluminum v. Stanley Akagha & Anor per Egbo-Egbo J.C.A



it must be fixed in a medium that is capable of being communicated, expressed and reproduced. For instance, an unsung song cannot be copyrighted unless it has been recorded in a medium that third parties can listen to it; a novel cannot be copyrighted unless it has been expressed in a medium that people can read it.³ Once expressed, the right conferred is the right to exclusivity⁴, the uniqueness of copyright is that registration is not a requirement for protection, once the work is contained in a medium of expression, it is protected.

Trademark

Trademark is a mark used or proposed to be used in relation to goods for the purpose of indicating a connection in trade between the goods and the person having the right either as a proprietor or as a registered user to use the mark⁵

Trademarks are generally words, phrases, symbols, or designs, or a combinations thereof, that identify and distinguish the source of the goods of one party from those of others⁶. They are best defined as source indicators because they form the fundamentals of the intangible asset of a business. The reputation and goodwill of a business can best be summarized in its marks as the public will patronize a brand merely by identifying the trademark on the product is associated with the brand. Unlike Copyright that merely requires originality and fixation, trademark require registration before protection can be afforded under the law. The right conferred is priority right and the right to exclusivity⁷, protection of the law is offered to the one who is first in time to file, and the priority right

³ See the provisions of Sections 1 and 6 of the Copyright Act

⁴ That is the right to proceed against any unauthorized use of the work by a third party, see also Section 6 and 15 of the Trademarks Act

⁵ See section 67 of the Trademarks Act

⁶ Marks includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof

⁷ See Section 5 of the Trademarks Act. The right to exclusivity is not just the right to sole use but the right to proceed against a subsequent applicant of a similar or confusing mark.



will defeat a subsequent registration even if the subsequent applicant is the legitimate owner of the mark.

Trademark is also territorial in that it is subject to the laws of each state. In some jurisdictions, a proprietor of a mark is entitled to registration if he can show use of the mark in commerce while in some others, use is not a prerequisite to protection but registration. In jurisdiction as this, an application for protection may be made on an intent-to-use basis (ITU basis), because trademark is territorial, registration in one country will not cover another, a proprietor of a mark must file for registration in the country it wishes to do business for protection.

Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something. Patent confers exclusive right, that is the right to commercialize an invention to the exclusion of all others for the duration of the patent. For an invention to be patentable, it must be:

1. New and result from inventive activity that is capable of industrial application or
2. If it constitutes an improvement upon a patented invention and also is new, results from inventive activity and capable of industrial application⁸.

The Act provided further clarification on the above criteria for registration⁹.

1. An invention is new if it does not form part of the state of art (that is, it is not commonplace)¹⁰
2. An invention results from inventive activity if it does not obviously follow from the state of the art (not a reproduction of an existing work)¹¹

⁸ See section 1 of the patents and designs act

⁹ Same Section 1

¹⁰ Emphasis mine

¹¹ Emphasis mine



3. The invention is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture (the blueprint or template for the invention can be used by anyone and obtain the same result)¹².

The right to a patent is vested in the statutory inventor, that is the person who was first-to-file whether or not he is the true inventor¹³

In Nigeria under its statute, an invention is not patentable if:

1. It is in respect of plant and animal varieties or essentially a biological process for the production of plants and animals.
2. It is against public morality or public order.

For the purpose of registration of patent, the patent must be subjected statutory and procedural examination, statutory examination is the examination that the patent conforms with the requirement of novelty and industrial application while procedural examination is the examination to merely ascertain formal compliance with registration¹⁴

Industrial Designs

An industrial design constitutes the aesthetic or ornamental part of an article in a legal sense. There may be three-dimensional features or two-dimensional features, such as lines or patterns. Any contribution of lines or colors or both and any three-dimensional form, whether or not associated with colors, is an industrial design, if it is intended by the creator to be used as a model or a pattern to be multiplied by industrial process as is not intended solely to obtain a technical result¹⁵.

The criteria for the registration of a design are:

¹² Emphasis mine

¹³ See section 2 of the Patents and Designs Act

¹⁴ Payment of filing fees, completion of the necessary forms. See section 3 of the Patents and Designs Act

¹⁵ See section 12 of the Patent and Designs Act



1. Novelty
2. It does not contravene public order and morality

The concept of industrial design focuses on the appearance of a product and not its technicality or functionality. It means that assuming the content of Pepsi and Coca-Cola were same, Pepsi will not be refused registration solely because Pepsi produces the same content as that of Coca-Cola. What the Patent and Designs Registry (the "Registry") is concerned about is the aesthetic design of the bottle i.e., to ensure that Pepsi has not come to register the same type of bottle Coca-Cola uses, since Coca-Cola has already registered its. Same way a new bicycle design will not be rejected because a similar machine already exists with the same function¹⁶.

The general test of novelty may be limited if it is shown that the creator of the design could not¹⁷ have known that the design is already in the public domain, an industrial design is not new merely because it is a minor variation of an earlier design.¹⁸

The right to registration is vested in the statutory creator of the design, priority right is vested on the first to apply for registration, Industrial design are to be subjected to substantial and procedural examination so as to ensure that they meet the requirements of law for registrability, however in Nigeria, It is only subjected to procedural examination.¹⁹ Regardless of the method of registration, once registered, the following rights are conferred on the creator of the design²⁰.

1. Right to reproduction of the design in the manufacture of products
2. Right to importing, selling or utilizing the design for commercial purposes.

¹⁶[Aderemilekun Olusoga](https://www.mondaq.com/nigeria/trademark/912624/industrial-designs-benefits-of-registration)- <https://www.mondaq.com/nigeria/trademark/912624/industrial-designs-benefits-of-registration>

¹⁷ Could not in that it was impracticable for the inventor to have known this fact. Could not have known is not the same as did not know.

¹⁸ See section 13

¹⁹ See section 16

²⁰ See Section 19



3. Right to hold the product for the purpose of selling it or utilizing it for commercial purpose

In conclusion, Intellectual property rights encourages creativity and ingenuity. While many have argued that it is only about 10% of the human brain that is being utilized, it is noteworthy that in this percentage, the human mind has conceived and created phenomenal ideas that makes the relationship between man and his environment interactive. In today's world, we have artificial intelligence driving the economy and market force within the intellectual property sphere, therefore, the importance of having strong intellectual property legislations cannot be overemphasized. Proper enactment ensures protection and transferability of these rights bringing them in consonance with all other property rights.