

Intellectual Property, SMEs, and Economic Recovery in Nigeria

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“When SMEs exploit IP rights, ideas are turned into business opportunities, these ideas generate value, and ultimately, the choice of products available to customers is massively enriched.”¹

1.1 Introduction

The Nigerian economy witnessed a downturn in 2020 triggered by the spillovers of the Covid-19 outbreak and declining oil prices.² The Nigerian government put out several policies to ensure the

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¹ National Intellectual Property Management Office, “World IP Day 26 April 2021 ‘IP & SMEs: Taking Your ideas to Market’ (NIPMO2021) <<https://nipmo.dst.gov.za/events/world-ip-day-26-april-2021-ip-smes-taking-your-ideas-to-market>> Accessed 17 May, 2021.

² Peterson Ozili, “COVID-19 Pandemic and Economic Crisis: The Nigerian Experience and Structural Causes”, available at <https://www.researchgate.net/publication/340439471_COVID-

survival of both humans and businesses. The government provided financial assistance to businesses and households. These were all aimed at ensuring that the economic crisis was controlled and the negative effect of Covid-19 on the economy was drastically reduced.

Small and Medium Scale Enterprises (SMEs) play a pivotal role in the economy of any nation. According to the World Bank, SMEs account for the majority of businesses worldwide and are important contributors to job creation and global economic development.³ SMEs represent about 90% of businesses and more than 50% of employment worldwide.⁴ According to the same World Bank Statistics, formal SMEs contribute up to 40% of national income (GDP) in emerging economies and a much higher percentage when informal SMEs are tabulated alongside the Formal SMEs.⁵ In Nigeria, SMEs contributed an estimated 48% to the gross domestic product (GDP) of Nigeria and also account for about 84% of Nigeria's workforce.⁶ In fact, The World Bank posits that SMEs generate the most formal jobs in emerging economies as they create seven out of 10 jobs; and this has poised SMEs as a target for absorbing an estimated 600 million jobs which will be needed by 2030 to absorb the growing global workforce.⁷

In Nigeria, SMEs which are characterized as businesses with less than 100 million naira in annual turnover and have less than 300 employees, are estimated to be around 41.5 million in number.⁸

[19 Pandemic and Economic Crisis The Nigerian Experience and Structural Causes](#)> Accessed 17 May, 2021.

³ The World Bank, "Small and Medium Enterprises (SMES) Finance: Improving SMEs Access to Finance and Finding Innovative Solutions to Unlock Sources of Capital, available at <<https://www.worldbank.org/en/topic/sme/finance>> accessed 17 May, 2021.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ NM Partners, "Are SMEs the Solution to Nigeria's wailing Economy?" (NM Partners, September 2020) <<https://nairametrics.com/2020/09/21/are-smes-the-solution-to-nigerias-wailing-economy/>> Accessed 17, May 2021

⁷ The World Bank, n3, *Ibid.*

⁸ Samuel Moore, "Important Statistics to Know As An SME in Nigeria", available at <https://www.sme360.ng/2020/08/25/important-statistics-to-know-as-an-sme-in-nigeria/#:~:text=According%20to%20the%20SMEDAN%20National,exceeds%20those%20in%20the%20USA.> Accessed on 17 May, 2021.

Intellectual property (IP) refers to the creations of the human mind and IP law protects these creations. There are various forms of IP: trademarks, copyright, patents and industrial designs. IP is considered the most valuable asset of a business despite the fact that it is an intangible asset. Small and Medium Enterprises (SMEs) are known to thrive on innovation and ideas which are assets to the SMEs. These ideas, when transposed into tangible forms, goods or services, become the IP of the business/SME. The tangible forms of these ideas are protectable and their protection has huge impacts on the business of the SME.

This essay discusses the role of IP in boosting the business of SMEs and how IP protections can be leveraged by SMEs in advancing economic recovery in Nigeria.

1.2 Role of IP in Boosting SMEs

The IP system impacts every stage of the business cycle; from product development to marketing of the products, up to the point the business decides to go into the international market. When an IP is duly and legally protected and exploited, it becomes a valuable business asset.

An SME has several intangible business assets. These include the brand reputation of the business, goodwill, expertise, innovation, human capital among others. IP laws have been carved to protect these intangible assets in various forms. The IP rights (IPRs) that may be important for an SME include trademark, copyright eligible works; innovations/inventions that qualify as patents; and aesthetic designs of the SMEs products that may qualify as industrial designs.

As a first step, it is important for an SME to identify its IPRs. This could be the business's brand name, its inventions, copyright eligible works, or the aesthetic non-functional aspect of the business's products which makes the product alluring and appealing to consumers. Governance

of IP is very important and should be done carefully. A badly selected trademark to act as legal title to reputation or goodwill of products and services could lead to problems in the future and may lead to the downfall of a business; unprotected sharing of trade secrets may lead to the closure of a business. For example, some SMEs, especially those in the luxury brand industry like shoes, jewelries among others are fond of adopting trademarks that are similar to popular brands. In Aba, Abia State for example, proprietors who manufacture quality shoes, bags, clothes, in the absence of a good IP governance or strategy, adopt names like *Fendi*, *Tendi*, *Versace*, *Versage* etc. in the marketing of their products. This opens them up for possible opposition proceedings; infringement or passing-off actions; raids by law enforcement officers; and possible criminal prosecution.

Some SMEs start small, carve their own IP, and become successful with their own brand. For example, the Sole Rebels shoe industry in Ethiopia started as a very small shoe industry with loans obtained from family and friends, but today is arguably the fastest growing African shoe brand and now sells in the North America and parts of Europe with over \$1 Million sales per year.⁹

When an SME identifies its intangible business assets, the next step is to take legal steps to protect them. IPRs confer exclusive right to the use of the IPR on the owner. This ensures that competitors do not take undue advantage of the IPR. Adequate registration and protection of an IP are very important also when you consider the effect of globalization which tend to deepen cross border trade. An unregistered or unprotected IP may easily lose its essence and exclusivity in an international market.

⁹ Smallstarter, "10 Made-In-Africa Footwear Brands That are Making Africa Proud (and the Amazing Entrepreneurs Behind Them)" available at <https://www.smallstarter.com/get-inspired/10-top-successful-made-in-africa-footwear-brands-making-africa-proud/> Assessed on 17 May, 2021.

A well protected IP can become an asset on its own. This asset can be traded like all other goods and services through licensing, assignment, franchising and the likes.

Access to finance has been recognized as a key constraint to the growth of an SME.¹⁰ As they are most times unable to obtain loans from Banks, they tend to rely more on internal funds from personal savings, friends and family. This is largely due to lack of collateral. A well protected IP asset can be used as collateral for possible loans and guarantee for investors, and even the *Companies and Allied Matters Act, 2020* recognize IP and goodwill as assets for which a company may create charges on.¹¹

IP helps SMEs adapt to the new normal post Covid-19. The advent of Covid-19 made many businesses to move online. A business which has maintained a good reputation in the brick-and-mortar market will not find it difficult to adapt to the online business. In fact, the online business will further boost the presence and revenue of the business. On the other hand, a business which copied a popular brand's trademark, like Fendi or Rolex, will find it difficult to move online because, first, moving online makes it easier for the original brand owner to locate the infringing business and sue the proprietors. Furthermore, some e-commerce sites may not accept to display such obvious counterfeit products for sale on their platform, while the proprietor of such business will find it difficult to purchase a domain name, in the name of the infringing name, for its online business.

Some businesses thrive on their IP without even owning physical assets. Businesses like Airbnb, Uber, Amazon etc, without owning much physical assets thrive on their brand name. These

¹⁰ The World Bank, n3.

¹¹ Section 222 (2) (i) Companies and Allied Matters Act, 2020.

businesses create value for their IP, which in turn becomes their biggest business asset and could be commercialized.

In all, it is important that an SME adopts an effective IP strategy as this will help in boosting the business of the SME.

1.3 Role of SMEs in Economic Recovery in Nigeria

Thriving SMEs contribute immensely to economic recovery in Nigeria. SMEs create employment. There are examples of businesses that started with one or two employees but employed more workers as the business grew.¹² SMEs are known for their innovative activities. In the course of the pandemic, there was an expansion of Logistics (delivery services), and Point of Sale (POS) businesses which created jobs for more people.

SMEs also contribute to the economy of the nation through the payment of taxes and other government fees. SMEs attract foreign investment in Nigeria. This has the effect of increasing the inflow of foreign exchange (forex) in the country. The CBN introduced the “Five Naira for one dollar” scheme to encourage inflow of forex into Nigeria.¹³ SMEs in Nigeria who moved their businesses online attracted foreign buyers that paid in forex. Most of the online businesses of SMEs we see on Instagram attract foreign buyers and the inflow of forex from these sales accords with the CBN drive for inflow of more forex.

¹² Ezra Olubi and Shola Akinlade started the Paystack company which has now grown into a multinational technology company providing payment solutions across countries. See https://pages.awscloud.com/rs/112-TZM-766/images/AWS_Startup%20Stories_Vol2_Trailblazers-C.pdf Accessed on 26 August 2018.

¹³ <https://nairametrics.com/2021/03/06/cbn-introduces-naira-4-dollar-scheme-for-diaspora-remittances/> Assessed 17 May 2021.

1.4 Conclusion

It has been established in this essay that IP is integral to every component of successful SME business. While SMEs contribute to the growth of the economy, IP rights contribute to the growth of the SMEs. IP helps SMEs create an identity of their own. Government has a role to play by employing more staff at the IP offices and reducing the bureaucracy to ensure a quick registration process for IP rights. The filing fees should also be reduced in the interest of SMEs with little funding. The government should provide accessible and well-priced facilities for SMEs.