



Intellectual Property, SMEs, and Economic Recovery in Nigeria

Badrudeen Lawal*

Faculty of Law, Olabisi Onabanjo University, Nigeria

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The interplay between Intellectual Property (IP) and Small and Medium-sized Enterprises (SMEs) can be likened to that of a constructed building and the roof to be placed directly above same, which without the latter, the former remains habitable but highly perilous. While the building represents the SMEs, IP epitomizes the roof which protects SMEs and also, ensures the realization of their maximum potential for the benefit of the entrepreneurs and the country at large.

Evidently, growth in the economy of any nation is essentially determined by the amount of products and services manufactured.¹ In spite of the various available means of deriving revenues in most economies, it remains unarguable that SMEs stimulate, in the highest percentage, the

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¹ The Investopedia Team and Charles Potters, Economic Growth, Investopedia (January 1, 2021) <https://www.investopedia.com/terms/e/economicgrowth.asp>

economic growth of most countries of the world due to their capacity to effect employment, maximize production and economic activities, and also tremendously minimize poverty amongst others.

Speaking of Nigeria, it is bold – faced from a recent survey conducted by the National Bureau of Statistics and also the Small and Medium Enterprises Development Agency of Nigeria that SMEs account for 48% of the nation’s Gross Domestic Product (GDP), as it constitutes about 96% of registered business and has created jobs for about 84% of the labour force.² It is however perturbing that Nigeria’s economy has since time immemorial, been dominantly predicated on oil which has neither solved her economic difficulties nor eradicated the poverty upsetting her citizenry.

With the crystallization of COVID-19 and its attendant effects on the Nigerian economy, the dire need to diversify her economy by investing greatly and attracting Foreign Direct Investment (FDI) into other non – oil sectors, which shall concomitantly improve and encourage domestic creativity and innovation, has not been more conspicuous.

IP are legal rights conferred on those who engage in creative, inventive and promotional activities, which have resulted in original, useful or other beneficial output.³ Investment in IP by SMEs is globally understood as the vehicle that drives innovation and business growth. Nigeria however,

² Proshare Nigeria, Role of SMEs in Driving Economic Recovery in Nigeria Through Markets and Intellectual Property (April 28, 2021, 08:11 PM)
<https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.proshareng.com/news/MSME%2520ST-ART%2520UP/Role-of-SMEs-in-Driving-Economic-Recovery-in-Nigeria-Through-Markets-and-Intellectual-Property/57016&ved=2ahUKEwjnuqzh4erwAhXPi1wKHfNDBSgQFjAAegQIAxAC&usg=AOvVaw2aNhW4JmLLKzs54P31npcB>

³ Adejoke Oyewunmi, Nigerian Law of Intellectual Property, Pg. 3 (Unilag Press & Bookshop) 2015.

seems not to be on the same page. This is due to the lack of awareness of the value of IP registration and protection, high cost of IP registration, and the perceived complexities surrounding the registration processes amongst others. In the ensuing paragraphs, IP as it relates to SMEs, the challenges faced by SMEs and also, recommendations to facilitate economic recovery in Nigeria shall be analyzed briefly.

Of the various prominent theories underlying the need to protect the IP of creators, it is the development theory which advocates that IP be viewed as a means to the desirable end of socio-economic and technological advancement, which shall ensure that the society receives a proportionate value from the rights granted to creators and as well, result to cultural growth and employment generation through SMEs,⁴ that best suits this discourse.

In Nigeria, the protected aspects of IP by virtue of the existing legal framework⁵ include Patents; Trademark; Industrial Designs; Copyright and Neighbouring rights. Protected also, albeit through Received English Laws, are Trade Secrets.

Copyright confers on authors, the exclusive right to own and economically exploit creative works of their mind or intellect. Works eligible for Copyright protection are literary, musical, artistic, and cinematograph works, sound recordings, broadcasts among others.⁶

Thus, SMEs that transact or whose trade fall between the above – stated works are entitled to Copyright protection of their original expression of ideas. As an advantage over others, Copyright protection is granted on eligible works without a registration requirement. Such work however, must be original and fixed in a definite medium of expression. Therefore, a programmer who

⁴ Ibid, Pg. 14 - 15

⁵ Namely; Copyright Act, Patents and Designs Act, and Trademarks Act.

⁶ Copyright Act, CAP 28, LFN 2004, Section 1 (1)

writes a computer program or software (a literary work), has the exclusive right to own and exploit such work for commercial purposes once it meets the originality and fixation requirements. Same applies to the other eligible works.

Trademarks on its part are distinctive signs, marks, or names which serve to distinguish the products of one enterprise from that of others. However, registration is a *sine qua non* for maximizing the full potential of a trademark,⁷ as a valuable asset to any enterprise.

SMEs that own and register their trademark simplify and improve the consumer decision in choosing their products or services among those of other competitors. Trademark thus, protects the results of investment which a brand must have imputed in the development of qualitative products or services and as well, gives the needed incentive and means to finance further research and development activities.⁸ It is easier today to sell a brand than the product itself. That is the result that a well-managed Trademark yields.

A patent is a bundle of exclusive rights granted to a legal person over an invention. It is a legal right which confers on inventors of useful products and processes that are new, results of inventive activity and capable of industrial application,⁹ the right to exclude the public from the commercial exploitation of such invention. Thus, Patent protection is sacrosanct to SMEs, especially those who invent new technologies, as it is a pathway to leverage on in attracting

⁷ Trademarks Act, (1965 No. 29), Section 3

⁸ ConnectAmericas, What should SMEs know about intellectual property?

<https://www.google.com/url?sa=t&source=web&rct=j&url=https://connectamericas.com/content/what-should-smes-know-about-intellectual-property&ved=2ahUKEwj9Z-Z5urwAhW2QEEAHcNDD4kQFjAAegQIBRAC&usg=AOvVaw3GM1B4mO3G7PXiAuLLgJuq>

⁹ Patents and Designs Act, CAP P2, LFN 2004, Section 1

investors, establishing collaboration agreements and also, competing with high-growth established firms.¹⁰

While the law of Industrial Designs protects the ornamental aspects of an article or product which may consist of three dimensional features, such as the shape of an article, or two dimensional features such as patterns, lines, or colour, Trade Secrets are pieces of information comprising of formulas or techniques, which are confidential in character, and which derive some commercial value from being unavailable to the public domain. The law of Trade Secrets prevents the disclosure of confidential information so as to prevent the misappropriation of such information by trade competitors.

Explained above are invariably the common IP concepts in Nigeria, which become real valuable assets to SMEs only upon maximization. The economic exploitation of these assets plays an essential role in the economic recovery of Nigeria. There are various means to exploit these assets. Beyond the profits that could be earned through the normal transactional activities incidental to the business, other channels of exploitation includes assignment, licences, usage as collateral and security for loans and opportunity to attract FDI, *inter alia*.

Unarguably, the objective of all SMEs is to attain the height of a high-growth firm. The materialization of this becomes easier when investors or potential partners are attracted to trades with such enterprise. However, without a robust IP position, which portrays the enterprise as the

¹⁰ Novagraaf, New study highlights link between IP and SME success, (May 24, 2019) <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.novagraaf.com/en/insights/new-study-highlights-link-between-ip-and-sme-success&ved=2ahUKEwiD6au26OrwAhWLzKQKHRaKD4sQFjAAegQIBRAC&usq=AOvVaw07CG2O8rtpACdtOCxsT5z8>

right owner of the IP, probably due to failure of registration or negligence to secure a patent for a technology-dealing enterprise, most investors or partners in these cases, walk away.

Hence, it is of great importance that SMEs enhance the value of their brands through an effective IP asset valuation and management. Sadly, the situation in Nigeria is that, most SMEs under-utilize their IP. The perceived causes of this *inter alia* are; lack of awareness and sheer ignorance of the value of IP protection, lack of adequate finance to fund the registration processes, lack of human resources, and the fear of a complex IP registration system.

In solving the above issues, and as a way of reform, it is suggested that, a well-structured educational policy be adopted in tertiary institutions. This could be achieved through the inclusion of IP as a compulsory course to be offered by all students, across all disciplines. This will ensure maximum awareness as to how IP systems operate and as well, reduce the number of ignorant citizens and future entrepreneurs in that regard.

In furtherance, state governments in collaboration with the Nigerian IP office(s) and SMEs regulatory bodies, should see to organising regular workshops or training programs on IP for entrepreneurs, which would serve as a sufficient enlightenment platform for them to utterly understand the concept of IP in Nigeria and the registration processes.

In same vein, it is submitted that, the federal government should on their part provide basic financial assistance to SMEs by establishing an Intellectual Property Small and Medium-sized Enterprise Investment Scheme. The ultimate objective of this establishment should be the provision of finance to SMEs, in order to fully maximize their IP assets which if achieved, will in the long run, increase the per capita income of the country.

Furthermore, it is important to note that the role of government and other stakeholders in ensuring an all-inclusive appreciation and adoption of the IP protection system transcends the mere creation of awareness. It is also imperative that they make IP law reforms, which shall incentivise the citizens to make good use of the IP protection system. Reforms such as reduction of IP registration costs, and as well, leveraging technology to effect a well-organized registration process, will be a step in the right direction.¹¹

Conclusively, it follows from the foregoing that, IP and its value must be adequately appreciated by SMEs and the government. SMEs should manage their IP assets from the date of establishment in order to greatly realize the potential of these assets. The government also, should implement policies that would assist SMEs in maximizing their IP assets.

¹¹ Techpoint Africa, Intellectual property and medium-sized enterprises: Taking your Ideas to the market, (April 27, 2021)
<https://www.google.com/url?sa=t&source=web&rct=j&url=https://techpoint.africa/2021/04/26/intellectual-property-and-medium-sized-enterprises-taking-your-ideas-to-the-market/&ved=2ahUKEwin9eLU6erwAhUAqf0HHVdvDG4QFjAAegQIAxAC&usq=AOvVaw0zeKjRngG6CRa1wy2BbmB6>