



# Intellectual Property, SMEs, and Economic Recovery in Nigeria

David Oluwatimilehin Adetula\*

Faculty of Dentistry, University of Ibadan, Nigeria

May 28, 2021

## 1.1 Introduction

Whenever I think about the *Mona Lisa* painting, I wonder if the painter of the original art – Leonard Da Vinci existed today and has such an amazing piece of artwork copyrighted, the story would have probably been a lot different and better told.<sup>1</sup> Today, many creative minds, like Da Vinci manning small businesses continue to come up with several innovative creations of the mind, including works of art, inventions, and others that are well capable of contributing meaningfully to the economic fortune of the country, but they do not know about, or how to tap into the unmined gold dust available in the protection of Intellectual Property Rights (IPRs). This essay seeks to lay bare what needs to be done so that these small businesses' intellectual property can be protected,

---

\* *Finalist, 2021 WIPO National IP Essay Competition for students of tertiary institutions in Nigeria, organized by the WIPO Nigeria Office. This is an original entry as submitted by the author to the 2021 WIPO National IP Essay Competition, and is not intended to reflect the views of the WIPO Member States or the WIPO Secretariat.*

such that the ripple effects of their protected creations are felt positively and drive the post-COVID19 economy to recovery.

## **1.2 SMEs and Economic Recovery Post COVID-19 Pandemic**

Just like it is the case in most parts of the world, small businesses in Nigeria constitute the growth engine of our economy contributing to its development, job creation, and export amongst others. Studies by the International Finance Corporation (IFC) show that approximately 96 percent of Nigerian businesses are SMEs and 84 percent of those who are employed in the country are domiciled in these small and medium enterprises.<sup>2, 3</sup> Also, in the last five years, this category of business has contributed nearly half (48 percent) of the country's GDP.<sup>4</sup> It is clear that anything that deals a blow to this sector also seeks to bring the nation's economy to its knees. At the same time, when this sector performs optimally, the economy rejoices.

It is now well over a year since the World Health Organization (WHO) declared the COVID19 outbreak a Public Health Emergency of International Concern and eventually a pandemic.<sup>5</sup> The report cards of various countries due to the impacts of the pandemic are coming out. Nigeria is no exception and in fact, it is one of the hardest-hit countries across the globe. Bloomberg says "unemployment in Africa's largest economy surged to the second-highest on a global list of countries" it is monitoring.<sup>6</sup> This report comes on the heels of the release of Nigeria's Labour Force Statistics for the fourth quarter (Q4) of 2020 by the National Bureau of Statistics (NBS). The NBS statistics showed a 6.2 percent increase in the unemployment rate of Q2 2020.<sup>7</sup> Sadly, SMEs are the most affected because many of these businesses were not designed to withstand these unforeseen impacts.

This shows a big economic problem at hand and the urgent need to come up with unconventional but effective ways to make sure that the economy gets on the path of recovery as the pandemic eases. This can be achieved by assisting SMEs to go through this difficult time, charting a viable operation model and a sustainable course for the business. While at all that, the main reason why they exist; their idea, creations, and works – the intellectual property must be adequately protected. Unfortunately, many of these business owners either do not know about this or how they can go about it.

### **1.3 SMEs and Intellectual Property in Nigeria – The Big Issues**

The World Intellectual Property Organization (WIPO) defines Intellectual Property (IP) as “creations of the mind – everything from works of art to inventions, computer programs to trademarks and other commercial signs”.<sup>8</sup> This means that if things were rightly constituted, a cocoa farmer in *Ijugbere* town in Ondo state should enjoy a type of IP called ‘Geographical Indication’ (GI) because his products “have a specific geographical origin and possess qualities or a reputation that are due to that origin”. Besides from the advantage that comes from the fact that Nigeria ranks amongst the top four producers of cocoa in the world, cocoa exported from Nigeria is well known for its premium quality – renowned for its aromatic and smoother flavor.<sup>9</sup> But the question is: does the *Ijugbere* farmer know what intellectual property is? Ignorance or limited knowledge of IP amongst small businesses is a big challenge.

Different types of IP exist but they are often broadly divided into two categories namely Industrial Property (which includes patents for inventions, industrial designs, trademarks, and geographical indications) and Copyright and related rights (including literary, artistic and scientific works, performances and broadcasts).

Another major issue affecting SMEs' chances of benefiting from IPRs in Nigeria is the lack of adequate IP policies; a weak legal framework that cannot adequately protect and enforce the rights of today's businesses. In a paper co-authored by Femi Olubanwo and Oluwatoba Oguntuase in 2019, they reflected that "most of Nigeria's IP laws are old and out of sync with the trends in the 21st Century global market place". They wrote that, "the Trade Marks Act was enacted in 1967 (and even then, was a re-enactment of the UK's 1938 Trade Marks Act) while the Patents and Designs Act was in 1971." <sup>10</sup>

Today, apart from treaties facilitated by WIPO that have been ratified by Nigeria, which incorporates the country into specific international IP regimes, there are currently about five extant laws that seek to protect intellectual property in Nigeria. These include the Copyright Act<sup>11</sup>, Patents and Designs Act<sup>12</sup>, Trade Marks Act<sup>13</sup>, Merchandise Marks Act<sup>14</sup>, and the Trade Malpractices (Miscellaneous Offences) Act<sup>15</sup>. While these laws are doing some bits in protecting IP rights, there are a lot more that is yet to be done. As posited by Olubanwo and Oguntuase, "the current laws fail to contemplate, and therefore do not provide means for protecting new developments and innovations in industrial property".

Leading the implementation and enforcement of IP in Nigeria is the Nigerian Copyright Commission (NCC) and efforts by this agency so far have been commendable. Other agencies that are equally empowered by some of the IP-related Acts stated above are either redundant or crippled by lack of the necessary resources to function. It is quite unfathomable that as things currently stand, the Trademarks, Patents and Designs Registry still operates a manual record system. Not just this, the information on the agency's website (<http://www.iponigeria.com/>) is not up-to-date; the "latest news" on the website is dated July 9, 2012.

## **1.4 Fixing the Intellectual Property Gaps for SMEs**

Intensive awareness and campaign educating small business owners on IP and emphasizing the many benefits that the IP system affords will be helpful. They should know benefits like the protection of innovative products and services, increasing the visibility, attractiveness and value of products on the market, distinguishing individual business and its products from the competition, access to technical and business information and knowledge, and also very important – avoiding the risk of unknowingly using third party proprietary content or inadvertently losing your valuable information, innovations or creative output.

The decision by the NCC to appoint the winners of last year's WIPO National IP Essay Competition as Copyright Ambassadors is an insightful development.<sup>16</sup> These ambassadors can lead campaigns that take the IP gospel to schools, startup incubation hubs, markets and other places where SMEs are concentrated.

On outdated laws, newer and effective laws that are in tune with the IP demands of this time need to be promulgated. We can take a cue from economies like America that have built empires of small businesses through well-structured IP systems and laws. Not just this, agencies that are saddled with the duty of protecting IP rights need to be strengthened and well-funded by the government so that they can perform in competent capacities. These agencies also have to work in synergy to achieve the common goal in real-time. It is also high time that the National Assembly passed the Industrial Property Commission Bill (IPCOM Bill) and the Trademarks Bill that have been before it for some time. Enacting these bills can be the game-changer in the IP quest in Nigeria.<sup>17</sup>

We cannot afford to lay low on investment in a competent IP architecture in Nigeria because it has proven to be capable of influencing investment; IP can attract foreign direct investment (FDI) and provide the necessary conditions for the transfer of technology.<sup>18</sup>

## **1.5 Conclusion**

President Joseph Biden said, “*Inventions born in the garages of small towns can have just as much impact as those developed in high-tech labs*”.<sup>19</sup> He is very right. There is no better time to look at the doings happening in the ‘garages of small towns’ and the ‘hostels of our schools’, take them seriously and help these inventors protect their intellectual property. When SMEs thrive and become successful, they will not only grow to become impactful businesses, the impact of these businesses will be felt in the country’s economy at large. This is surely a potent dose of the drug that our economy needs to heal from the scourge of COVID19.

## REFERENCES

[1] Peter Ball (2019) Leonardo da Vinci feud: The 'earlier' Mona Lisa mystery. Accessed on 20/04/2021

<https://www.bbc.com/news/entertainment-arts-50046133>

[2] Banji Oyelaran-Oyeyinka (2020) FSS 2020 International Conference SME: Issues, Challenges and Prospects. Accessed on 23/04/2021

[https://www.cbn.gov.ng/fss/wed/SME\\_Issues,%20Challenges%20and%20Prospects\\_Oyeyinka%20Banji.pdf](https://www.cbn.gov.ng/fss/wed/SME_Issues,%20Challenges%20and%20Prospects_Oyeyinka%20Banji.pdf)

[3] Rilwan Shittu (2020) The economic impact of COVID-19 on the labour market. Accessed on 23/04/2021

<https://www.stearsng.com/article/the-economic-impact-of-covid-19-on-the-labour-market>

[4] PwC (2020) Nigeria MSME Survey 2020; Building to Last. Accessed on 01/05/2021

<https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf>

[5] World Health Organization (2020) COVID-19 Public Health Emergency of International Concern (PHEIC) Global research and innovation forum. Accessed on 28/04/2021

[https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum)

[6] Ruth Olurounbi (2021) Nigeria Unemployment Rate Rises to 33%, Second Highest on Global List. Accessed on 29/04/2021

<https://www.bloomberg.com/news/articles/2021-03-15/nigeria-unemployment-rate-rises-to-second-highest-on-global-list>

[7] National Bureau of Statistics (2021) Labor Force Statistics: Unemployment and Underemployment Report (Q4 2020). Accessed on 03/05/2021

<https://nigerianstat.gov.ng/download/1238>

[8] World Intellectual Property Organization (2020) What is Intellectual Property? Accessed on 22/04/2021

[https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_450\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf)

[9] Nigerian Export Promotion Council (2020) Reasons to buy. Accessed on 05/05/2021

<https://nepc.gov.ng/importer/nigeria-product/cocoa/>

[10] Femi Olubanwo & Oluwatoba Oguntuase (2019) Strengthening Intellectual Property Rights and Protection in Nigeria. Accessed on 01/05/2021

<https://www.mondaq.com/nigeria/trademark/788714/strengthening-intellectual-property-rights-and-protection-in-nigeria?type=popular>

[11] World Intellectual Property Organization (2020) Copyright Act (Cap. 68, Laws of the Federation of Nigeria, 1990 as amended by the Copyright Amendment Decree No. 98 of 1992 and the Copyright (Amendment) Decree 1999)

<https://www.wipo.int/edocs/lexdocs/laws/en/ng/ng001en.pdf>

[12] ICT Policy Africa (2019) Patents and Designs Act Chapter 344 Laws of the Federation of Nigeria 1990

<http://www.ictpolicyafrica.org/fr/document/bzst7k778ii?page=1>

[13] Nigeria Trade Portal (2021) Trademarks Act, CAP T13 Laws of the Federation of Nigeria, 2004 (the “Trademarks Act”)

<https://nigeria.tradeportal.org/media/Trade%20Mark%20Act.pdf>

[14] Policy and Legal Advocacy Centre. Merchandise Marks Act 2004

<https://lawsfnigeria.placng.org/view2.php?sn=250>

[15] Law Nigeria (2018) Trade Malpractices (Miscellaneous Offences) Act 2004

<https://laws.lawnigeria.com/2018/04/20/lfn-trade-malpractices-miscellaneous-offences-act/>



[16] The Guardian (2021) DG tasks newly appointed copyright ambassadors. Accessed 07/05/2021

<https://guardian.ng/news/dg-tasks-newly-appointed-copyright-ambassadors/>

[17] John Onyido, Yetunde Okojie & Oluwasolape Owoyemi (2018) The Industrial Property Commission Bill (IPCOM) and the New Trade Marks Bill: Highlights, Issues and Recommendations. Accessed on 21/04/2021

<http://www.spaaibade.com/resources/wp-content/uploads/2018/12/The-Industrial-Property-Commission-Bill-and-Trademarks-Bill-Highlights-Issues-and-Recommendations.pdf>

[18] Keith E. Maskus (2000) Intellectual Property Rights and Foreign Direct Investment. Accessed on 08/05/2021

[https://www.iatp.org/sites/default/files/Intellectual\\_Property\\_Rights\\_and\\_Foreign\\_Direc.htm](https://www.iatp.org/sites/default/files/Intellectual_Property_Rights_and_Foreign_Direc.htm)

[19] Joseph R. Biden Jr. (2021) A Proclamation on World Intellectual Property Day, 2021. Accessed on 03/05/2021

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/23/a-proclamation-on-world-intellectual-property-day-2021/>