



Intellectual Property, SMEs, and Economic Recovery in Nigeria

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1.1 Introduction

The term, Small and Medium Scale Enterprises (SMEs), does not submit to definitive definition. Generally speaking, SMEs are businesses that maintain revenues, assets or number of employees below a certain threshold. Different countries and different organizations have their own definitions. Usually, certain size criteria must be met and occasionally, the industry in which the business operates is taken into account as well.¹ The sizing or categorization of a company as an SME can be based on a number of characteristics. The traits include annual sales, number

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¹ Daniel Liberto, 'What is a Small and Mid-Size Enterprise (SME)?' (2020) *Investopedia*, available at <https://www.investopedia.com/terms/s/smallandmidsizeenterprises.asp> accessed 13 May, 2021

of employees, the amount of capitalization, or any combination of these factors.² In Nigeria, they are broadly defined as businesses with turnover of less than N100 million per annum and/or less than 300 employees.³

Amidst varying descriptions, one thing stands as a common truth: SMEs are extremely vital to any economy. The definitional disparities are reconciled by this generally accepted fact – they play an important role in the economy through job creation, investment, exports, innovation, significantly contributing to national economic growth.⁴ According to the World Bank, Micro, Small and Medium Enterprises (MSMEs) represent about 90% of businesses and more than 50% of employment worldwide, and contribute up to 40% of the Gross Domestic Product (GDP) of emerging economies.⁵ Totalling over 41 million, Nigerian SMEs account for 96% of the total number of businesses in the country, with a contribution of about 50% to Nigeria’s GDP, a total employment contribution of over 76% of national workforce, and 7.64% of export receipts.⁶ Furthermore, SMEs serve as a breeding ground for technical and managerial skills, and are very

² Corporate Finance Institute, ‘Small and Medium-Sized Enterprises (SMEs)’ *CFI Education Inc.*, available at <https://corporatefinanceinstitute.com/resources/knowledge/other/small-and-medium-sized-enterprises-smes/> accessed 13 May, 2021

³ Prof. Banji Oyelaran-Oyeyinka, ‘SMEs: Issues, Challenges and Prospects’ *Financial System Strategy 2020 International Conference*, available at https://www.cbn.gov.ng/fss/wed/SME_Issues%2C%20Challenges%20and%20Prospects_Oyeyinka%20Banji.pdf accessed 14 May, 2021

⁴ Guriqbal Singh Jaiya, ‘The Importance of Intellectual Property for the Competitiveness of SMEs’ *World Intellectual Property Organization SMEs Division*, Baku, June 4 and 5, 2003, available at https://www.wipo.int/edocs/mdocs/sme/en/wipo_ip_bak_03/wipo_ip_bak_03_www_34145.pdf accessed 17 May, 2021

⁵ The World Bank, ‘Small and Medium Enterprises Finance (SMEs) Finance’, available at <https://www.worldbank.org/en/topic/smefinance> accessed 14 May, 2021

⁶ National Survey of Micro, Small & Medium Enterprises (MSMEs) 2017, p.7, available at [http://smedan.gov.ng/images/NATIONAL%20SURVEY%20OF%20MICRO%20SMALL%20&%20MEDIUM%20ENTERPRISES%20\(MSMES\).%20%202017%201.pdf](http://smedan.gov.ng/images/NATIONAL%20SURVEY%20OF%20MICRO%20SMALL%20&%20MEDIUM%20ENTERPRISES%20(MSMES).%20%202017%201.pdf) accessed 14 May, 2021

useful as feeders and production outposts for large-scale enterprises,⁷ thereby contributing to the strengthening of industrial inter-linkages.⁸

It thus goes without saying that the benefits are undeniable. It is the essential value of these businesses that makes facilitating their growth and competitiveness by leveraging key tools like intellectual property (IP) rights, all the more necessary. SMEs need to have an understanding of intellectual property and its place as one their most valuable assets. Identified, developed, properly exploited and protected IP helps ensure that SMEs have remedy against consent-bereft copying, pirating, reproduction, or use, which would otherwise have gone without legal consequences. IP protection mitigates the tendency for rivals to blatantly infiltrate aspects of key market elements and unique selling points.⁹

It paves the way for the steady development of brand reputation and goodwill which is essential for the growth of a customer base for SMEs.¹⁰ It not only safeguards and guarantees return on the investments of time, effort and resources put into research, product development and rebranding, but also opens the business up to other opportunities: licensing, investment, ground-breaking partnerships, mergers, collaborations, which are desirable for growth and expansion,¹¹

⁷ National Survey of Micro, Small & Medium Enterprises (MSMEs) 2017, p.4

⁸ Job Abiodun Olorunshola, 'Problems and Prospects of Small and Medium-Scale Industries in Nigeria', Seminar on Small and Medium Industries Equity Investments Scheme (SMIEIS) (Lagos: CBN Training Centre, 2003), 34 at 36

⁹ ABOU NAJA, 'IP for Small and Medium-Sized Enterprises' (2020) ABOU NAJA, available at <https://abounaja.com/blogs/intellectual-property-for-sme> last accessed May 7, 2021

¹⁰ Olisa Agbakoba Legal, 'Role of Intellectual Property for SMEs in the Nigeria Fashion Industry' (2018) *Mondaq*, available at <https://www.mondaq.com/nigeria/trademark/757902/role-of-intellectual-property-for-smes-in-the-nigeria-fashion-industry> accessed May 25, 2021

¹¹ Jennifer Brant & Sebastian Lohse, "Enhancing Intellectual Property Management and Appropriation by Innovative SMEs" (2013) *Innovation and Intellectual Property Series, 7*, available at <https://iccwbo.org/content/uploads/sites/3/2016/11/Enhancing-intellectual-property-management-and-appropriation-by-innovative-SMEs.pdf> accessed May 7, 2021

and for satisfying the unmet needs in the market.¹² With their intellectual property assets duly registered and protected, SMEs can enhance product value, increase market penetration, become more competitive and sustainable, and the Nigerian economy will be the ultimate beneficiary.

However, there are a number of obstacles militating against the boost of SME growth and performance via IP, prominent amongst which is the lack of awareness.¹³ In this regard, SMEs range from those that are completely in the dark about IP to those that know, but rule it out as waste of time. In other words, the problem ranges from lack of awareness to the absence of proper understanding or appreciation of the subject matter.

Access to finance also constitutes a major obstacle to the thriving of SMEs in Nigeria. The low income level of most of these businesses coupled with the non-availability of assets with which to secure financing, immensely cripples their ability to carry out IP registration, renewal upon expiration, or even to access quality legal services to assert their rights.¹⁴ The predicament is further intensified by stringent regulatory bottlenecks and red-tape which impede ease of carrying on business, bullying tactics by large scale businesses, especially when it comes to trademarks and industrial designs,¹⁵ as well as the ineffective mechanisms for the protection and enforcement of IP rights in Nigeria.

¹² Amit Aggarwal, 'Relevance of Intellectual Property for Business' (2015) *The Economic Times*, available at <https://m.economictimes.com/small-biz/legal/relevance-of-intellectual-property-for-business/articleshow/49563911.cms> accessed May 19, 2021

¹³ Brand Press, 'Intellectual Property and Medium-Sized Enterprises: Taking Your Ideas to the Market' (2021) *Techpoint Africa*, available at <https://techpoint.africa/2021/04/26/intellectual-property-and-medium-sized-enterprises-taking-your-ideas-to-the-market/> accessed May 14, 2021

¹⁴ Helen Oji, 'Tackling Funding Challenges for Nigeria's Small Businesses' (2019) *The Guardian*, available at <https://m.guardian.ng/business-services/tackling-funding-challenges-for-nigerias-small-businesses/amp/> accessed May 23, 2021

¹⁵ Ben Lobel, 'SMEs Hurt by Bullying Bigger Businesses and Cash Flow Problems' (2015), available at <https://smallbusiness.co.uk/smes-hurt-by-bullying-bigger-businesses-and-cash-flow-problems-2481971/> accessed May 24, 2021

Commendably, with the commencement of the digitization and automation of trademark and patent databases and application processing by the Trademark and Patents Registry, alongside the December 2020 memorandum of understanding on Alternative Dispute Resolution executed between the Nigerian Copyright Commission and the WIPO Arbitration and Mediation Centre,¹⁶ the Nigerian government has certainly taken positive steps towards addressing these issues. Nonetheless, for an assured realization of economic recovery through the interplay between SMEs and IP, more decisive actions need to be taken, in significant measure.

Widespread awareness should be promoted through sensitization programmes, seminars and workshops on IP for businesses. While maximizing the platform offered by the educational system and leveraging useful resources like WIPO Distant Learning, there should be trainings and capacity building for SMEs, dedicated to ensuring that they are educated on how to take their IP and ideas to the market, and consequently spur economic growth. Unprotected IP is akin to the biblical “house upon the sand”, the fall of which is inevitable when the winds of infringement come blowing. IP has enormous economic potential for any business; SMEs need to be aware of this.

Furthermore, the government can play a vital role through the enactment and implementation of policies to facilitate ease of doing business in such areas as business registration, IP registration, etc. by subsidizing costs, providing for waiver of fees, reducing red tape, making room for self-registration, providing subsidized legal services for SMEs, and through purposeful inter-agency and inter-governmental collaborations and partnerships.¹⁷

¹⁶ Otunba Adeniyi Adebayo, ‘Role of Small and Medium Enterprises (SMEs) in Driving Economic Recovery in Nigeria through Markets and Intellectual Property (IP)’ Being the Keynote Address of the Honourable Minister of Industry, Trade and Investment delivered at the WIPO World IP Day Webinar (Monday, April 26, 2021)

¹⁷ Banwo & Ighodalo, ‘Strengthening Intellectual Property Rights and Protection in Nigeria’ (2016), available at <https://www.banwo-ighodalo.com/grey-matter/strengthening-intellectual-property-rights-and-protection-in-nigeria> accessed May 23, 2021

In addition to the above recommendations and in cognizance of the fact that their implementation would realistically spread over time, SMEs may, in the meantime, adopt certain resource effective means such as collaborations. Unquestionably, collaborations and partnerships are usually very instrumental in bridging gaps in competence that may otherwise hinder the success of SMEs. With collaboration, SMEs could ensure quicker improvement, shorten innovation time, gain complementary experience, reduce risk and cost, and increase flexibility of operation.¹⁸ Moreover, in pitching ideas for potential collaborations which, of course, carries the risk of knowledge leakage to rivals,¹⁹ SMEs can employ simple precautionary tools such as non-disclosure agreements to protect their works.²⁰

Also, since IP registration and protection can be very expensive, SMEs need to judge this investment against the rewards they might receive. They do not only need to understand which ideas they can protect and which they cannot, but also when it is valuable to protect ideas by registration and when it is better to adopt other forms of protection such as trade secrets,²¹ to save costs. Hence, investment in knowledge acquisition and capacity building is strongly advised. There are tons of valuable resources online: books, articles, courses, accessible at little or no cost.

Indeed, effort, no matter how little, needs to be put in, not only on the part of the government, but on the part of the businesses as well; if for no other reason, for the legal issues that could be avoided. With limited financial and legal strength, basic, self-acquired knowledge of IP will

¹⁸ S. Lee, G. Park, B. Yoon, J. Park, 'Open Innovation in SMEs: An Intermediated Network Model' (2010) 39(2) *Research Policy*, 290-300

¹⁹ Jennifer Brant & Sebastian Lohse (Supra)

²⁰ ABOU NAJA (Supra)

²¹ Simon Webster, 'Why is Intellectual Property important to business?' (2017) *ITProPortal*, available at <https://www.itproportal.com/features/why-is-intellectual-property-important-to-business/> accessed May 7, 2021

certainly serve to guide SMEs on steering clear from infringing on the IP rights of others, and inviting legal problems which will not bode well for them.²²

Withal, the journey to economic recovery in Nigeria must encompass concerted inputs from all quarters, if it is to be actualized. All the key players and stakeholders must step up, if it is to become a reality.

²² ConnectAmericas, 'What should SMEs know about intellectual property?' (2015) *ConnectAmericas*, available at <https://connectamericas.com/content/what-should-smes-know-about-intellectual-property> accessed May 7, 2021