



# Intellectual Property, SMEs, and Economic Recovery in Nigeria

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## 1.1 Introduction

Small and Medium-Sized Enterprises (SMEs) can be considered as the lifeblood of economies. As the lifeblood, they are constant contributors to innovation and creativity in many economies with the creation of new products and services tailored to the consumer's needs. Thus, with their continuous innovative capacity, SMEs achieve a high level of productivity. Hence, it becomes increasingly necessary not only that SMEs understand how Intellectual property (IP) which protects innovations can be used to safeguard their products, but also how it can secure the monetary value that accrues from their products. Therefore, this essay discusses how IP supports

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SMEs in a competitive market and enabling approaches that can drive Nigeria's economic recovery.

## **1.2 Intellectual Property Rights and Small and Medium-Sized Enterprises**

Intellectual Property ensures SMEs appropriate the results of their creativity and inventiveness. Through the various IP rights such as copyright, trademark, industrial design, patents, and trade secrets; SMEs can protect their products and derive maximum economic benefits from their products.

Intellectual Property provides a competitive edge for SMEs. Intellectual Property rights such as trademark and Industrial design create a brand image for SMEs, provides the ability to differentiate their products in the market, discover a niche market for their business, segment the market, and even target specific customer groups. SMEs also have exclusivity over the commercial use of the mark or design which precludes any other person or business from using the mark or design without their consent.

Furthermore, Intellectual property increases the productivity, profitability, and overall success of the SME in the market. Through Intellectual Property rights, SMEs can diversify into new markets through various contractual agreements such as where an SME licenses its trademark to another company for the sale of a new or improved product or sets up a franchising system based on the SME's trademark, copyright, or even trade secret. This provides additional revenues for the SME.

Additionally, intellectual property serves as business assets to SMEs. Intellectual Property turns the innovations and ingenuity of SMEs in their products into exclusive intangible property rights that tend to be more valuable than physical assets (e.g. the structure of the business, equipment).

These intangibles assets increase the market value of SMEs in the case of a sale of the business or merger with another SME. Similarly, Intellectual Property creates access to new financial opportunities for SMEs in the case of a request for funds from investors or lenders such as banks, financial institutions, business moguls, or venture capitalists. When SMEs have Intellectual Property right protection, it indicates that the business has great potentials to succeed in the market place and there are great expectations of future profits.

Moreover, intellectual property protects SMEs from unfair competition in the market. Where the acts of other SMEs in the market are contrary to honest practices in the course of business, Intellectual Property steps in through unfair competition laws to protect against such practices. Practices that can amount to unfair competition include causing confusion or misleading consumers with a false impression of a consumer's good and taking advantage of an SME achievements (free-riding which is a competition by imitation) Therefore, Intellectual Property ensures that SMEs in the market through unfair competition laws play according to the same rules of the market while protecting against dishonest trade and commercial practices.

### **1.3 Enabling Approaches for Economic Recovery in Nigeria**

Creating awareness to new and existing SMEs about the IP system is the epicenter of Nigeria's economic recovery. To bridge the gap between IP and SMEs, the government should organize seminars, and campaigns on IP for SMEs. There should be regular radio and television programs in different national languages on IP awareness and sessions on success stories of SMEs that have leveraged IP rights. Also, the Nigerian WIPO office should engage in business fairs and occasional visits to SMEs to discuss IP-related issues. Similarly, there should be compulsory inclusion of IP into the university curriculum to educate students at the tertiary level. Students

should also be encouraged to set up IP clubs in their various universities, partake in courses offered by WIPO Academy, and writing of articles on IP-related issues to magazines targeting entrepreneurs, researchers, and SMEs. Consequently, this awareness will ensure SMEs effectively utilize the IP system.

Furthermore, a supportive SME legislation by the government designed to make SMEs operate easily will enable economic growth. Nigeria has the continent's most vibrant SME hub based in Lagos. It has also recognized an investment milestone with the recent acquisition of Paystack (a medium enterprise) by Stripe for over €200 million. However, entrepreneurs and SMEs are facing an unfavorable regulatory environment that makes it hard to grow and scale an innovative business. Thus, supportive legislations with the interest of entrepreneurs and SMEs at heart creates an enabling environment for SMEs. The provisions of the legislation should increase the incentives for young people to start a venture, investors to put their money into promising companies, and facilitate foreign direct investment in SMEs. For instance, Tunisia's Startup Act which has paid off for Tunisia's economy includes additional incentives such as available startup grants, fast-track licenses to obtain startup registration documents, and increased state support for covering patent licenses. Consequently, Nigeria can toe this step to catalyze a positive change in the broader business environment by improving local support for entrepreneurs which signals to global venture capitalists investors that innovation is here to stay.

Furthermore, Nigeria should strengthen its IP legislations to boost economic development. The IP Laws in Nigeria are weak and old such as the Nigerian Patent and Designs Act which was enacted in 1971 and Trademarks Act, 1967. These laws cannot accommodate modern trends of innovation and also provide for adequate protection accordingly. Therefore, there is a need for a proper review and amendment of IP Laws. Also, there should be provisions for stiffer penalties

that serve as a deterrent to persons who infringe on the IP rights of others. Consequently, a legal infrastructure that protects SMEs is critical for the economic success of Nigeria.

Also, the ease of accessing protection is dissatisfactory as there is only one Trademarks, Patents, and Designs Registry at Abuja that is managed as an underfunded appendage of the Ministry of Commerce and Investment. Even the online registration for patents has not been effective. Similarly, the cost of acquiring IP protection is expensive for SMEs with limited funds. Therefore, the government should establish more IP offices to aid accessibility and there should be reduction in registration fees for IP rights acquisition in order to encourage SMEs protect their IP assets.

Similarly, Nigeria is a signatory to numerous international agreements such as Trade-Related Aspects of Intellectual Property Rights (TRIPs). However, Nigeria has not domesticated some of these treaties to have the force of law. Essentially, without domestication, Nigeria is not able to benefit from the provisions of such treaties.

Moreover, Nigeria is blessed with products that qualify for geographical indication (GI) protection such as Kolanuts, Ofada Rice, Adire, etc. However, there are no laws and policies in Nigeria to encourage SMEs that are marketing such goods. Thus, there should be specific legislation for the protection of GIs to facilitate SMEs trading GI products which will, in turn, lead to economic development from the grassroots level upwards. Also, Nigeria should enter into trade agreements with other trading partners targeted at enhancing the value of GIs (like the China-EU agreement on geographical indications), to strengthen Nigeria's GIs regime once introduced.

Similarly, small-scale farmers make up the bulk of the agricultural sector in Nigeria. The traditional practices of small-scale farmers such as saving, reusing, and selling seeds are fundamental to agricultural production which also creates employment opportunities. However, to ensure

continued economic growth in the agricultural sector, there is a need to promote the introduction of a *sui generis* plant variety system. A comprehensive *sui generis* plant variety system embodies the interconnections between breeder's rights, farmer's rights, access, and benefit-sharing as well as biodiversity conservation which is invaluable to small-scale centered agricultural systems. Consequently, a plant variety system guarantees food security in Nigeria.

Also, the enforcement of IP rights should be addressed through a national IP strategy. Nigeria should establish a special oversight body to oversee her IP regime, as this will increase effectiveness. There should be a collaboration between the regulatory agencies administering and enforcing IP rights. A database to store and analyze registered IP rights should be at IP agencies which will help the fight against infringers who prevent SMEs from reaping maximum benefits from their products or services. Also, the methods for enhancing the training and development of skills and capabilities of personnel in these agencies as well as adequate funding of regulatory agencies should be put in place.

#### **1.4 Conclusion**

Nigeria has to be more intentional about bridging the gap between IP and SMEs. It is beyond having the desire that SMEs should be competitive. Dedicated efforts needs to be made by the government, individuals, public and private organizations. This is how to drive Nigeria's economic recovery.

## Bibliography

International Chamber of Commerce (2015). Promoting and Protecting Intellectual Property in Nigeria. Retrieved May 10, 2021 from [iccwbo.org](https://iccwbo.org/content/uploads/sites/3/2017/01/Promoting-and-Protecting-Intellectual-Property-in-Nigeria.pdf):

<https://iccwbo.org/content/uploads/sites/3/2017/01/Promoting-and-Protecting-Intellectual-Property-in-Nigeria.pdf>

Soyombo, A., Agar (2021). Intellectual Property & Small and Medium-Sized Enterprises: Taking Your Ideas to Market. Retrieved May 8, 2021 from DOA: <https://www.doa-law.com/intellectual-property-small-and-medium-sized-enterprises-taking-your-ideas-to-the-market/>

PricewaterhouseCoopers (2019). Impact of Intellectual Property Infringement on Businesses and The Nigerian Economy. Retrieved May 7, 2021 from Pwc.com:

<https://www.pwc.com/ng/en/publications/intellectual-property-infringement-and-the-nigerian-economy.html>

Adebola, T. (2018). Examining plant variety protection in Nigeria: Realities, obligations, and prospects. J World Intellect Prop. 2018;1–23. <https://doi.org/10.1111/jwip.12113>

Guriqbal, S. (2006). The Importance of Intellectual Property(IP) for Enhancing The Competitiveness of Small and Medium-Sized Enterprises (SMEs). Retrieved May 11, 2021 from [https://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=63852](https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=63852)

Adebayo, O (2020). The Rationale for Protecting Geographical Indications in Nigeria. Retrieved May 14, 2021 from Mondaq: <https://www.mondaq.com/nigeria/trademark/1006534/the-rationale-for-protecting-geographical-indications-in-nigeria>

Olubanwo, F., Oguntuase, O. (2019, March 11). Strengthening Intellectual Property Rights and Protection in Nigeria. Retrieved May 16, 2020, from Mondaq:

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

Jackson Etti & Edu. (2009). Intellectual Property: A Tool for Economic Growth In Nigeria.

Retrieved May 12, 2021 from

Mondaq:<https://www.mondaq.com/nigeria/trademark/82368/intellectual-property-a-tool-for-economic-growth-in-nigeria>

Oyebola, C (2021). IP as a tool for economic growth in Nigeria. Retrieved May 12, 2021 from Inventa.com: <https://inventa.com/en/ng/news/article/616/ip-as-a-tool-for-economic-growth-in-nigeria>

OECD, (2004). Promoting Entrepreneurship and Innovative SMEs in a Global Economy. Retrieved May 12, 2021

Singh, R (2014). Role of Intellectual Property Rights for SME's: Need to Manage Knowledge. Retrieved May 10, 2021

Patents and Designs Act (1971). An Act to make comprehensive provisions for the registration and proprietorship of patents and designs in Nigeria and other matters ancillary thereto, enacted in 1971.

Trade Marks Act (1967). The relevant legislation governing registration of trademarks in Nigeria

World Intellectual Property Organization (WIPO). (2003). WIPO Magazine. Retrieved May 12, 2021

Alexander, O. (2021). A Startup bill for Nigeria is being discussed Between Founders, Investors and Government reps. Retrieved May 16, 2021 from Techcabal.com: <https://techcabal.com/2021/05/14/nigeria-startup-bill-proposal/>

European Commission. (2020). Startup Acts are the next form of policy innovation in Africa. Retrieved May 16, 2021 from: <https://africaeurope-innovationpartnership.net/news/startup-acts-are-nextform-policy-innovation-africa>