

Intellectual Property, SMEs, and Economic Recovery in Nigeria

Joan Eseoho Edegbai*

Faculty of Law, Ambrose Alli University, Nigeria

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"We need to begin to see IP not just as a vertical but as a horizontal catalyst for jobs, enterprise growth and economic development."

Daren Tang, Director General, World Intellectual Property Organization.¹

1.1 Introduction

SMEs are to most economies of the world what blood is to the human body. Without it, there is barely a significant chance of survival. According to a report by the World Bank, SMEs make up to 90% of the world's businesses and employ around 50% of the global workforce.²

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¹ Daren Tang, "World Intellectual Property Indicators 2020" (WIPO) <https://youtu.be/ncMZ2WvhCb4>< Accessed May 2021>

² The World Bank, "Small and Medium Enterprises(SMEs)Finance <https://www.worldbank.org/en/topic/sme/finance>< Accessed May 2021>

In Nigeria, a recent survey carried out by the National Bureau of Statistics (NBS) and the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) indicates that SMEs in Nigeria account for 96% of registered businesses and similarly employs an estimated 84% of the labor force.³ Undoubtedly, most economies of the world today thrive on the backbone of SMEs. Recent European studies have revealed that SMEs that utilize Intellectual Property Rights (IPR) performs better than those who do not.⁴ According to WIPO, Intellectual Property is the creation of the mind: inventions, literary and artistic works and symbols, names, images and designs used in commerce.”⁵ These are all protected in law through IPR like patents, copyrights, trademarks and industrial designs. This essay looks at the nexus between SMEs and IP and further considers how an efficient utilization of IP Rights could benefit SMEs, and how this on the long run could result in Nigeria’s economic recovery. It inevitably appraises the challenges faced by SMEs in utilizing IPR and proffers pathways and solutions.

1.2 The Role of Intellectual Property in Supporting SMEs for Nigeria’s Economic Recovery

Despite the challenges orchestrated by the recent global pandemic, Nigerian SMEs have shown resilience and massive ability to adapt and arguably thrive. SMEs are essentially the backbone of national economies. However, a common misconception often conceived by a vast majority is that IP is a preserve of big business.⁶ This is largely untrue, as statistics have shown that SMEs are can thrive better with utilization of IPR. It is thus necessary that IP is seen as a power tool for economic growth rather than an obscure concept meant for a legally savvy few. The most imperative goal of IP is to ensure that an innovator benefits from his own work rather than the monopoly of his innovation.

³ PWC Nigeria, “ Nigeria SME Survey: Assessing current market conditions and business growth prospects <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> <Accessed May 2021>

⁴ Julian Crump, “ IP protection: building value and growth for small businesses” (WIPO Magazine 2021)https://www.wipo.int/export/sites/www/wipo_magazine/en/pdf/2021/wipo_pub_121_2021_01.pdf <Accessed May 2021>

⁵ WIPO, “what is intellectual property” <https://www.wipo.int/about-ip/en/> <Accessed May 2021>

⁶ World Intellectual Property Day 2021, Navalayo Osembi-Ombati, Founder and CEO ENDA “Taking your ideas to the market” <https://www.youtube.com/watch?v=G4H2PiC-bC4> <Accessed May 2021>

Most SMEs are often victims of IP theft as their inventions are susceptible to plagiarism, cybersquatting and trademark squatting among others. As a result, SMEs are enjoined to seek protection in IPR and further protect their businesses through trademark protection, notifying the relevant authorities of the creation of copyrightable works, protecting innovation through patents and enhancing value of SMEs through effective IP asset valuation and management. If IP is left unprotected, a good invention may be lost to bigger competitors leaving the inventor without financial benefits or reward.⁷ Adequate protection of a company's IP deters infringement and turns ideas into real market value for the creator fostering more creativity and boosting innovation.⁸

A typical SME success story is the case of NTP Inc. and Research in Motion (RIM) over the Blackberry device. Blackberry maker RIM had infringed on NTP's patents. After much negotiations which started at four million Dollars, RIM paid over 600 million Dollars to NTP after the case was settled.⁹ Thus, it is distilled that IP can protect SMEs and they must show no complacency in utilizing it.

Over the years, Nigeria has become a target destination and transit route for counterfeit and pirated goods.¹⁰ The market is often flooded with substandard goods and illegally imitated products of already established brands. In the last 10 years, Nigeria has been rated top 10 of countries with most prevalent cases of piracy hovering around 80% to 90%. This is often due to IP rights not being utilized and infringements not sanctioned. As Nigeria increasingly becomes a major actor in the economic hub of Africa, the protection of IPR is strategic to not just the non-oil sector but also to economic growth and development goals. With IP protection and efficient enforcement, this grotesque reality can be avoided and infringers can be sanctioned accordingly.

IP can generate income for SMEs through licensing, sale or commercialization of IP products or services. With IP Rights like trademarks, SMEs can franchise to other businesses and further

⁷ Sati-Salmah Sukarmijana and Olivia De Vega, "The importance of intellectual property for SMEs; Challenges and moving forward"
https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_and_Moving_Forward <Accessed May 2021>

⁸ Supra.

⁹ Kirk Teska, "The story behind the Blackberry Case" <https://spectrum.ieee.org/consumer-electronics/gadgets/the-story-behind-the-blackberry-case> <Accessed May 2021>

¹⁰ Federal Ministry of Industry, Trade and investment "Role of SMEs in Driving Economic Recovery in Nigeria Through Markets and Intellectual Property"
<https://www.proshareng.com/news/MSME%20START%20UP/Role-of-SMEs-in-Driving-Economic-Recovery-in-Nigeria-Through-Markets-and-Intellectual-Property/57016> <Accessed May 2021>

boost business growth. Early trademark registration in a global market can be a valuable component of a branded business strategy.¹¹ Trademarks and branding have become an integral business strategy for entrepreneurs. SMEs that utilize trademark rights can franchise just as Kentucky Fried Chicken (KFC) once did in Nigeria.¹² Trademarks play a significant role in advertisement and consumers are largely influenced by advertisement.

Without an effective IPR enforcement regime, Foreign Direct Investors (FDI) may move to other destinations where IP is better enforced and protected. IPR can enhance the value of SME in the eyes of investors, thus in an instance of a merger acquisition, IP rights may significantly increase the value of the enterprise.¹³

Nigeria's biggest resource is not oil but its people rich in creativity, intelligence and energy. Significantly, unemployment is a frontline issue crippling Nigeria's economy. Undoubtedly, when SMEs begin to experience business growth from protection of their IP, there may be employment needs which will further account for a decrease in employment rate in Nigeria.

The strategic utilization of IP assets can therefore substantially boost the competitiveness of SMEs. Like physical assets, IP assets must be valued, maintained and accounted for.

1.3 Challenges Faced by SME's in Utilizing Intellectual Property

Many SME owners do not appreciate the role of IPR in business growth and development as a vast majority perceive IP as an esoteric concept. As a result, they are indifferent to making effort in registering their intellectual property to secure their interest and their intangible creations. Some SME owners also find IP to be abstract and lack the information regarding the avenue available to them to protect their businesses. Those possessing some knowledge think of the

¹¹ Tiki Dare, President (The International trademark Association)Intellectual Property and SMEs: How to take your idea to the market <https://www.youtube.com/watch?v=G4H2PjC-bC4> <Accessed May 2021>

¹² Sati-Salmah Sukarmijana and Olivia De Vega, "The importance of intellectual property for SMEs; Challenges and moving forward"
https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_and_Moving_Forward <Accessed May 2021>

¹³ IPPNG, "Increasing the Marketing Value of Business with IP" <http://ipopng.gov.pg/increasing-productivity/> <Accessed May 2021>

process as being too cumbersome; the resultant effect is an untapped and under-utilized IP system.¹⁴

Furthermore, the cost of getting IP registrations is generally perceived as one of the greatest barriers for SMEs. SMEs are threatened by the cost for application, legal advice and translation cost whenever an applicant is applying abroad.¹⁵ The time taken to grant a patent is also a concern for most SMEs. A long delay for obtaining patent leaves a great deal of uncertainty and delays possibilities of finding potential licensees or partners for exploiting an invention.¹⁶

1.4 The Pathway

It is important to create awareness on IP for SMEs and spread information for the active utilization of IP, as a vast majority of SMEs are not fully abreast of the potential benefits that IPR proffers to their businesses. For example, Australia has taken an active role in raising awareness and educating entrepreneurs about the importance of the IP system.¹⁷ The Australian Government set up a marketing department in order to conduct training and promotion activities which was targeted at SMEs and the general public.¹⁸

The government must also pool resources to prevent infringement and ensure infringers of IP are duly sanctioned. In 2015, the US Department of Homeland Security created a national IP coordination center to combat IP theft through partnership with the public and private sector, a similar model could benefit Nigeria. Government institutions must also seek to address not just SMEs but also their business advisers who are more likely to be listened to by SME owners.

¹⁴ Sati-Salmah Sukarmijana and Olivia De Vega, "The importance of intellectual property for SMEs; Challenges and moving forward"
https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_and_Moving_Forward <Accessed May 2021>

¹⁵ Supra.

¹⁶ Supra.

¹⁷ Sati-Salmah Sukarmijana and Olivia De Vega, "The importance of intellectual property for SMEs; Challenges and moving forward"
https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_and_Moving_Forward <Accessed May 2021>

¹⁸ Supra.

Additionally, Government can also facilitate SMEs access to information on IP. Information on laws, taxation, custom regulations may be out of reach for SMEs owners.¹⁹ Government can create small business administration services to assist SMEs in this regard. It is important for relevant stakeholders in the public, private and civil society to come together and make awareness on IP possible. In the republic of Korea, close cooperation between KIPO (Korean Intellectual Property Office), the Chambers of Commerce, the Government's SMEs support agency; the Korea Patent Attorney Associations, and other stakeholders in the field have established a network of support for SMEs.²⁰ Thus, the importance of cooperation cannot be over emphasized for the successful utilization of IP by SMEs.

1.5 Conclusion

The most important approach to IP is to utilize it as a commercial tool and as a strategic tool for an enterprise.²¹ Having a patent, trademark or design is key into entering negotiations. SMEs can definitely utilize IPR in attracting investors and scaling up their business. Undoubtedly, new ideas are essentially the lifeblood of SMEs and IP is premised on the idea that people should truly be certified as the owners of their own ideas. Nigerian SMEs must not sleep on this luscious opportunity to foster their development; all hands must be on deck to see that SMEs begin to explore business potentials from IP protection. Contrary to popular concerns, IP is not an obscure concept, it is a catalyst that if properly harnessed, advances the ball!

¹⁹ Sati-Salmah Sukarmijana and Olivia De Vega, "The importance of intellectual property for SMEs; Challenges and moving forward"
https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_and_Moving_Forward <Accessed May 2021>

²⁰ Supra.

²¹ Hongbing Chen, (Trademark Specialist,WIPO), 'Intellectual Property and SMEs: How to Take your Ideas to market <https://www.youtube.com/watch?v=G4H2PjC-bC4> <Accessed May 2021>