



# Intellectual Property, SMEs, and Economic Recovery in Nigeria

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## 1.1 Introduction

On December 3, 2020, a Nigerian vendor on Twitter lamented about how a reseller repackaged her products and sold them as theirs without acknowledging her (the vendor).<sup>1</sup> In the slew of opinions generated on social media, very few persons mentioned the fact that the reseller's actions could perhaps precipitate Intellectual Property (IP) enforceable issues relating to trademark infringement. This story reflects Nigerian Small and Medium Scale Entrepreneurs' general attitude towards IP and its role in their businesses.<sup>2</sup>

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<sup>1</sup> See original tweet here: <https://twitter.com/Brownsugarsteph/status/1334434609065390080?s=20>

<sup>2</sup> Contrast this scenario with the United States' case of *Kerry Wilson v The Walt Disney Company* (14-cv-01441-VC), where a relatively unknown creative Kelly Wilson went up against the megaconglomerate Disney to pursue a perceived copyright infringement in the *Frozen* movie trailer. Appreciate the audacity, aided, no doubt, by a fully blooming IP system.

A small-to-medium-size enterprise (SME) is a business with revenues, assets, or employees that are less than 50.<sup>3</sup> For most companies, the upper range sits around 250.<sup>4</sup>

The importance of SMEs to any economy cannot be overemphasized. According to a report by PWC, in Nigeria, SMEs contribute 48% of the national GDP, account for 96% of businesses, and 84% of employment.<sup>5</sup> Significantly, the SME sector in Nigeria is strategically positioned to absorb up to 80 percent of jobs.<sup>6</sup> Given the current state of the global economy, the prospects for this cannot be glossed over.

Intellectual Property (IP), on the other hand, refers to creations of the minds, such as inventions, literary and artistic works, designs, and symbols, names, and images used in commerce.<sup>7</sup> The bundle of rights is protected by IP Laws and are legally enforceable, as they “enable people to earn recognition or financial benefit from what they invent or create”.<sup>8</sup> Intellectual Property rights seek to reward individuals for their creativity. Considering that each of these SMEs “have taken an idea, married it with ingenuity to create a product or a service consumers want”,<sup>9</sup> this puts them squarely in the realm of IP. In fact, according to a report, SMEs that have at least one IP right are more than 21 percent more likely to experience a growth

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<sup>3</sup> ‘What are SMEs?’ < <https://corporatefinanceinstitute.com/resources/knowledge/other/small-and-medium-sized-enterprises-smes/>> accessed 16 May 2021.

<sup>4</sup> Ibid.

<sup>5</sup> PWC, ‘Nigeria SME Survey’ < [<sup>6</sup> Ibid.](https://www.pwc.com/ng/en/events/nigeria-sme-survey.html#:~:text=The%20SME%20sector%20is%20the,employment%2C%20economic%20and%20export%20growth.&text=In%20Nigeria%2C%20SMEs%20contribute%2048,businesses%20and%2084%25%20of%20employment.> accessed 10 May 2021.</a></p></div><div data-bbox=)

<sup>7</sup> World Intellectual Property Organization (WIPO), ‘What is Intellectual Property’ < <https://www.wipo.int/about-ip/en/>> accessed 5 May 2021.

<sup>8</sup> Ibid.

<sup>9</sup> Instructions for the 2021 National IP Essay Competition.

period.<sup>10</sup> Furthermore, IP provides a level playing ground and closes the gap between SMEs and large corporations.

From the foregoing, it can be surmised that the neglect of IP solutions has had SMEs operating below their threshold. This cannot be allowed to be if a wholesome economic recovery is expected in the wake of the coronavirus pandemic.

This essay considers how SMEs can utilize IP systems and processes to stay afloat, boost the economy and herald an era of prosperity post-COVID-19.

## **1.2 The Benefits of Intellectual Property for SMEs in Nigeria**

One of the supervening challenges SMEs face is a lack of finance. Most small businesses fail to access the initial capital needed to kick off their ideas because of a lack of access to loans, high-interest rates, and lack of collateral, amongst others.<sup>11</sup> These problems can be elided if SMEs self-generate sustenance through effective IP Financing, using IP assets that include patents, trademarks, copyright, trade designs, and trade secrets. One way to do this is by licensing these assets. For example, Acumen Design Associates, a multidisciplinary design company, moved from consultancy to licensing their designs, generating huge funds, including an undisclosed huge

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<sup>10</sup> Survey conducted by the European Patent Office and the European Union Intellectual Property Office, accessible at [http://documents.epo.org/projects/babylon/eponet.nsf/0/F59459A1E64B62F3C12583FC002FBD93/\\$FILE/high\\_growth\\_firms\\_study\\_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/F59459A1E64B62F3C12583FC002FBD93/$FILE/high_growth_firms_study_en.pdf)

<sup>11</sup> Pariminder Vir OBE, '5 Challenges that African Start-Ups Face in Business' [6 March 2019] <<https://www.linkedin.com/pulse/5-challenges-african-start-ups-face-business-parminder-vir-obe>> accessed 12 May 2021.

licensing deal with United Airlines in 2016.<sup>12</sup> Also, even though Daimler registered 2,000 patents in 2009, it still pays 2,600 outside inventors to use their innovations in Daimler products.<sup>13</sup>

Furthermore, SMEs could also consider IP lending. Here, IP (usually patents) is pledged as collateral, and the patent is reregistered in the name of the lender. In 2017, Fortress Investment Group loaned Theranos, a health technology company, \$100 million. The security for the loan was 726 granted, high-quality patents.<sup>14</sup> IP can also enable SMEs to access venture capital funding. Venture capitalists often look at a startup's IP portfolio when deciding whether or not to invest; the startup can increase chances of receiving initial funding, as well as the overall amount received, by pursuing IP protection.<sup>15</sup> Using the various forms of IP financing, SMEs can become more economically viable. The main and ancillary benefits of this include greater capacity for employment, increased contribution to the nation's GDP through taxes and rates, as well as the direct impact on the immediate communities through corporate social projects. Considering the dire states the Nigerian economy is in, help from SMEs will be more than necessary.

It is not uncommon to find SMEs and startups collapsing due to the activities of large corporations. Large businesses directly undercut SMEs by stealing their ideas, establishing monolithic national/international structures, or monopolizing government incentives. Additionally, large corporations are often prolific with registering and enforcing their IP rights.<sup>16</sup> Eventually, SMEs

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<sup>12</sup> Catherine DHanjali, 'SME Case Study: Shift from Consultancy to Licensing Helps Design Associates Fly High' [25 April 2021] <https://ficpi.org/ip-news/sme-case-study-shift-consultancy-licensing-helps-design-associates-fly-high> accessed 9 May 2021.

<sup>13</sup> Peter Thomas, 'Patents Are the Future of Innovation Management' [2010] accessed February 10, 2011, <http://www.daimler-technicity.de/en/christianhahner>.

<sup>14</sup> Report by the iam Media Group, available at <https://www.iam-media.com/coronavirus/saturday-opinion-ip-financing> accessed 9 May 2021.

<sup>15</sup> Mary Juetten, 'Do Venture Capitalists Care About Intellectual Property?' [11 August 2015] <https://www.mhbh.com/intelligence/snippets/intellectual-property-and-the-venture-funded-startup> accessed 19 May 2021.

<sup>16</sup> A joint EUIPO/IPO Report in 2021 show that about 60 percent of large firms own at least one of the three main IP rights as opposed to 9 percent of small businesses. (Report accessible at <https://euipo.europa.eu/ohimportal/en/news/-/action/view/8510485>

are forced to liquidate. SMEs can co-opt the exclusivity that IP provides to protect their ideas and products and also gain a competitive advantage.

Firstly, they could use trade secrets to protect certain aspects of their IP. In addition, they could secure patents or register their trademark before deploying goods and services into the market, thus enjoying the sole right to exploit the economic advantages accruing from such registration. This automatically prevents others from the unauthorized use of their IP rights and subsequently grants the right to seek redress for any infringement. This prohibition extends to large corporations. Registration, and with it exclusivity, also gives SME right holders a firm footing when bargaining with large corporations. For instance, in 2013, two-year-old startup Snapchat turned down a \$13 billion offer from Facebook.<sup>17</sup> In 2021, the company is valued at \$26.64 billion.<sup>18</sup> Snapchat's survival against the Goliath that is Facebook can be traced to the exclusivity that IP offers it.

Another way IP boosts visibility for businesses is through enhancing and protecting goodwill. Goodwill is one of the strongest intangible (IP) assets any company can have. In 2014, Facebook acquired WhatsApp for \$19 billion; it recorded \$1.8 billion of that as goodwill.<sup>19</sup> The power of goodwill is further exemplified by the fact that Alibaba, the world's greatest retailer, owns no stores, Uber, the world's largest taxi business, owns no taxis, and iTunes only supplies digital recordings of music.<sup>20</sup> This is because IP creates a protective wrapper around an intangible asset

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<sup>17</sup> Anlee Elingson, 'Snap Reportedly Turned Down Facebook a Second Time' [24 December 2018] <<https://www.bizjournals.com/losangeles/news/2018/12/24/snap-reportedly-turned-down-facebook-a-second-time.html>> accessed 9 May 2021.

<sup>18</sup> Mansoor Iqbal, 'Snapchat Revenue and Usage Statistics' [6 May 2021] <<https://www.businessofapps.com/data/snapchat-statistics/>> accessed 9 May 2021.

<sup>19</sup> 'Goodwill' <<https://thismatter.com/money/stocks/valuation/goodwill.htm>> accessed 10 May 2021.

<sup>20</sup> Tom Goodwin, 'The Battle is for the Customer Interface' [4 March 2015] <<https://techcrunch.com/2015/03/03/in-the-age-of-disintermediation-the-battle-is-all-for-the-customer-interface/>> accessed 15 May 2021.

(goodwill) – locking in value and making it tradeable.<sup>21</sup> Generally, using IP, SMEs can improve their goodwill by registering and aggressively promoting their trademarks. With IP-sponsored visibility, SMEs can dismantle monopolies, decentralizing and equitably distributing economic gains. New players in the field will present multifaceted products and options for consumers, enhance internal competition and provide revenue streams for the government. Increased visibility for SMEs will also position them to compete favorably on the global stage, ensuring that the nation reaps the benefits of international trade.

Finally, IP provides grounds for commercial relations, and with it, room for litigation and redress. SMEs are often reluctant to pursue IP violations due partly to ignorance and a lack of faith in the Nigerian judicial process. The net effect of this is that they are disincentivized from pursuing legitimate IP claims, and compensation where appropriate.

The Nigerian government can dislodge the problem of ignorance by engaging in massive IP education. This could include establishing IP clubs in secondary schools and tertiary institutions, sensitizing SMEs about the various IP options they can employ, and engaging in massive grassroots IP education.

The judiciary can work to restore the faith of the common man in the judiciary by firstly training judges to be IP-savvy and then, using the mechanism of precedents, laying a solid framework regarding the stance of the Nigerian judiciary regarding IP violations. A case in point is the general furore of the Nigerian case of the musicians Kcee and Jude Nnam. The media buzz it has generated has done a lot of good bringing to the spotlight IP infringements issues. It behooves

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<sup>21</sup> Julian Crump, 'IP Protection: Building Value and Growth for Small Businesses' [March 2021] [https://www.wipo.int/wipo\\_magazine/en/2021/01/article\\_0003.html](https://www.wipo.int/wipo_magazine/en/2021/01/article_0003.html) accessed 12 May 2021.

the courts to ensure that justice is done and public confidence is amplified using this case as a linchpin.

More so, stakeholders can use opportunities presented by IP cases to educate SMEs on the rights to explore. For instance, Bloomberg reports that there were reportedly more than 60 amicus curiae briefs<sup>22</sup> filed in support of both parties in *Google v Oracle*,<sup>23</sup> including briefs from IBM, Microsoft, CCIA, EFF, amongst others.<sup>24</sup> The arguments on both sides added elegance and indeed showed a living, breathing intellectual property spirit amongst the United States.<sup>25</sup> Nigerian IP stakeholders can adopt such an attitude. By creating an enabling environment to pursue claims in IP violations, IP right holders owners will first be incentivised to seek and utilize IP solutions for the different problems their small businesses face, and secondly to fight for their rights when violations occur.

### 1.3 Conclusion

Intellectual Property provides a virgin land of untapped opportunities for Nigerian SMEs. It bears reiterating that given the sorry state of the global economic scene, it would be foolhardy for any government to neglect a viable pathway to recovery. This, essentially, is what Intellectual Property provides for SMEs. Thus, it behooves these SMEs to vigorously, as a matter of survival, pursue IP solutions. Furthermore, there is a commensurate responsibility on the Nigerian government to

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<sup>22</sup> Naomi Nix and Joe Light, 'Google, Oracle Financed Many Supporters in Supreme Court Faceoff' [6 October 2020] <<https://www.bloomberg.com/news/articles/2020-10-06/google-oracle-financed-many-supporters-in-supreme-court-faceoff>> accessed 15 May 2021.

<sup>23</sup> 593 US (2021).

<sup>24</sup> 'Oracle v Google: Guild Joins Amicus Brief' <<https://graphicartistsguild.org/oracle-vs-google-guild-joins-amicus-brief/>> accessed 15 May 2021.

<sup>25</sup> This is not mere postulation, even the United States Supreme Court has taken such cognizance of Intellectual Property that lines are drawn demarcating judges who are pro IP rights and those aren't, the death of Justice Ruth Bader Ginsburg being celebrated as a loss for the former group.

provide an enabling environment for IP to thrive, incentivize, encourage, and help SMEs scale up using IP.