



# ENFORCEMENT OF IP RIGHTS

26-04-18

G.O Sodipo and Co News Letter

***“Ingesting a much higher dose than recommended by a doctor or on the medicine pack, can lead to serious complications and even death. It is therefore critically essential to ensure authentic products are packaged in conformity with high standards, in the food and drugs industry”***  
**Boma V. Enwesi, LLB, BL, LLM (E-commerce Law)**

Today we examine the progress made by some Nigerian government agencies in enforcing the protection of intellectual property and consumer rights in the country and highlight recently decided cases on intellectual property rights enforcement.

## **NIGERIAN COPYRIGHT COMMISSION**

The Nigerian Copyright Commission (NCC) recently seized broadcast contrivances (Decoders, Splitters, Senders and Boosters) worth 36.1 Million Naira with the arrest of two suspects in Delta State. This was done through an anti-piracy raid carried out from March 13 to 16.

The enforcement of Copyright Law by the NCC has reached an all-time high this year, as it has recorded 58 convictions and 150 cases in the Federal High Courts. An example of such convictions is the recent sentencing by the Federal High Court, Lagos of Mr. Anthony Okojie to two years imprisonment on a one count charge of unauthorized sale of 376 copies of bibles and motivational books which infringed the Bible Society of Nigeria’s copyright.

The international community has also noticed the zeal of the NCC with the United States Embassy offering to collaborate with the NCC on copyright administration, especially in offering capacity building in on-line Content Investigation, on-line Piracy and Cybercrimes and conducting outreach programmes to enhance copyright knowledge.

Over the past few years, the NCC has made giant strides which include pro-active enforcement and prosecution of Copyright offences; continuous reform of the Nigerian Copyright Administration; the e-Registration programme, the ratification and depositing of four (4) Instruments of Treaty at WIPO, and the recent approval of the proposed Copyright Bill for deliberation at the National Assembly.

The future of copyright protection looks promising indeed.

**National Agency for Food and Drug Administration and Control (NAFDAC).** NAFDAC has equally been very active for instance, this agency was quick to alert the public on the fact that it had been informed that, the General Council Medical Colleges of Spain in the January/February 2018 edition of its Journal of Tropical Medicine alerted that a batch of fake Penicillin-V (Phenoxymethyl Penicillin) was in circulation in the South-West region of Cameroun. It went ahead to implore all pharmaceutical importers, distributors, wholesalers, retailers, healthcare providers and consumers to be on the lookout and notify the nearest NAFDAC office of any information concerning the distribution, sale and use of the fake Penicillin-V tablet.

NAFDAC was also informed by the United States Food and Drug Administration that the latter is working with manufacturers of Imodium (loperamide) which is an over-the counter (OTC) drug that helps control symptoms of diarrhea, to use

single dose packaging to ensure its safe use. This is as a result of increased reports of serious heart problems and deaths when higher than the recommended dose is taken.

### **Estimated duration for the Registration of Food and Drugs**

Submission of Application Document Verification – 10 days for food and drug

Facility Inspection/Sampling – 20 days for Food, 40 days for Drug

Laboratory Analysis – 30 days for Food, 40 days for Drug

Final Vetting – 10 days for food and drug

Approval Meeting/Issuance of NAFDAC registration Number (Certificate of registration) – 20 days for food and drug.

The total number of days is 90 days for Food and 120 days for Drugs.

### **The Standards Organization of Nigeria's (SON)**

The World Bank recently sent a 5-member delegation on a fact-finding mission to the SON Abuja office in relation to a gap analysis of SON's activities as regards the Nigerian Quality Infrastructure (NQI) project, with emphasis on standardization and quality assurance activities; laboratories; engagement with the private sector; micro, small and medium enterprises and how they affect the economy of the country among others. Currently, The Nigerian Quality Infrastructure is at an advanced stage with a world class laboratory complex at Ogba, Lagos at 95% completion and a National Metrology Institute complex in Enugu also at an advanced stage of completion.

The SON is under the supervision of the Federal Ministry of Industry, Trade and Investment and has offices in the 36 states of Nigeria. The World Bank delegation expressed its intention at the end of its visits to some of the offices, to identify the extent of work and areas requiring improvement, for its possible intervention.

The SON is also representing Nigeria, in its leadership of other West African countries to pioneer the implementation of the Economic Committee of West African States Quality Policy. Choosing Nigeria was largely as a result of SON's efforts in 2015 of articulating a National Quality Policy. The SON achieved this with the support of the European Union (EU) and the United Nations Industrial Development Organization (UNIDO).

### **LOTTERY BOARDS**

There is an ongoing tussle between the state agencies that govern lottery in different states and the federal agency that governs lottery in Nigeria at the national level. Although the **Lagos State Lotteries (Amendment) Law 2008**, authorizes the state agencies to issue "12-month permit" to companies that engage in promotions of their products, services and brands, Honourable Justice Mohammed Idris of the Federal High Court in Lagos on April 10 2018, restrained Lagos and Ogun State governments from shutting down businesses of such companies over failure to obtain lottery permits/licences.

The court's decision is in line with previous court judgements that have stated clearly that **once a company has paid the federal government (the National Lottery Regulation Commission) for a lottery permit or licence, it need not in addition, pay the state government agencies.**

## Highlights of recently decided Intellectual Property Law Cases in Nigeria

### The Musical Copyright Rights Society Nigeria Ltd/Gte is now a recognized Collective Management Organization:

Appeal No: CA/L/846/2009 between Performing & Mechanical Rights Society Ltd/Gte Vs. Skye Bank Plc, Musical Copyright Society Nigeria Ltd/Gte & Mechanical-Copyright Protection Society Limited.

In Suit No. FHC/L/CS/1049/06 filed before the Federal High Court in Lagos, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent had claimed declaration, injunction and damages against the Appellant and the 1<sup>st</sup> Respondent for alleged infringement of the copyright to a musical work in respect of which they are assignee and holder and owner and assignee, respectively. The Appellant objected and challenged the jurisdiction of the Federal High Court (hereinafter referred to as the trial court) to entertain the suit on amongst others, the ground that the Plaintiff is not a duly authorized collecting society in accordance with the laws of the Federal Republic of Nigeria. The Court of Appeal reaffirmed the decision of the trial court and held that the then Plaintiff (Musical Copyright society Nigeria Ltd/Gte) being in this suit an owner, assignee and exclusive licensee of copyright, is not affected by section 17 and 39 of the Copyright Act, which refers strictly to one engaged in collecting society functions. This judgement was given in October 2017.

### Multichoice Nigeria Limited ordered to Six Billion Naira (N6,000,000,000.00) in damages for copyright infringement;

Suit No: FHC/L/CS/1191/12 between Multichoice Nigeria Limited Vs. Musical Copyright Society Nigeria Ltd/Gte:

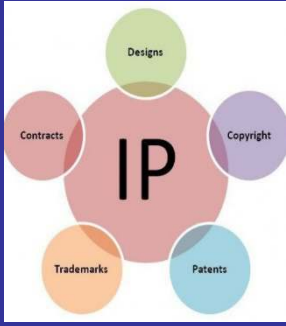
The Plaintiff commenced this action by a writ of summons in September 2012, claiming amongst others, a declaration that it was not legally obliged to pay any monies or royalties for material used in programming or content of the DSTV Bouquet unless the Defendant is licensed as a collecting society for that purpose by the Nigerian Copyright Commission, and claiming a perpetual injunction restraining the Defendant from demanding, collecting and/or receiving from the Plaintiff monies or any other form of payment for the use of material on programming and content on the DSTV bouquet. The Defendant/Counterclaimant in response filed an amended Statement of Defence and Counterclaim, claiming N5,490,652,125.00 (Five Billion, Four Hundred and Ninety Million, Six Hundred and Ninety Million, Six Hundred and Fifty Two Thousand, One Hundred and Twenty Five Naira) as special damages and N4, 509, 347,875.00 (Four Billion, Five Hundred and Nine Million, Three Hundred and Forty Seven Thousand Eight Hundred and Seventy Five Naira) as general and aggravated damages for the Plaintiff's flagrant use of works forming part of the counterclaimant's repertoire since January 2006 without consent or licence of the counterclaimant. Honourable Justice M.I Idris of the Federal High Court Lagos in January 2018 entered judgement in favour of the Counterclaimant. The Honourable Court held that the counterclaimant as owner, assignee and exclusive licensee was entitled to and therefore awarded the sum of Six Billion Naira (N6, 000,000,000.00) in damages for the infringement of the counterclaimant's copyright.

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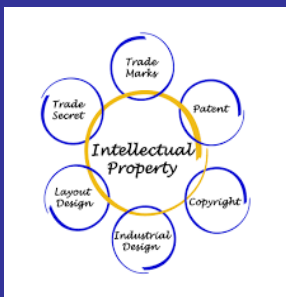
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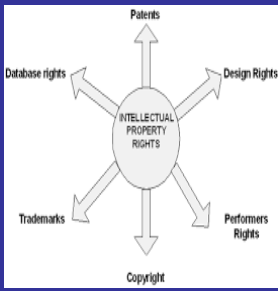
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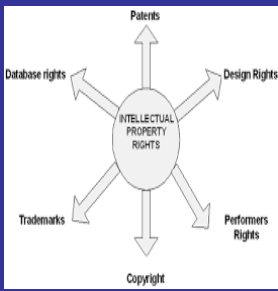
“Protection and enforcement of Intellectual Property Rights will encourage creativity and add support to the ongoing effort to diversify Nigeria’s economy ”- Boma V. Enwesi,LLB,BL,LLM(E-commerce Law)

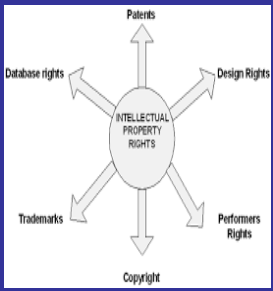




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