



2013 Intellectual Property Nigeria

2013 Nigerian IP Judicial Decisions: The Year in Review

December 12, 2013 Ufuoma Barbara Akpotaire

December 12, 2013 — Looking back at this year, we see that there was a lot of activities in the sphere of Intellectual Property Rights in Nigeria. From the National Agency for Food and Drug Administration and Control (NAFDAC) securing its first conviction through the Federal High Court; IP lawyers in Nigeria showing that they are fearless in taking anyone to court including the Trademarks, Patents and Designs Registry; the Nigerian Copyright Commission (NCC) securing a number of convictions on charges ranging from book to broadcast piracy; two tobacco companies disputing over the gold get-up of their cigarette packs; to the Musical Copyright Society Nigeria and the NCC giving IP lawyers a lot to talk and write about in terms of collecting societies in Nigeria. Not bad!

As the year draws to an end, there is no better time to take a closer look at some of the intellectual property rights decisions of our courts.

MARCH 2013

Music Copyright Society (NIG) Ltd/GTE & Ors. v. Nigerian Copyright Commission & Ors.

Suit No: FHC/L/CS/1163/12

Judgement delivered on March 18, 2013

Honourable Justice Muhammad Nasir Yunusa

Our theory is, that this case and its sister cases [FHC/IKJ/CC/18/2012, FHC/IKJ/CR/19/2012, FHC/IKJ/CR/20/2012, FHC/L/353C/2012, FHC/L/352C/2012, FHC/L/351C/2012, FHC/L/CS/478/2008, FHC/L/CS/35/2008, CA/L/925/2011 and FHC/L/CS/377/13...many sisters!] have become some of the most “famous” intellectual property disputes in Nigeria.

Facts: On December 14, 2007, about 20 fully armed mobile policemen stormed the business premises of the MCSN without a search warrant. Two officials of MCSN were detained at the office of the NCC without an arrest warrant or order of court. The NCC alleged that it had relied on its powers to enforce the Copyright Act inclusive of the powers to enter into any premises in Nigeria without warrant, arrest and prosecute any suspect, inspect and seize documents relating to piracy, and generally exercise all powers and privileges of a police officer in the investigation and prosecution of copyright crime. According to the NCC, the MCSN was performing the functions of a collecting society without its approval, which is required by Nigerian law.

Delivering the judgement on March 18, 2013, Honourable Justice Yunusa of the Federal High Court, declared that the activities of the MCSN is guaranteed by the Constitution of the Federal Republic of Nigeria and that the MCSN's operations are legal and constitutional. The court awarded damages against the NCC for 50 million Naira for what it termed “unlawful disruption and interference” in the MCSN's lawful business.

“...That the existence and the activities of the 1st Applicant is guaranteed under Section 40 and 44 of the Constitution and 1st Applicant's operation is legal and constitutional based on subsisting Order of the Court in Suit No. FHC/L/CS/35/08 delivered by Justice A. Archibong reinforcing the Applicant's rights as guaranteed by the Constitution of the Federal Republic of Nigeria.”...Justice M.N. Yunusa

APRIL 2013

International Tobacco Company Plc. v. British American Tobacco (Nig.) Ltd. & Anor.

CA/IL/43/2012

Judgement delivered on April 18, 2013

Court of Appeal

The Plaintiffs/Respondents — British American Tobacco (Nig.) Ltd. and Benson and Hedges Overseas Ltd., claimed that sometime in February 2012, they discovered that the Defendant/Appellant — International Tobacco Company Plc, manufactured, distributed and sold “Gold Bond” brand filter cigarettes in gold colour, which infringed their use of the get-up, device and design of gold colour for their “Benson and Hedges” brand of filter cigarettes.

At the lower court, the Plaintiffs/Respondents filed an action seeking several declaratory and injunctive reliefs for infringement and passing-off of their proprietary rights in their “Benson and Hedges” brand of filter cigarettes. The Plaintiffs/Respondents also filed an ex parte motion for interim and anton pillar orders of injunction. The lower court granted the interim orders.

On appeal to the Court of Appeal challenging the ex parte orders, the court considered whether the interim orders made by the lower court fell short of the requirements for granting ex parte injunctions and held amongst other things, that having regard to the timeline between when the Plaintiffs/Respondents found out about the Defendants/Appellants alleged passing-off, and the time in which they filed their application for the ex parte orders (estimated to be about 47 days), no emergency existed as the incidence happened long enough for the Plaintiffs/Respondents to have given due notice of the application to the Appellant.

“The respondents are caught in the intractable mire of the equitable maxims, delay defeats equity and equity aids the vigilant and not the indolent, vigilantibus et non dormientibus jura subveniunt. Those maxims still hold sway in the corpus of our laws... It follows that equity, which hosts the respondents’ ex parte application, has no patience for a person who relishes in dilatory attitudes. In the end, I find that the respondents, by their own showing, clearly, romanced with delay which defiled any iota of urgency or emergency that required prompt relief in terms of ex-parte orders.”

MAY 2013

The Case of My Pikin Baby Teething Mixture

Judgement delivered on May 17, 2013

Justice Okechukwu Okeke

Federal High Court

In Nigerian Pidgin, a language which is widely used across the country, the expression “my pikin” literally means “my child” and is often used as an endearment. But in 2008, “My Pikin Baby Teething Mixture” redefined those words completely. Barewa Pharmaceutical Ltd, the manufacturer of My Pikin Baby Teething Mixture, sold a paracetamol-based syrup that killed 80 babies in 2008. It was found that the syrup was contaminated with engine coolant diethylene glycol. In a judgement delivered on May 17, 2013, Justice Okechukwu Okeke of the Federal High Court while winding up the company, convicted two officers of the company for conspiracy and selling of dangerous drugs. The officers were sentenced to concurrent sentences of seven years for conspiracy to sell dangerous drug and seven years for selling dangerous drugs.

This action marked the first case in which NAFDAC secured an actual conviction through the Courts.

OCTOBER 2013

Registered Trustees of Intellectual Property Lawyers Association v. The Registrar, Trademarks, Patents and Designs and Anor.

Suit No. FHC/ABJ/CS/579/12

Judgement delivered on October 31, 2013

Honourable Justice A.F.A. Ademola

In May 2012, the Plaintiff (Registered Trustees of Intellectual Property Lawyers Association Nigeria) filed an action against the 1st and 2nd Defendants (the Trademark Registrar and the Honourable Minister for Trade and Investment respectively) challenging the Defendant’s announcement and subsequent requirement that from July 16, 2012, only accredited agents and lawyers would be allowed to make use of its online registration portal.

The Plaintiff's counsel, challenged the imposition of additional administrative fees on applications brought under the Trademarks Act and the Patents and Designs Act, without publishing the same in a Federal Gazette. The Plaintiff also challenged the Defendant's ability to impose accreditation of agents and legal practitioners. According to the Plaintiff, the mandatory accreditation imposed by the 1st Defendant on agents and legal practitioners was in violation of the Trademarks Act and the Legal Practitioners Act and Regulation.

The Plaintiff therefore sought an order setting aside the 1st Defendant's directive mandating the accreditation of agents and legal practitioners; an injunction restraining the Defendants from continuing the accreditation of agents and legal practitioners; and an injunction restraining the Defendants from collecting additional fees other than the application fees prescribed by law. Relying on the provisions of [Section 45 of the Trademarks Act](#), the Plaintiff asserted that neither the 1st or 2nd Defendant could validly increase or prescribe additional fees.

As part of the defence, the 1st defendant asserted that by virtue of Section 45 of the Trademarks Act, the 2nd Defendant was empowered to make regulations and that the accreditation requirement in no way prevents the Plaintiff from manual or regular filing of applications.

While the Court, per Ademola J., held that the 2nd Defendant in exercise of the powers conferred on him by Section 45 of the Trademarks Act can validly make regulations for the practice of trademarks in Nigeria, the court found that there must be a publication in the Federal Gazette as a condition precedent to imposing administrative fees on applications brought under the Trademarks Act and the Patents and Designs Act, to be complied with by the Defendants.

In the absence of such publication, the court held that neither the 1st or 2nd defendant can validly increase or prescribe additional fees under the Trademarks Act or the Patents and Designs Act. The Court also held that the additional fees imposed by the 1st and/or 2nd Defendants from July 16, 2012 are null and void and of no effect. An injunction was issued restraining the 1st and 2nd Defendants from collecting additional fees other than the application fees prescribed by Law.

The Court however declined to grant an injunction restraining the 1st and 2nd Defendants from introducing an accreditation scheme based on the 1st Defendant's statement on oath that it was neither preventing nor restricting access to the Registry. The Court also held that by introducing the online filing system, the Minister acted pursuant to the powers conferred by S 45(1) of the Trademarks Act.

[Full Judgement](#) is available here.

The Nigerian Copyright Commission (NCC) CASES

This year, the NCC's efforts in fighting piracy showed some interesting results especially as it relates to books and broadcast piracy. Some of the judgements secured by the NCC against accused persons in 2013 are provided below:

Date	Case	Nature of Piracy	Decision	Court
January 16, 2013	NCC v. Taiwo AdenijiFHC/IB/70C/10	Literacy Piracy	Convicted and sentenced to six (6) months imprisonment or a fine of N250,000	Federal High Court, Ibadan
January 30, 2013	NCC v. Eze IgweFHC/ABJ/CR/93/12	Sale and Possession of Pirated Optical Discs	Convicted and sentenced to six (6) months imprisonment or a fine of N5,000	Federal High Court, Abuja
February 4, 2013	NCC v. Aminat OnifadeFHC/IB/71C/11	Literacy Piracy	Convicted and sentenced to one (1) day imprisonment with a fine of N35,900	Federal High Court, Ibadan
June 11, 2013	NCC v. Awuru Chukwuma AbelFHC/L/151C/13	Literacy Piracy	Convicted and sentenced to three (3) months imprisonment	Federal High Court, Lagos



			without the option of fine	
June 11, 2013	NCC v. Jonaz OzoFHC/L/152C/13	Literacy Piracy	Convicted and sentenced to three (3) months imprisonment without the option of fine	Federal High Court, Lagos
June 18, 2013	NCC v. Emmanuel OguduFHC/L/181C/13	Literacy Piracy	Convicted and sentenced to three (3) months imprisonment or a fine of N10,000	Federal High Court, Lagos
June 18, 2013	NCC v. Nwali SundayFHC/L/153C/13	Book Piracy	Convicted and sentenced to N300 fine.	Federal High Court, Lagos
June 19, 2013	NCC v. Emordi Henry ChukwumaFHC/ABJ/CR/90/13	Broadcast Piracy	Convicted and sentenced to N10,000	Federal High Court, Abuja

Undoubtedly, it is encouraging to see cases that indicate growth in IP enforcement and prosecution in Nigeria. Now we wait to see what 2014 holds.

This article is intended to provide general information about the subject matter. Professional legal advice should be sought about specific circumstances.



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