

2014 Nigerian Intellectual Property Court Cases: The Year in Review



December 1, 2014 — 2014 has been another busy year for the Federal High Court in Nigeria. Ruling on patent infringement relating to transparent ballot boxes, operation of a collecting society in Nigeria, ownership of a trademark, damages for defamatory publication, counterfeiting of alcoholic beverages, and hearing a suit filed by the Federal Government for alleged violation of the Consumer Protection Act. NLIPW takes a closer look at eight interesting IP cases and decisions from 2014.

JANUARY 2014

1. **Bedding Holdings Limited v. Independent National Electoral Commission (INEC) & 5 Ors.**

Suit Nos: FHC/ABJ/CS/816/2010

Judgement delivered on Tuesday, January 28, 2014

Justice Ibrahim Auta of the Federal High Court

At issue: Patent Infringement

Facts: On November 25, 2010, Bedding Holdings Limited (the Plaintiff) sued INEC and 5 others (including INEC's chairman, Professor Attahiru, the Trademarks Registrar, and the Attorney General of the Federation) at the Federal High Court in Abuja for infringing its Patent Rights No. RP 16642 relating to Electronic Collapsible Transparent Ballot Boxes, and Patent Rights No. RP NG/P/2010/202 in respect of Proof of Address System/Scheme (PASS).

Both patents relate to the process and application of Direct Data Capture (DDC) machines for the compilation and collection of various biometric information and are protected by patents granted in accordance with the Patent and Designs Act.

The Plaintiff sought the following reliefs:

“A declaration that the Plaintiff is the bona fide owner of the Patent Rights No. RP 16642 and

Copyrights Designs No. RD 13841 in and over Electronic Collapsible Transparent Ballot Boxes (ECTBB) and Patent Rights No. RP NG/P/2010/202-Proof of Address System/Scheme (PASS) (Embedded with the Concept of the Coded Metal Plate) and the process and application of these products respectively to produce the Voter's Register;

"A declaration that the contract entered into between 1st and 2nd Defendants (INEC and its chairman, Attahiru Jega respectively) of the one part and the 4th-6th Defendants (Haier Electrical Appliances Corporation Limited, Zinox Technologies Limited and Avante International Technology Incorporation respectively) of the other part for the production, procurement, supply, acquisition, importation, purchase, receipt, sale of the Direct Data Capturing Machines, Laptops and/or the collation/compilation and production of the Voter's Register for the 2011 general elections or any other elections without first seeking and obtaining the written license, consent and authority of the Plaintiff is a flagrant infringement on the Plaintiff's Patent Rights No. RP 16642 and Copyrights Designs No. RD 13841 in and over Electronic Collapsible Transparent Ballot Boxes (ECTBB) and Patent Rights No. RP NG/P/2010/202-Proof of Address System/Scheme (PASS) (Embedded with the Concept of the Coded Metal Plate).

Judgement: On January 28, 2014, the court declared the Plaintiff as the owner of patent rights No: RP16642 and copyrights designs No: RD13841 over Electronic Collapsible Transparent Ballot Boxes (ECTBB), and patent rights No: RP NG/P/2010/202 – Proof of Address System/Scheme (PASS) – embedded with the concept of the coded mental plate – and their application for the process of producing voters' register.

The court also found the Defendants guilty of infringing the patent rights of the Plaintiff. The Court in arriving at its decision held that the Defendants violated the patents and consequently made a declaration that Bedding Holdings Limited is entitled to 50% of the total contract sum amounting to N17, 258, 820, 000 (Seventeen Billion, Two Hundred and Fifty Eight Million, Eight Hundred and Twenty Thousand Naira only) as the minimum reasonable royalty accruable for the infringement committed by INEC and the other Defendants.

The court ordered the Defendants to always seek prior consent of the Plaintiff before using the invention, failing which any act for which it is deployed would be rendered a nullity.

OCTOBER 2014

2. Musical Copyright Society Ltd/Gte v. Copyright Society of Nigeria and Nigerian Copyright Commission

Suit No: FHC/L/CG/377/2013

Judgement delivered on Friday, October 24, 2014

Justice Okon Abang of the Federal High Court

At issue: Operation of a Collecting Society in Nigeria

On March 22, 2013, the Musical Copyright Society of Nigeria (MCSN) filed Suit No. FHC/L/CS/377/2013 against the Copyright Society of Nigeria (COSON) and the Nigerian Copyright Commission (NCC). MCSN sought an order to restrain the COSON from parading itself as Nigeria's sole Collective Management Organization (CMO) for musical works and sound recordings. MCSN also challenged the approval of COSON as a sole CMO on grounds that COSON fraudulently misrepresented particulars of its membership to the NCC, which particulars the NCC relied upon to grant approval to COSON, in total disregard of the provisions of the Copyright Act, the Copyright Regulations of 2007 and the 1999 Constitution of the Federal Republic of Nigeria as amended.

On May 2, 2013, COSON filed a preliminary objection in response to the Suit. COSON contended that MCSN lacked

the requisite locus standi to institute the action and that MCSN did not obtain the necessary leave of court to file the Suit as required under Order 34, rules 3 and 4 of the Federal High Court Rules. COSON also contended that the suit amounted to an abuse of the processes of the court as the relief sought had been litigated upon in the Federal High Court in Suit No. FHC/L/CS/798/2010 (Musical Copyright Society of Nigeria v. Nigerian Copyright Commission).

Judgement: On October 24, 2014, Honourable Justice O.E. Abang struck out the Suit on grounds that MCSN lacked the requisite locus standi to institute an action against COSON and NCC. In his ruling, Mr. Abang made a clear distinction between the decision of the Court of Appeal in [MCSN v. Adeokin Records & Anor \(2004\)](#) and the decision of the Appeal Court in [Compact Disc Technologies v. MCSN \(2010\)](#). He said that the Adeokin decision could not be of assistance to MCSN because the Court of Appeal interpreted the provisions of Section 15 of the Copyright Act 1988 which had no limitation provisions. He went on to say that the Compact Disc decision of the Court of Appeal applied to the instant case not just because it was later in time but because the decision interpreted the 2004 Copyright Act which had limitation provisions in Section 17 of the Act.

Justice. Abang agreed with COSON that MCSN did not fulfil the conditions under Order 34, rules 3 and 4 of the Federal High Court Rules. He also, in alignment with the Court of Appeal decision in Compact Disc Technologies v. MCSN (2010), ruled that MCSN lacked the requisite locus standi to institute the action.

On the long canvassed argument by MCSN that the requirement for it to be approved by the NCC before it can operate as a CMO is unconstitutional, Justice Abang ruled thus:

“On the issue of Section 17 of the Copyright Act being in conflict with Sections 43 and 44 of 1999 Constitution as contended by the Plaintiff’s Counsel, it is my view that the requirement to obtain a licence from the 2nd Defendant to operate as collecting society does not amount to compulsory acquisition of the Plaintiff’s property.”

“The fact that the Plaintiff is required under Section 17 of Copyright Act to fulfill certain conditions to be entitled to exercise of a right acquired by him does not in my view amount to compulsory acquisition of a right to own a property. Section 17 of the Copyright Act is not in any way in conflict with the combined provisions of Sections 43 and 44 of 1999 Constitution.”

“I have no jurisdiction to entertain this suit. It is accordingly struck out with cost of N10,000 each awarded in favour of the 1st and 2nd Defendants payable by the plaintiff.”

3. Mr. Mayo Ayilaran of Musical Copyright Society of Nigeria Limited (MCSN) v. Chief Tony Okoroji, Copyright Society of Nigeria (COSON)

Judgement delivered on Friday, October 22, 2014
Justice Olubunmi Femi-Adeniyi of the Lagos High Court, Ikeja
At Issue: Operation of a Collecting Society in Nigeria

By a writ of summons dated April 16, 2002, the Plaintiff/Claimant, Mayo Ayilaran of MCSN, accused the Defendant, Tony Okoroji (Chairman of COSON), of defaming his character and demanded N100 million as damages. According to the Plaintiff, the Defendant had by a letter dated December 4, 2001 and addressed to Performing Rights Society Limited, United Kingdom with the heading: **“PRS Activities in Nigeria: Serving the Interest of the Authors/Composers or Mayo Ayilaran?”** and copied to the International Federation of Societies of Authors and Composers and the Nigerian Copyright Commission, defamed him by describing him as a dishonest, fraudulent, difficult, problematic and dissatisfied individual.

At trial, the Defendant did not deny authorship of the letter; he however contended that he wrote the said letter in his capacity as the Chairman of Performing and Mechanical Right Society of Nigeria (PMRS) and that the Plaintiff has been operating an illegal collecting society in Nigeria for many years for which he was facing criminal charges.

Judgement: On October 22, 2014, Justice Olubunmi Femi-Adeniyi of the Lagos High Court, while delivering the judgement of the court noted that the language used in the letter in question were carefully measured and were not spoken in the heat of an argument or in the prelude to a fight.

“The said letter contains three pages of writing carefully divided under subheads...I find and hold that the words used therein which are disparaging of the claimant are not mere vulgar abuse but that they were used intentionally and with the motive to remove the claimant in favour with the recipients of the letter.

“The defendant has not been able to successfully give lawful justification for the words he has used in relation to the claimant in the said letter to remove him from liability and I so hold.”

The judge ordered the Defendant to pay the Plaintiff the sum of N25 million as damages for the defamatory publication. The court also directed the Defendant to pay the sum of N250,000 as costs and an interest on the judgment sum at 10% per annum from the date of judgment. The judge also issued an order restraining the Defendant from further writing, publishing or causing to be written or published the aforesaid letter or words used therein or similar words defamatory of Plaintiff.

“The defendant also alleged that the claimant was facing criminal charges based on the illegality. However, this allegation was not supported by the production of any charge sheet proffered against the claimant as exhibit before the court, or even the proceedings of the criminal prosecution....Rather, it was the claimant who tendered Exhibit C23, the order striking out the charge against him in the Federal High Court given on June 18, 2002. The defendant tendered exhibits D1 to D3 in proof of his assertion that the claimant was collecting royalties from companies without MCSN being approved to do so.”

NOVEMBER 2014

4. Consumer Protection Council v. Coca-Cola Nigeria Limited and Nigerian Bottling Company

Ruling delivered on Tuesday, November 4, 2014
Honourable Justice Evoh S. Chukwu of the Federal High Court
At Issue: Alleged Violation of the Consumer Protection Council Act

The Federal High Court 8, Abuja, under Justice E.S. Chukwu, has fixed Tuesday, November 4 for the hearing of the suit filed by the Federal Government against Coca Cola Nigeria Limited and Nigeria Bottling Company Limited for alleged violation of the Consumer Protection Council Act.

The Global soft drink giant, Coca Cola Nigeria Limited, and its Nigeria franchise bottler, Nigeria Bottling Company Limited, are currently facing prosecution for allegedly violating the orders of the Council, which were given to ensure compliance with laid down safety standards and regulations and enhanced consumers' welfare.

This was after an administrative panel set up to investigate a consumer complaint regarding two half-empty cans of Sprite manufactured by Nigerian Bottling Company (NBC) Limited under the licence and authority of Coca Cola Nigeria Limited found them culpable.

As part of the Administrative Panel's recommendations, CPC, a parastatal under the supervision of the Ministry of Industry, Trade and Investment ordered Coca-Cola Nigeria Limited and the Nigerian Bottling Company, to subject their manufacturing processes to its inspection for a period of 12 months to ensure compliance with laid down safety standards and regulations, while demanding necessary compensation for the consumer/complainant.

Also, Coca-Cola and NBC were directed to formulate a shelf-life policy for their products; to review their Consumer Grievance Resolution Policy; supply chain management policy, product traceability policy; and to present written assurances that they would refrain from a continuation of any conduct which is detrimental to the interest of consumers.

In a bold move aimed at ensuring the protection of Nigerian consumers, the Federal Government, last week, dragged the Nigerian Bottling Company (NBC) Limited, Coca-Cola Nigeria Limited and their Chief Executives before a Federal High Court in Abuja for alleged criminal breach of the Consumer Protection Council (CPC) Act.

Documents obtained from the CPC in Abuja on Wednesday, indicated that the Attorney-General of the Federation, Mohammed Bello Adoke (SAN), in the charges filed before the Federal High Court, Abuja, had preferred a one-count charge against NBC and its Managing Director, and a two-count charge against Coca-Cola Nigeria limited and its Chief Executive, making them liable to jail terms ranging from three to five years, if found guilty.

The two criminal cases have been listed before Justice E.S. Chukwu of the Federal High Court 8, Abuja. The Federal Government in the charge against NBC and its Managing Director, Ben Langat, by the Director, Public Prosecutions of the Federation, on behalf of the Attorney-General of the Federation, alleged that the two accused persons have committed an offence by violating the Orders of the Consumer Protection Council by "deliberately failing, refusing and/or neglecting to comply with the Council's Orders, duly made and served on you, and thereby committed an offence contrary to Section 21 of the Consumer Protection Council Act, Cap C. 25, Laws of the Federation of Nigeria, 2004 and punishable under the same section."

In the first count of the two-count charge against Coca-Cola Nigeria Limited and its Managing Director, Adeola Adetunji, the Federal Government had alleged that the two accused persons have committed an offence by refusing to "attend the hearing of the Consumer Protection Council held in Abuja, in relation to investigation of violation of product quality standard under the Consumer Protection Council Act, after Summons was duly issued and served on you, and thereby committed an offence contrary to Section 18 of the Consumer Protection Council Act Cap C. 25 of the Federation of Nigeria, 2004 and punishable under the same section."

In the same vein, Coca-Cola and its Chief Executive, were also charged for violating the Orders of the Council by deliberately refusing to comply with the Order duly made and served on them, thereby committing an offence contrary to Section 21 of the Consumer Protection Council Act, Cap C. 25, Laws of the Federation of Nigeria, 2004 and punishable under the same section.

Speaking during a media briefing after the conclusion its investigation, the Director-General, CPC, Dupe Atoki, had stated that while NBC co-operated by providing information to the administrative panel of investigation, Coca-Cola refused to attend and testify. Atoki disclosed that the panel, after an extensive investigation, substantiated the allegation of product defect and a violation of the Consumer Protection Council's Act, based on which several recommendations were made and orders thereto issued to Coca-Cola and NBC.

A Federal High Court, sitting in Abuja, yesterday refused to issue a bench warrant for the arrest of the chief executives of the Nigerian Bottling Company, NBC, and Coca-Cola Nigeria Limited, after they failed to appear in a criminal case preferred against them by the Federal Government.

Justice Evoh Chukwu, in a brief ruling, did not give reason for his refusal of the Federal Government prayer, but observed that the arraignment of the two accused persons would not have been possible when one of them was yet to be served with the processes.

He however granted the prayer of the government for a substituted service, by pasting the processes on the wall of the premises of the accused.

The accused, Chief Adeola Adetunji of Coca-Cola Nigeria Limited and Mr. Ben Langat, of the NBC, were to be arraigned yesterday before the court for allegedly violating the Consumer Protection Council, CPC, Act.

When the matter came, counsel to the Federal Government, Chief Bayo Ojo, SAN, informed the court that the chief executives were not in court because the summons were not served on them

“My Lord, I have been informed by the court registry that it is only the first accused that were served and that they were unable to serve the second accused person”, Ojo told the court.

The prosecution counsel then applied that the second accused person be served through substituted means.

Ojo also applied that a bench warrant be issued against the accused for failing to appear in court to take their plea, despite the fact that they are aware of the matter.

While counsel to the NBC, Godswil Iwuacho filed a notice of preliminary objection to the charge against his clients, counsel to Coca-Cola, Oluseye Opasanya, SAN, objected to Ojo’s appearance as prosecution counsel, pointing out that the charge sheet served on his client was signed by the Director of Public Prosecution, DPP, and not a private lawyer.

Ojo however told the court that he has the fiat of the AGF to prosecute the matter. He went further to submit the fiat letter to the court.

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The arraignment of the Nigerian Bottling Company (NBC) Limited, Coca-Cola Nigeria Limited and their Chief Executives before the Federal High Court sitting in Abuja for criminal breach of the Consumer Protection Council (CPC) Act was stalled yesterday due to the absence of the accused persons.

The Federal Government had slammed a two count criminal charge on the accused persons bothering on criminal breach of acts regulating consumers’ right. At the resumed hearing, complainant counsel, Bayo Ojo, SAN told the court that the charge was ready for the accused to take the plea but was taken aback with absence of the NBC and Coca Cola. Ojo had earlier told the court the Chief Executives of the two organizations have not been served owing to the fact they have not been located.

He, however, prayed the court for order of substituted service on the Chief Executives to be pasted at a conspicuous place within the premises of their office. He also prayed the court to issue a bench warrant on the Managing Directors of both NBC and Coca-Cola for not appearing in court even when their respective organizations have been served with court process. Counsel to Coca- Cola, Godwin Elias, however, opposed to the application, adding that he has preliminary objection challenging the jurisdiction of the court to entertain the matter.

He contended that the issue of jurisdiction needed to be disposed off first before any other issue. He however served the objection on the complainant in court. Similarly, counsel to NBC and its chief executive, O. Opasanya, SAN opposed the complainant application. He however informed the court that he has preliminary objection as to the jurisdiction of the court. In his short ruling, the trial judge, Justice Evoh Chukwu, granted an order of substituted service on the defendants but refused to issue bench warrant on the Managing Directors of the two organizations. He later adjourned till November 9 for the defendants to argue their objections.

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The Consumer Protection Council (CPC), on Tuesday in Lagos, slammed Coca-Cola Nigeria Limited and franchisee of its various beverage products- Nigerian Bottling Company offering defective products for sale at the detriment of

consumers across the country.

This conclusion, according to Mrs. Dupe Atoki, CPC's director-general, followed an investigation by the council arising from consumer complaints about "rusty bottle tops, rusty cans and foreign particles in beverage products of the Nigerian Bottling Company under licence of Coca-Cola Nigeria Limited. The panel, after five hearings, held between September 2013 and February 2014, substantiated the allegation of product defect and violation of the Consumer Protection Council Act."

She added also that although "the investigation was premised on two half-filled cans of Sprite, it led to a plethora of findings, among which are: that the cans of Sprite are products of the Nigerian Bottling Company under license of Coca-Cola Nigeria Limited; that the cans of sprite were defective and had health and safety implications for consumers; that the Nigerian Bottling Company does not have a detailed written shelf life policy for dealing with expired products; and that the Nigerian Bottling Company's grievance resolution policy does not cover instances where the consumer suffers physical injury from consumption, or compensation in instances where replacement will be inadequate."

In arriving at the decision, she said the council also found that NBC does not have a detailed written shelf life policy for dealing with expired products, and that the NBC's traceability policy fails to effectively address the real purpose as the company often relies on information as to the place of purchase of the product.

According to Mrs. Atoki, the council had made far reaching recommendations for system change in NBC and CCNL ordered remedial actions on all aspects, including that both companies subject their manufacturing process to the Council's inspection for 12 months. This is to ensure compliance with safety standards and regulations, besides formulating, and making available to the Council a shelf life policy within 90 days, to facilitate the removal of expired products from the market. They are also to review within 90 days their grievance resolution policy to address compensation for injuries, or compensation in instances where replacement will be inadequate and review their supply chain management policy within 90 days to include retailers in order to minimise the distribution of defective, non-conforming or expired products.

Clem Ugorji, Public Affairs & Communications Manager, CCNL said "as responsible organisations, NBC and CCNL take all matters relating to products very seriously and remain committed to maintaining the highest international quality management and food safety standards and certifications. Because consumers are at the heart of everything we do, both organisations also take a responsive approach towards satisfying customers and consumers.

Adeyanju Olomola, Head, Public Affairs and Communications, Nigerian Bottling Company (NBC) said "Nigerian Bottling Company Limited and Coca-Cola Nigeria Limited hold the Council and, indeed, all regulators and stakeholders in high esteem and will continue to work with them to make any necessary improvement."

The Nigerian Bottling Company (NBC) and Coca Cola Nigeria Ltd yesterday filed a preliminary objection challenging the jurisdiction of the Federal High Court Abuja to entertain a suit filed against them by the Consumer Protection Council of Nigeria. The Attorney General of the Federation, Mr. Mohammed Adoke SAN had filed a one-count charge against NBC and its Managing Director and a two-count charge against Coca-Cola Nigeria limited and its Chief Executive, for criminal breach of certain provisions of the Consumer Protection Council (CPC) Act. Also, the defendants contended that the suit constituted an abuse of court process as a similar suit is before the same court. The matter which was slated for the arraignment of officials of the Nigerian Bottling Company (NBC) Limited and Coca-Cola Nigeria Limited could not go on due to the application challenging the court's power to hear the matter. At yesterday's sitting, Godwin Elias counsel to Coca Cola and its Managing Director Mr. Adeola Adetunji, told the court that the Federal Government's application filed by Chief Bayo Ojo was "completely premature. Our objection to the jurisdiction of this court should be heard first. However, the court in a short ruling directed in line with the application of Ojo that the originating summon should be served by substituted means on the 2nd defendant by pasting it in the premises of the 1st accused person. More so, the court refused to grant the application for a bench warrant to be issued against the 2nd accused person for failure to appear in court. On the second application involving the Federal

Government against the Nigerian Bottling Company and its Chief Executive Ben Langat, counsel to the accused persons Oluyole Opesanya informed the court that he would be filing a preliminary objection challenging the appearance of Bayo Ojo as counsel to the Federal Government in the matter. Opesanya contended that the charge sheet was endorsed by the Director of Public Protection in the office of the Attorney General of the Federation, stressing that he was surprised to see a private counsel handling the matter. He posited that Ojo is involved in a sister suit and therefore lacks the power to be in the same matter. Reacting, Ojo, a former Attorney General of the Federation, however, told the court that he has a fiat from the AGF to handle the matter, and tendered a letter of mandate to that effect. In a short ruling, the presiding judge, Justice Evoh Chukwu ordered for substituted service on NBC Chief Executive by pasting the summon in the premises of the company. The suits were later adjourned to November 10 for hearing of the accused persons' preliminary objections. The Federal Government had earlier filed a charge against NBC and its Managing Director, Ben Langat alleging that the two accused persons committed an offence by violating the order of the Consumer Protection Council for refusing to comply with the council's order, an offence contrary to Section 21 of the Consumer Protection Council Act, Cap C. 25, Laws of the Federation of Nigeria, 2004.

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The Attorney General of the Federation and Justice Minister, Mr. Mohammed Adoke (SAN), last week filed a one-count charge against the Nigerian Bottling Company (NBC) and Coca-Cola Nigeria Limited as well as their chief executives for criminal breach of the Consumer Protection Council (CPC) Act. If eventually found guilty by the Federal High Court in Abuja where the case has been listed, the two chief executives would be liable to jail terms ranging from between three to five years.

In the charge against the two chief executives and their companies, the federal government has accused them of "deliberately failing, refusing and/or neglecting to comply with the Council's Orders duly made and served" on them and in the process "committed an offence contrary to Section 21 of the Consumer Protection Council Act, Cap C. 25, Laws of the Federation of Nigeria, 2004 and punishable under the same section."

The CPC had earlier this year found NBC and Coca-Cola culpable following its findings from the administrative panel set up over a consumer complaint regarding two half-empty cans of Sprite manufactured by Nigerian Bottling Company (NBC) Limited under the licence and authority of Coca Cola Nigeria Limited. The Council's Director-General, Mrs. Dupe Atoki, had stated that while NBC cooperated by providing information to the administrative panel of investigation, Coca-Cola refused to attend and testify. She disclosed further that the panel, after an extensive investigation, substantiated the allegation of product defect and a violation of the CPC Act based on which several recommendations were made and orders thereto issued to Coca-Cola and NBC.

The case against NBC and Coca-Cola is a long and detailed investigation that spanned a period of 15 months in the course of which witnesses were called. Typically, officials of the multinational companies treated both the complainant and the investigating authority with disrespect and did not avail themselves of the opportunity to make their case. Now, the CPC is in court to defend the right of the Nigerian customer in what could be a landmark trial that should set new parameters for the conduct of business owners in our country. The Nigerian consumers who have for years suffered in silence in the hands of companies and service providers who exploit the weakness of our institutions to practically maltreat our people must feel elated by this development.

As a newspaper, we are also interested in the outcome of the case. In most countries, every consumer reserves the right to a repair, replacement or refund for products or services that fail to meet one or more of the guarantees given at the time of entering into a purchase. Also, in most countries, signs that read, "No refunds on sale items" or the likes are illegal because they infer that the consumer has no right. Unfortunately, that is not the situation in Nigeria where companies that sell products and services behave as if they are above the law. From the airlines to the mobile telecoms operators, hotels and banks, Nigerians have had to endure poor services and abuses for years without any avenue for seeking redress.

Even though the CPC has always been there, very little or nothing has been done by the agency to protect the Nigerian consumers. However, with the recent case against Coca-Cola by the CPC, whichever way it ends, it would now be clear to companies operating in Nigeria that our country is not a jungle without rules and that consumers do have rights. We therefore commend Atoki and her team at the CPC and urge them not to relent in the efforts to restore a measure of dignity to the Nigerian consumer.

5. Copyright Society of Nigeria (COSON) v. Startimes

Suit No. FHC/CS/1194/14

Judgement pending, case filed on October 31, 2014

Honourable Justice A.F.A Ademola

The Copyright Society of Nigeria (COSON) filed an application at the Federal High Court, Lagos requesting the court to issue an order of interlocutory injunction restraining NTA-Star TV Network Ltd, owners of Startimes, the pay TV platform, whether by itself or its officials, privies, servants, agents or howsoever called from broadcasting, rebroadcasting or communicating to the public on any channel on its platform any musical work and/or sound recording belonging to COSON, its members or affiliates pending the determination of the issues.

The application which was filed by Mr. Justin Ige of Creative Legal, was supported by a 15 paragraph affidavit sworn to by Chief Tony Okoroji, the COSON Chairman. In the affidavit, COSON claims that the operators of Startimes have never paid any royalties for the public performance, broadcast or rebroadcast of musical works and sound recordings belonging to the members, assignors and affiliates of COSON and that that there is a real likelihood that the operators of Startimes will continue to engage in the broadcasting, rebroadcasting and public performance of the musical works and sound recordings belonging to the members, assignors and affiliates of COSON during the pendency of the suit if they are not restrained.

The application filed by COSON is indeed a fallout from the originating summons initiated by the operators of Startimes, which had gone to court asking for an order restraining COSON 'from further writing, threatening or obstructing the Applicant's business or demanding for royalties pending the determination of the substantive suit'

In opposing the application by the operators of Startimes, Chief Tony Okoroji, the Chairman of COSON, deposed to a counter affidavit in which he stated that in compliance with the law and respect for the rights of the owners of the intellectual property deployed by all broadcasting platforms in Nigeria, the Broadcasting Organizations of Nigeria (BON), the Independent Broadcasting Association of Nigeria (IBAN), the National Broadcasting Commission (NBC), the Nigerian Copyright Commission (NCC) and COSON on May 21, 2014 at a widely reported event in Lagos signed an agreement by which every broadcast operator in Nigeria is bound to obtain a licence and pay royalties to COSON for the broadcast of musical works and sound recordings. According to Chief Okoroji's affidavit, despite the COSON/BON/IBAN/NBC/NCC Agreement, despite the provisions of the law, despite the efforts made by COSON to get the operators of Startimes to respect the intellectual property of COSON members, affiliates and assignors and despite the fact that other organizations in a similar trade as the operators of Startimes and operating under the same environment have obtained the licence of COSON and are paying royalties for the copying, broadcasting and rebroadcasting of musical works and sound recordings by their establishments, the operators of Startimes continue to behave as if they are above the law and permitted to freely exploit the intellectual property of free citizens without consequence.

Furthermore, Chief Okoroji stated that the behaviour of the operators of Startimes which he stated is unacceptable in most countries around the world cannot be allowed to continue as it will lead to massive loss of jobs to the Nigerian nation, significant loss of revenue to the country and heavy capital flight from Nigeria;

Commenting on the developments, COSON General Manager, Mr. Chinedu Chukwuji said, "We have said it loud and clear that if anyone slaps COSON once, we will respond with five slaps. It is clear that we did not start this fight. With

all humility, we are the masters of hard ball and anyone who thinks that COSON will be distracted or intimidated by whatever schemes or maneuvers they may engage in, had better bury the thought. COSON will continue to forcefully represent musicians and the music industry, a group of people whose rights have been trampled upon for too long in Nigeria. Apart from having on our board some of the nation's best intellectual property lawyers and experts, we also engage some of the best external lawyers in the business. We are determined to establish a culture of respect for intellectual property rights in Nigeria. It is game over for abusers of copyright in Nigeria. There will be no hiding place for them”

6. FAPA Company Limited v. Ocean Waves Corporation Limited and the Registrar of Trade Mark

Suit No. FHC/
Judgement delivered on...
Justice John Tsoho

Ownership tussle of the Qlink trademark between two companies has been laid to rest by the Federal High Court sitting in Lagos as the court affirmed Ocean Waves Corporation limited as the rightful owner of the trademark.

This was the thrust of the judgement of Justice John Tsoho while dismissing a suit filed by FAPA Company Limited against Ocean Waves Corporation Limited and the Registrar of Trade Mark challenging the first defendant claim of ownership of Qlink trademark.

Dismissing the suit, Justice Tsoho upheld the preliminary objection filed by Ocean Waves Corporation Limited, through its counsel, Edwin Anikwem challenging the competency of the suit. The court affirmed the earlier judgement of Justice Okon Abang of November 11, 2011 that ordered the Registrar of Trademark to immediately register Qlink in class 9 in the trademark register in favour of Ocean Waves Corporation Limited, the plaintiff in the suit brought against The Registrar of Trademark.

Dispute over the rightful ownership of Qlink trademark started in 2002 when Ocean Waves Corporation Limited in order to regularise the trademark it had been dealing in since 1996, applied for its registration.

The application was accepted and was subsequently advertised in the trademark journal No 4 volume 4 of October 10, 2002. While the processing of the trademark was in advance stage, another company FAPA Company Limited via a letter dated August 15, 2002 protested against the acceptance of Ocean Wave's application to register Qlink in class 9.

However the Registrar responded in a letter dated November 14, 2002 directed FAPA to seek remedy in court in accordance with section 13 (3) of the Trade Mark Act.

Acting on the advice, FAPA Company limited instituted an action against Ocean Waves Corporation Limited (the 1st defendant) and the Registrar of Trade Mark in 2005.

The first defendant raised a preliminary objection to the suit, which was upheld by the court. Dissatisfied, FAPA Company limited lodged appeal via CA/L/337/2006. The plaintiff appellant later abandoned the appeal through a notice of withdrawal dated May 2, 2008.

Sequel to the abandonment of the suit by FAPA Company limited, the coast became clear for Ocean Waves Corporation to have its Qlink trademark duly registered.

The company approached the Registrar of Trademark for the completion of the registration of its Qlink trademark in a letter dated April 2, 2009. Curiously the Registrar declined and instead wrote to the applicant that the earlier acceptance granted to it was in error.

Alarmed by the development, Ocean Waves Corporation through its counsel, Edwin Anikwan approached the court to

seek redress over the perceived injustice.

In determining the matter, Justice Abang after careful evaluation of the material facts placed before the court held that the purported registration of the trademark Qlink by the defendant in favour of any person or company including FAPA Company limited is illegal, unconstitutional, null and void.

Justice Abang also held that in view of the fact that the Registrar invoked section 13 (3) of Trade Mark Act, pursuant to FAPA company limited protest letter, the defendant has no discretion in the matter under section 22 (2) of the same Act other than to give effect to the unchallenged decision of the court on November 25, 2005 in suit No FHC/L/CS/458/05.

The trial Judge further declared that, FAPA Company limited having abandoned its opposition to the registration of Trade Mark Qlink in favour of Ocean Waves, by withdrawing its appeal via a notice of withdrawal dated May 2, 2008 and having failed to comply with the court decision, there is no other company with the prior registration of the trademark Qlink.

Consequently, the court set aside, cancelled and expunged from the trademark register, the purported registration of the trademark register in favour of any person or company

7. Delphi Media Consulting Nigeria Limited v. Nigeria Institute of International Affairs (NIIA)

Suit No. FHC/1/CS/1676/14

Writ of Summon dated November 5, 2014

Federal High Court

At Issue: Intellectual Property Dispute

Facts: A FIRM, Delphi Media Consulting Nigeria Limited, has filed a suit against the Nigeria Institute of International Affairs (NIIA) and its Director General, Professor Bola Akinferinwa over alleged theft of intellectual property.

The disputed intellectual property is attached to international brainstorming session on Migration and Terrorism concept, which was allegedly presented to NIIA for collaboration in execution.

The plaintiff in its Writ of Summon marked as FHC/1/CS/1676/14 and dated November 5, 2014 is seeking an order of the court for a declaration that the plaintiff is the bonafide owner of intellectual property attached to international brainstorming session on Migration and Terrorism concept.

An order for a declaration that the execution of the concept project by the defendant under 12th special brainstorming session on migration and terrorism in West Africa without the consent and approval of the plaintiff amount to unlawful conversation of intellectual property of the plaintiff

Delphi is also praying for an order of the court to order the defendant to pay the sum of five million as money misappropriated, had and received provided to the defendants by the plaintiff

The plaintiff wants court to make an order directing the defendant “to furnish the plaintiff with the whole account of the execution of the project. And N20 million as general damages for unlawful conversion of intellectual property that belonged to plaintiff in the project.”

The plaintiff in its statement of claim stated that is a registered company in Nigeria that is into media consultancy and public communication company, adding that sometime in 2012 it conceived an idea of a project tagged “International security Summit on Migration and Terrorism in West Africa Challenges” and presented the concept to the 1st and 2nd defendants for possible collaboration in execution of the project.

“The defendants received the idea which is the brainchild of the plaintiff and examined it having several meetings with the plaintiff’s representative on the project.

“The plaintiff averred that defendants deliberately sidelined, relegate and denied the plaintiff access to vital information on the proportion and implementation of the budget for the project”, it claimed, adding that it generated N14million from sponsors for the purpose for executing the project and averred that the defendants organized the conference without the consent of the plaintiff.

8. National Agency for Food and Drug Administration and Control (NAFDAC) v. Sunday Okeke

Suit No. FHC/1/CS/1676/14

Writ of Summon dated November 5, 2014

Federal High Court

At Issue: Intellectual Property Dispute

The National Agency for Food and Drug Administration and Control (NAFDAC) had won a landmark judgment securing an 11 years imprisonment against a middle-aged man who specializes in counterfeiting various alcoholic drinks.

The landmark judgment was delivered by the Presiding Judge of the Federal High Court Port-Harcourt division, Justice R.M Aikawa who sentenced the accused person, Sunday Okeke, on a four-count charge of violating Counterfeit and Fake Drugs and Unwholesome processed Food Laws of the Federal Republic of Nigeria.

It would be recalled that Mr. Okeke was arrested at Orumumafi Mami Market of the Nigerian Air force Port-Harcourt for illegal production of fake and unregistered products like Bacchus tonic wine, King Edward, Centurion and Glen Garry Gold Blended Scotch.

After rigorous prosecution of the case by NAFDAC’s legal team Okeke had his day in court when the presiding judge handed down the judgment on a four count charge with option of fine of 600, 000 (six hundred thousand naira) only.

This recent conviction has been hailed by NAFDAC as very significant as it will send a strong signal to counterfeiters and fakers of the agency’s regulated products. The judgment is also further testimony of the resolve of Dr. Paul Orhii’s leadership of the agency to rid Nigeria of criminals dealing in fake, substandard, unregistered NAFDAC regulated products.

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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