

IP Lawyers Speakers Series: Interview with Entertainment Transaction Attorney, Segun Aluko

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This week's IP Lawyers Speakers Series guest is Mr. Segun Aluko, an Entertainment Transaction Attorney, licensed in Nigeria and the State of California in the United States. He has an LL.B. from Obafemi Awolowo University, Ile-Ife, Nigeria, and an LL.M. from the University of Southern California Law School.

Q: Tell us more about your practice?

Over 50 percent of my practice focuses on entertainment transactions covering business and legal affairs issues in the development and acquisition of underlying rights, financing, production, and distribution of entertainment content (motion picture, documentary, television, digital media and music). Within this process, a number of IP issues come up including assignment of underlying rights, chain of title analysis, registration of copyright, license agreements, etc. I also advise corporate entities and brands on protecting their brands by providing analysis, registering and managing their trademark and copyright portfolio.

Q. Last year, you were a key speaker at the Artist Resource Center, tell us more about that presentation?

The Artist Resource Center is a non-profit organization of One Church International that provides capacity building for the people in the creative industry. My speaker series focused on legal issues involved in entertainment transactions particularly focusing on reality and scripted TV productions. I walked the participants through these legal issues including setting up a single-purpose entity for their projects, optioning and acquiring the underlying right, talent agreements, etc.

Q: You are a very active legal writer, have you written or published any articles lately?

Yes, I have. I have written articles that discuss legal issues in the entertainment business. One of my articles – “Gravity’ Lawsuit Against Warner Bros – A Fresh Look at “Right to Assign” Clauses in Literary Option/Purchase Deals” – is scheduled to be published in the upcoming issue of the ABA IP YLD magazine. I also write articles on emerging legal issues on copyright and entertainment law in Nigeria as its movie industry – Nollywood – develops. My articles can be accessed on segunaluko.com and on my LinkedIn page.

Q: How would you describe the investment climate in Nigeria??

Nigeria has really improved since it became a democratic society. The country’s institutional legal framework is growing with reviews and amendments of its IP laws. The recent one is the ongoing revision of the Copyright Act. This, in my opinion, will help increase activities in Nollywood particularly with respect to establishing priority of copyright registration, recordation of assignments and collateralization of IP rights for entertainment finance deals.

Q: What are your thoughts about the current legal framework of Nigeria’s Intellectual Property System?

One of the problems is that the laws are anachronistic. They have not really kept up with current developments. For example, recently there were right of publicity issues in a couple of Nollywood movies. One was with respect to AY the Comedian and his allegation against the film producer that his image was used to market a movie when he only played a minimal supporting role (I wrote an article about that). More recently, the family of late Dr. Adadevoh (the courageous lady who gave up her life and helped prevent the spread of the Ebola virus in Nigeria) are also at some sort of war with the film producer on the use of the late doctor’s life story in making a movie. While there have been differing opinions on this, lawyers have had to rely on the “passing off” provision of the Nigerian Trademark Act, which is very limited in scope at proving the plaintiff’s case, and the US laws. Also in the area of motion picture finance, banks and film makers have complained about not having the required framework on perfection and recordation of security interest in IP rights (and I hope this will be addressed in the new Copyright Act and that activities relating to IP either with the copyright or trademark registry online are improved). The pace for this needed revision is slow. However, that is understandable. I’m sure that with time, things will speed up.

Q: In your opinion what are three important things individuals and businesses can do to protect their intellectual property in Nigeria?

The first is that brand owners need to understand the purpose of their brand, which is to identify the source of their product or services. Identifying that helps brand owners value their brands more than they currently do. Huge and long-lasting businesses are built on brands that transcend generations. Brand owners also need to understand that the best way to protect their brand is through registering and maintaining the registration with the relevant registry – whether it is copyright or trademark. Finally, brand owners need to continue to do all they can to explore their brand either through continued personal use or by third parties through licensing. I look forward to seeing local brands become national or even go across the West African region through franchising.

Q: What advice would you offer to individuals or businesses who have had their IP infringed?

I always advise my clients to register their brands. That's the highest form of protection for intellectual property rights. Without registration, you're left with suing for "passing off" under the Nigeria Trademark Act. In the US for example, you're only limited to common law trademark which only protects you within the area you do business but not nationally. Proving damages might also be difficult in an infringement action. Without registration also, you may not be able to take benefit of bilateral and multilateral treaties like the Madrid Protocol or TRIPS Agreement.

Secondly, businesses and individuals should always endeavor to use their marks and spend some money to ensure their brand is in the consciousness of the general public. Major brands in the world like Coca-Cola spend a lot in protecting their brands.

Thank you for taking time to talk to us.

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