

10 Intellectual Property Cases that Made Headlines in 2015

December 21, 2015 — Awareness about Intellectual Property Rights (IPRs) in Nigeria has been riding the waves of growth over the past few years. From copyright infringement suits to cases of unpaid royalty, 2015 has left no doubt that suing for the protection of intellectual property is quickly becoming common practice in Nigeria. Below are 10 intellectual property cases that made headlines in 2015:

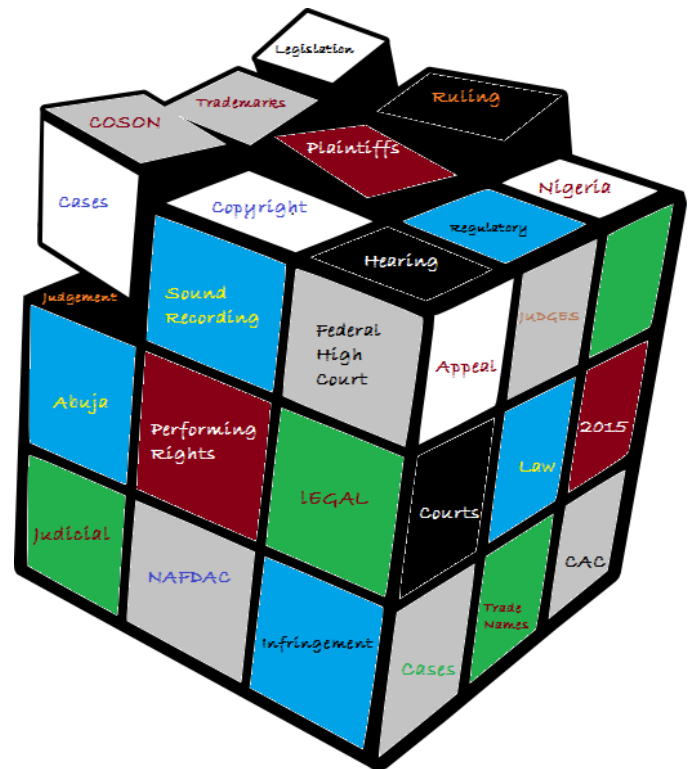
10. Ghills Entertainment Limited v. Union Bank Plc.

Suit No: FHC/L/CS/659/15
 Filed on May 18, 2015
 Federal High Court, Lagos

Facts: In May of 2015, GHills Entertainment Ltd. (the Plaintiff), an events, content provider and entertainment company filed a Suit against Union Bank Plc. (the Defendant) for alleged copyright infringement.

According to the Plaintiff, sometime in 2014, it developed a youth activation product idea and pitched the idea to representatives of the Defendant, in the Events and Sponsors Unit of the Defendant bank. The Plaintiff alleged that it had several meetings and discussions with the Defendant's representatives, with the last being in February of 2015. The Plaintiff further alleged that the representatives of the Defendant showed interest in the idea and prompted the Plaintiff to develop detailed materials to help launch the Defendant's product on campuses.

However in March of 2015, the Plaintiff discovered that the Defendant had gone ahead to execute an edition of the project similar to that pitched by the Plaintiff to the Defendant's representatives. The Plaintiff filed Suit No. FHC/L/CS/659/15 against the Defendant for copyright infringement at the Federal High Court Ikoyi, Lagos.



9. Copyright Society of Nigeria (COSON) v. First Bank of Nigeria

Suit No: FHC/CS/L/530/2014
 Before: Justice Ibrahim Buba
 Federal High Court, Lagos

Although this suit was filed in 2014, trial commenced on March 17, 2015.

Facts: The Copyright Society of Nigeria filed a suit against one of Nigeria’s largest banks, First Bank of Nigeria. The suit was filed before Honourable Justice Ibrahim Buba at the Federal High Court, Ikoyi, Lagos. The suit was filed with regards to unpaid royalties and damages against First Bank for copyright infringement — unauthorized use of several musical works and sound recordings communicated to the public. First Bank was also sued for its alleged unauthorized use of the works in its video presentation, “Sights and Sounds of Carnival Calabar”.

8. Celtel International Ltd. v. Celtel Nigeria Limited & Anor.

Before: Justice Evoh Chukwu
Federal High Court, Abuja

Facts: Celtel International Limited (the Plaintiff) filed a suit against telecommunications giant, Celtel Nigeria Limited (the 1st Defendant) and the Corporate Affairs Commission (CAC) in Nigeria. The Suit was filed at the Federal High Court in Abuja based on allegations of double registration and infringement of a trade name. The Plaintiff demanded N3.1 billion as damages for the alleged infringement of its trade name and forgery as well as the illegal registration of a company with a similar name.

The Plaintiff further sought an order restraining the 1st Defendant from using a similar name ‘Celtel Nigeria Limited’ or any other name that is likely to confuse or misrepresent the name of the Plaintiff to the public. The Plaintiff stated that it was first in time to be incorporated as it was registered on the April 25, 1997 whilst Celtel Nigeria Limited was registered on October 27, 2006. The Plaintiff alleged that as at the time it was registered there was no legally registered company in the name of ‘Celtel Nigeria Limited’ and that the purported documents of the registration of the 1st Defendant’s company are false, contrived and non-existent. The Plaintiff further averred that the 1st Defendant passed-off the Plaintiff’s name ‘Celtel International Limited’ when the 2nd Defendant (CAC) registered it despite the 1st Defendant’s discovery of two companies with the name: Celtel Nigeria Limited and Celtel International Limited after a search was conducted at the registry of the 2nd Defendant.

7. Mr. Paul Dairo v. Emerging Market Telecommunications Services

Suit No. FHC/L/CS/581/2014
Before: Justice C. J. Aneke
Federal High Court, Lagos

Facts: Musician, Paul Play Dairo (the Plaintiff) filed Suit No. FHC/L/CS/581/2014 for Copyright Infringement. The case was filed against Etisalat (Emerging Markets Telecommunication Services Ltd), one of the big telecommunications service providers in Nigeria and Optima Media Group (the 1st and 2nd Defendants respectively). According to the Plaintiff, the 1st Defendant used his song ‘Mosorire’ in its popular reality TV singing competition, ‘Nigerian Idol’ for two consecutive years without paying him.

In his supporting affidavit, the Plaintiff averred:

“I am the copyright owner of the work named and tagged ‘Mosorire’, contained in my repertoire, exclusively for the jurisdiction of Nigeria and the authority or permission to exploit such work can only be obtained from me...However, the Defendants being an organizer of a television reality show tagged, ‘Nigerian Idol’ caused the use, adaptation and deployment of my said work titled, ‘Mosorire’ on the said show without my consent, and which was broadcast to several millions of television viewers throughout the Federal Republic of Nigeria and the rest of Africa for 2012 and 2013 editions.”

The Plaintiff averred the Defendants particularly infringed on his copyright when they allowed a contestant on the

show to reproduce and perform his song on television, stating that as a singer and composer, he was entitled to an annual fee of N100m on the said track, commensurate with his effort in putting the work together. The Plaintiff further averred that having made use of his work without obtaining permission from him, the defendants had caused him loss of income while “they have made gains and improved on their own brand image.”

The Plaintiff is sought a declaration:

“that the act of adaptation, deployment, public performance and exploitation of his musical work titled ‘Mosorire’ by the Defendants without the Plaintiff’s prior consent, authorization or permission constitutes an infringement of the Plaintiff’s copyright, as guaranteed by the Copyright Act, Cap C28, Laws of the Federal Republic of Nigeria, 2004 and sections 6 (6) (b) and 44 of the 1999 Constitution.”

6. Copyright Society of Nigeria v. Big Joe Ventures

Suit No. FHC/B/CS/153/15

Federal High Court, Benin City

Facts: On June 30, the Copyright Society of Nigeria (COSON) filed Suit No. FHC/B/CS/153/15 at the Federal High Court, Benin City. The Suit was filed against Big Joe Ventures, a transportation company, and its Managing Director (the Defendants). COSON (the Plaintiff) sought a declaration that the act of the Defendants, without the authority or permission of COSON, in copying, communicating to the public and permitting to be performed in the commercial buses and bus stations owned or operated by Defendants, the various musical works and sound recordings belonging to the members, assignees and affiliates of COSON is an infringement of the rights of the Plaintiff as guaranteed by the Copyright Act (Cap 28, LFN 2004).

The Plaintiff asked the court for:

1. The award of N500 Million in unpaid royalties and damages against the Defendants for the unauthorized copying, communication to the public, permission to perform in public and infringement of the copyright in the musical works and sound recordings belonging to the members, affiliates and assignors of the Plaintiff.
2. A perpetual injunction restraining the Defendants, their agents, privies or servants from the unauthorized copying, communication to the public, permission to perform and infringement of the copyright in the musical works and sound recordings belonging to its members, affiliates and assignors.

5. Copyright Society of Nigeria v. Lagos Oriental Hotel

Suit No. FHC/L/CS/1091/15

Before: Justice C. J. Aneke

Federal High Court, Lagos

Facts: The Copyright Society of Nigeria filed Suit No. FHC/L/CS/1091/15 at the Federal High Court in Lagos against Lagos Oriental Hotel located in Victoria Island, and its General Manager, Mr. Philip Speilhage.

In the 39 paragraph Statement of Claim, COSON (the Plaintiff) is seeking a declaration that the act of the Defendants, without the authority or permission of COSON, in copying, communicating to the public and permitting to be performed in public the musical works and sound recordings belonging to COSON members, affiliates and assignors, is an infringement of the rights of the Plaintiff as guaranteed by the Copyright Act (Cap 28, LFN 2004).

The Plaintiff has asked the court for:

1. The award of N500 Million in unpaid royalties and damages against the Defendants for the unauthorized copying, communication to the public, permission to perform in public and infringement of the copyright in the musical works and sound recordings belonging to the members, affiliates and assignors of the Plaintiff.
2. A perpetual injunction restraining the Defendants, their agents, privies or servants from the unauthorized copying, communication to the public, permission to perform and infringement of the copyright in the musical works and sound recordings belonging to its members, affiliates and assignors.
3. Exemplary and aggravated damages.

4. Musical Copyright Society of Nigeria v. Details (Nigeria) Ltd.

Suit No: CA/L/506/1999

Judgement delivered on May 28, 2015

Court of Appeal, Lagos

Facts: The question of whether the Musical Copyright Society of Nigeria (MCSN) can administer, protect or sue for the infringement of its intellectual property right without being a collecting society approved by the Nigerian Copyright Commission (NCC) has been resolved by the Court of Appeal in favour of MCSN.

The Court of Appeal presided over by Honourable Justice Amina Adamu Augie and in a lead judgment delivered on the 28th Day of May, 2015 by Honourable Justice Joseph Shagbaor Ikyegh of the Lagos Division unanimously decided that as an owner, assignee and exclusive licensee, the MCSN need not be a collecting society before it can sue for the infringement of its copyright and therefore declared that Section 39 (formerly Section 32B) of the Copyright Act does not apply to MCSN.

The judgment was in respect of an appeal lodged by the MCSN against the decision of the Federal High Court in an infringement action which the organisation brought against Details Nigeria Limited (one of the operators of Multichoice or DSTV in Nigeria) for the broadcast of the works in MCSN repertoire in Nigeria without MCSN's permission. The Federal High Court, presided over by Hon. Justice Tajudeen Odunowo, now retired, had ruled that because MCSN had not been approved as a collecting society, it cannot sue. Not satisfied with that decision, MCSN through its lawyer **Norrison I. Quakers SAN** went on appeal to the Court of Appeal, which now overturned the decision.

This decision apparently settles the raging controversy that MCSN as an owner, assignee and exclusive licensee of copyright does not necessarily need to be a collecting society to judicially enforce its copyright.

A close watcher of the intellectual property sector in reacting to the latest judgment of the appellate court declares that the decision of the Their Lordships would definitely open the way for competition in the copyright industry, which had been held down by stifling monopoly engendered by the corrupt activities of certain officials of the NCC over the years.

This blogger has recently come across a judgment by the Court of Appeal in Nigeria in the long-running case of *MCSN v. Details (Nig.) Ltd (CA/L/506/1999)*. In this case an *ex parte* order had been obtained by MCSN against Details for unauthorized use of musical works. Details raised objections on the ground that MCSN lacked locus standi to bring the action. Details noted that since MCSN had provided evidence that it represented more than two million artistes, it was practically performing the functions of a collecting society and therefore required the approval of the Nigerian Copyright Commission (NCC) to carry on the activities of a collecting society.

MCSN denied suing as a collecting society but rather as an owner, assignee and exclusive licensee as contemplated in Section 15 of the Act. Having considered all the evidence, inclusive of the deed of assignments executed with members of MCSN which clearly spelt out that the activities to be undertaken were those within the purview of the attributes of a collecting society, the court ruled that: *"it is for the foregoing reasons that I have come to the inexorable*

conclusion, after deep reflection, that the plaintiff is a collecting society. Not having been registered pursuant to Section 32B(4) of the Copyright Act, it cannot be permitted to operate as such body. To do so would be tantamount to subverting not only the letter but also the spirit of the copyright laws of this country”.

At the Court of Appeal, the question of locus standi was answered in the specific context of the present matter. MCSN had proved that it was an owner, assignee and exclusive licensee of copyright and therefore it had a statutory standing to sue since the cause of action emerged under the 1988 Copyright Act which was subsequently amended in 1992. However, the Court of Appeal rejected MCSN’s contention that the requirement for NCC approval to operate as a CMO in Nigeria does not infringe MCSN’s right to freedom of association under section 40 of the Constitution of Nigeria. Furthermore the Court of Appeal clearly stated that the registration of a collecting society is not optional but mandatory.

3. Subaya Metalware Nigeria Limited v. Toyota Motor Corporation & Anor.

At Issue: Use of the “Lexus & Device” trademark for goods in Classes 9 and 11
Before: Justice Ibrahim Buba
Federal High Court, Lagos

Facts: In 2013, the 1st Defendant, Toyota Motor Corporation, applied to register “Lexus & Device” in Nigeria, with application Nos. F/TM/O/2013/4233 and F/TM/O/2013/4236 in Classes 9 and 11 respectively. The Applications were allowed by the Trademarks Registrar (the 2nd Defendant) and published for opposition purposes in the Online Trademarks Journal Vol. 1 No. 2 of August 14, 2014.

The Plaintiff, Subaya Metalware Nigeria, while filing a motion ex parte against the 1st and 2nd Defendants claimed to currently hold valid and subsisting certificates of trademark registration since 1996 and 2008 and that it had built goodwill in the Nigerian market place. The Plaintiff, in its 26 paragraph affidavit also claimed to have expended huge amounts of money over the years for the marketing and promotions of its Lexus Fans and Devices, Lexus Ultimate (Stylised), and Lexus Diamond & Device brand of products.

As stated in the affidavit, the 1st Defendant applied to register Lexis & Device in Classes 9 and 11 in the Nigeria and the 2nd defendant accepted and published the 1st Defendant’s trademark application Nos. F/TM/O/2013/4233 and F/TM/O/2013/4236 in Classes 9 and 11 respectively. Earlier this year, this case made headlines following the issuance of an injunction by Justice Ibrahim Buba of the Federal High Court in Lagos, restraining the 1st Defendant from trading with its “Lexus & Device” trademark for goods in Classes 9 and 11, on grounds that they are confusingly similar to registered trademarks for electrical products owned by the Plaintiff, pending the hearing of a motion on notice. The Federal High Court at the time also restrained the Registrar of Trademarks and its officials from issuing certificates of trademark registration to the 1st Defendant in respect of application Nos. F/TM/O/2013/4233 and F/TM/O/2013/4236 in Classes 9 and 11 respectively, as trademarks by 1st Defendant on grounds that is likely to infringe, erode, pass-off and be confusingly similar with Plaintiff’s prior registered trademarks.

2. Nigerian National Petroleum Corporation Retail Limited v. Corporate Affairs Commission & Anor.

Suit No. FHC/AK/99/15
Justice I.M Sanni
Federal High Court, Akure

Facts: The Nigerian National Petroleum Corporation Retail Limited, has dragged the Corporate Affairs Commission, CAC, and Natural Network Petroleum and Gas Company Limited, NNPG, to court, alleging an infringement on its trademark. Also cited as defendants in the suit marked FHC/AK/99/15, was the Registrar of Trade Marks, Patent and Designs. Addressing newsmen in Abuja, yesterday, the Managing Director of NNPC Retail Limited, Mr. Fagbola Ladipo, maintained that the suit was a consequence of the anti-corruption campaign of President Muhammadu

Buhari. He said the firm had also commenced similar legal action against an indigenous firm, Mummy Nigeria Limited, over the same subject matter. Ladipo said the infringement on the NNPC trademark by the first defendant (NNPG), had dwindled sales of NNPC in Ondo State. He alleged that 1st defendant was imitating NNPC “by using its colour combination of red, yellow, green, uniform, emblem and the acronym NNPG to deceive the public,” describing it as sabotage on the effort of the present administration to provide petroleum products to the common man. In its writ, the plaintiff is praying the court for a declaration that ‘NNPG’ mark is phonetically and alphabetically and confusingly identical/similar to NNPC’s trademark. Specifically, it prays the court to make an order of perpetual injunction restraining NNPG from selling, offering any service, advertising for sale or promoting howsoever the name and consequently the acronym of NNPG in any of its service outlets, or any similar acronym, mark design and / or trade logo identical or similar to its own. It also wants the court to direct CAC pursuant to Section 31(1) and (4) of the Companies and Allied Matters act, 1990 to remove the NNPG’s name from its record being similar with its registered trademark, NNPC. NNPC further wants the court to direct the Registrar of Trademarks, Patent and Designs never to accept for registration the word NNPG or any word or color combination so closely identical or similar to its own. The plaintiff further wants to the court to stop NNPG from using similar/identical colors/combination of colors to that of the plaintiff as its retail outlets. In addition, it wants the court to restrain NNPG from infringing or assisting others to infringe on the plaintiff’s registered trademark, colors/combination of colors, totems, insignia and emblem. The plaintiff is also asking the court to order NNPG to remove all sign posts, names/acronyms with letters NNPG and any such identical/similar design infringing on its trademark with immediate effect. Besides, the plaintiff is praying the court for the sum of N5 million being exemplary damages and N10 million as general damages for the infringement and passing off of its trademark and design. In its statement of claim, the plaintiff avers that sometime in 2015, it discovered that 1st defendant sells and continues to sell petroleum products under the confusing brand design of NNPG, at the very least, confusingly similar to that of the plaintiff’s registered trademark NNPC in Akure, Ondo State. Ladipo said the suit which is currently before Justice I.M Sanni of the Federal High Court sitting in Akure, has already been slated for hearing on November 10.

1. Intellectual Property Lawyers Association Nigeria v. Attorney-General of the Federation, & Ors.

Suit No. FHC/ABJ/CS/334/2015

Justice A.R. Mohammed

Federal High Court, Abuja

Facts: The Intellectual Property Lawyers Association Nigeria (IPLAN) filed a suit against the Federal Government Over Appointment of Registrar of Trademarks and Registrar of Patents & Designs Per Second News is in possession of the Suit No FHC/ABJ/CS/334/2015, filed at the Federal High Court, Abuja, FCT by the Intellectual Property Lawyers Association Nigeria over irregularities in the appointment of the Registrar of Trademarks, Patents and Designs. The suit seeks to compel the relevant agencies of the Federal Government to follow due process in the appointment of the Registrar who’s office and function is very crucial and sensitive to the protection of intellectual property rights in Nigeria. The defendants are the Attorney-General of the Federation, Federal Minister of Trade and Investment, the Registrar of Trademarks, the Registrar of Patents and Designs, the Federal Civil Service Commission and Nima Salmann-Mann. The matter has been assigned to Justice A.R. Mohammed of the Federal High Court sitting in Abuja, FCT.

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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