

INTELLECTUAL PROPERTY QUARTERLY REPORT

April 2024



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Executive Summary

Greetings,

Intrepid readers, and welcome to the maiden edition of our IP Quarterly Report! This time, we are embarking on a thrilling expedition across the vast landscapes of intellectual property in Africa and beyond. Buckle up, because this adventure promises twists, turns, and a few quirky surprises along the way.

Our journey begins on the captivating continent of Africa, where intellectual property is shining brighter than ever before.

With a diverse array of innovations from sustainable agriculture in Kenya to tech startups in Nigeria, Africa is bursting with creativity and potential. But wait, there is more! We discovered that African countries are ramping up their IP game with innovative policies, fostering a climate of innovation. From the shores of Cape Town to the deserts of Morocco, the IP landscape is evolving faster than you can say "African Innovation Renaissance".

Moving beyond Africa, our adventure takes us to the global stage where IP is the name of the game. Intellectual property is like a kaleidoscope of creativity, with patent battles, copyright clashes, and trademark tussles happening across the globe.

China, the land of innovation and the Great Wall (of Patents), is leading the way in IP filings. And let's not forget the U.S.

In conclusion, this IP Quarterly Report is your passport to the dynamic world of intellectual property. With Africa on the rise and global IP theatrics, it is an adventure you will not want to miss. So, grab your magnifying glass, put on your detective hat, and join us on this whimsical journey through the enchanting realm of IP! Remember, when it comes to IP, it is not just about protecting ideas; it is about celebrating the wild and wonderful world of innovation and creativity. Until our next quarterly escapade, stay curious and keep those ideas flowing!



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Associate



INTELLECTUAL PROPERTY

The Global IP Landscape: Notable Decisions

First in time matters in Nigerian Trademarks Laws

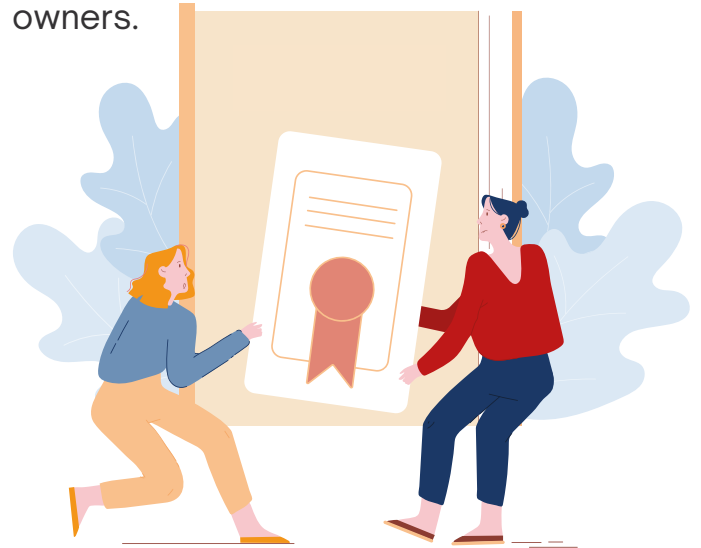
In the 2020 case of Anofi S.A. v. Sanofi Integrated Services Limited & Ors, the dispute was between Sanofi S.A., a French healthcare company, and Nigerian entities that used the name "Sanofi" in their corporate names. Sanofi S.A. registered the trademark "SANOFI" in Nigeria in 1987, while the Nigerian entities registered similar names in 1992 and 2011. The court ruled in favor of Sanofi S.A., stating that the Nigerian entities must change their names or have their registrations cancelled.

The court addressed various legal issues, including trademark infringement, the authority of the Corporate Affairs Commission ("CAC") to compel name changes, and the rights of a trademark owner. The judgment was based on Sections 30(1)(2) and (4) of the Companies and Allied Matters Act[1] (CAMA), which allows the CAC to require a name change if it conflicts with a pre-existing trademark registration.

The court emphasised the CAC's power to refuse registration or order a name change in case of conflicting names. It highlighted that trademark registration grants exclusive rights to the name,

and unauthorised use constitutes a wrongful act known as "passing off."

The court concluded that Sanofi S.A. had successfully proven trademark infringement and that a trademark takes precedence over a business name. This judgment clarifies the CAC's authority to refuse to register a company bearing similar names with an existing company or to order a company to change its name from a conflicting name, underscores the importance of protecting trademarks to prevent confusion and unauthorized use, and reaffirms the rights of trademark owners.



Gold Standard Win: Court Says No to Copycats in Trademark Color Wars!

In the case, Justice Mohammed Lawal Garba explained the definitions and legal principles related to trademarks. According to Section 67 of the Act, a "trademark" is defined as a mark used in connection with goods to indicate a trade

The Global IP Landscape: Notable Decisions

connection between the goods and a person with the right to use the mark. A "registered trademark" is a trademark entered in the register of trademarks maintained by the Registrar of Trademarks.

The court also addressed the issue of specifying a color as part of a registered trademark. In this case, two trademarks, No. 60722 and No. 56629, included the color gold as an integral part of their trademarks. ***The court emphasized that the registration of a trademark with a specific colour limitation, as in these trademarks, is protected under Section 16(1) of the Act.*** This provision allows trademarks to be limited to certain colors. The court rejected the argument that other products used the same gold colour, stating that the Respondents had established distinctiveness through their long and extensive use of the gold colour in their trademarks. As a result, the court found that the gold colour specification in the Respondents' trademarks was distinctive and likely to be recognized as a trademark, leading to a judgement in favour of the Respondents for trademark infringement.

In summary, the court upheld the protection of registered trademarks with

The court rejected the argument that other products used the same gold color

In summary, the court upheld the protection of registered trademarks with specified colours and affirmed that the use of a similar colour by others could constitute trademark infringement under the Act.

US Trademark Law Does not rule the World- The Abitron Case.

In the world of heavy-duty construction equipment, there was a company called Hetronic from the USA. They made radio remote controls for construction equipment. Hetronic contracted Abitron, a foreign company, to help sell its equipment, mostly in Europe.

Trouble started when Abitron decided they were the kings of Hetronic's trademarks and intellectual property. The Austria-based company also used Hetronic's name on its products.

Upon discovering the infringement, Hetronic severed all ties and filed a \$100 million lawsuit. Hetronic, armed with irrefutable evidence, painted a picture of brazen intellectual property theft. The Supreme Court

The Global IP Landscape: Notable Decisions

The court did not stop there; they put their foot down and said, "Abitron, you cannot sell these copycat products anywhere in the world!" Abitron did not like that and appealed for help.

The US Supreme Court said, "Okay, okay, you cannot sell these copies everywhere, just in certain places." So, while Hetronic won the trademark battle, Abitron got away with a little less punishment. And they all lived somewhat unhappily ever after.

This saga serves as a stark reminder of the importance of intellectual property protection, a cornerstone of fair competition in the global marketplace. It is a cautionary tale of trust misplaced and ambition unchecked, where a single misstep can trigger a legal avalanche.



Source: Sasha Pritchards Images

Is it a Birkin if it is not real?- The Hermès and Rothschild Fashion Face-off

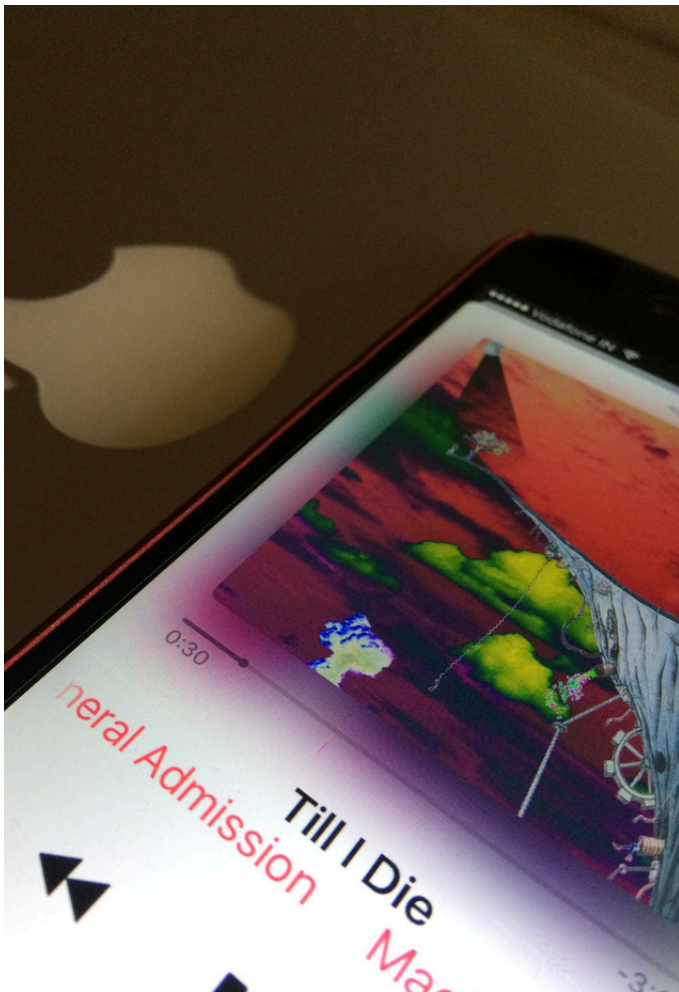
In a landmark case involving non-fungible tokens (NFTs), a New York jury ruled against artist Mason Rothschild, who sold NFT images of furry Birkin bags. The sales violated the trademark rights of the French fashion house Hermès. Rothschild's "MetaBirkins" collection, which sold for over \$1 million. The NFT product was found to confuse consumers, resulting in a \$133,000 damages award for trademark infringement, dilution, and cybersquatting.

The jury ruled that Rothschild's use of the bags' likenesses did not qualify as protected speech under the First Amendment, a decision criticised by his attorney. This case sets a precedent for how trademark law applies to NFTs, which are unique digital tokens used for verifying ownership of digital art. It highlights the tension between artists and brands in emerging digital environments, with the potential for further legal battles in the metaverse.

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Apple for Apple Music Not Apples and Oranges

Picture this: Apple, the tech giant, had a bit of a tussle with the Beatles over trademarking their name. You see, the Beatles had dibs on "Apple" since way back in 1968.

But in 2007, Apple had an "Aha!" moment and decided to buy those trademark rights. All seemed well, and they wanted to trademark "Apple Music." It should've been a breeze, right? Well, here's where it gets twisty. Apple tried to sneak in live music performances under that trademark. Imagine trying to fit a square peg into a round hole – it didn't go over too well.

Enter Charlie Bertini, a trumpet player who'd been using "Apple Jazz" for his concerts since 1985. He said, "Hold on, folks are gonna mix us up." The Trademark Office nodded in agreement, but they gave Apple a little nod too because they got there first. But Charlie wasn't having it. He took the whole shebang to court and, guess what, he won! The court said Apple can't just mash live performances into their trademark because that's a whole different ball game.

The Global IP Landscape: Notable Decisions

Apple, stung by the decision, attempted to reconcile things, proposing to relinquish live performances while retaining the broader trademark. But the court, unwavering in its rhythm, delivered a final, conclusive chord: the entire "Apple Music" trademark, in its entirety, was denied.



Source: Warchi Getty Images Signature

The Global IP Landscape: Africa and the Rest of the World



Artificial Intelligence and its Impact on Intellectual Property

AI and intellectual property rights (IPR): AI systems facilitate efficiency in research and work processes. The increased adoption of this tool has led to more inventions, invariably leading to more IP filings ranging from copyrights to patents. The collaborative nature of AI research encourages information exchange and open-source initiatives, promoting innovation and education in the area. Despite its potential benefits, inventors are clamouring for its regulation due to associated risks; on the other hand, legislators are concerned about making laws that will stifle innovation.

In 2023, there will be an increase in the use of AI globally. The global artificial intelligence market size is projected to expand at a compound annual growth rate (CAGR) of 37.3% from 2023 to 2030 and is projected to reach \$1,811.8 billion by 2030. In July 2023, Elon Musk announced his new AI company, xAI, whose primary objective is to understand the true nature of the universe.





t AI

The fields of art, music, literature, and design have all seen revolutionary changes because of generative artificial intelligence (AI). Generative AI algorithms have made new creative and innovative opportunities possible by producing original material. But this incredible technology also brings up significant issues with ownership and intellectual property rights. While Intellectual Property rights give inventors exclusive rights to their inventions, the distinction has become hazy with artificial intelligence-generated works. Questions such as who owns AI-generated works? Who built the algorithm- the developer, the person who taught it, or the AI itself? Etc have arisen. In an open letter, Elon Musk and more than 1,000 other prominent figures in the technology industry have asked artificial intelligence laboratories to put a stop to the creation of the most sophisticated systems, stating that these tools pose "profound risks to society and humanity".

Recent copyright decisions have taken two distinct approaches. The first approach is to deny AI-generated works copyright protection, thereby opening the door for them to enter the public domain.. The second approach is to attribute authorship to human beings- often the developers or programmers.

In conclusion, organisations like the World Intellectual Property Organisation (WIPO) are taking steps to resolve the conflicts with intellectual property rights and artificial intelligence, with developed countries taking active steps towards amending the existing IP laws to cater to this new development. There is a need for more countries to take active steps towards coming up with detailed regulations and policies that will protect the rights of inventors.

National IP Highlights

Updates on Nigerian IP Legislation and Policy

1. Copyright Act No. 56, 2022

There were several sponsored Copyright Bills, however, the relevant Bill now is the consolidated Bill sponsored by Sen. Abdullahi Abubakar Yahaya, SB 769 Copyrights Act Cap C28 LFN 2004 (Repeal and Re-enactment) Bill, 2021. The Bill has gone through the First Reading (May 4, 2021), Second Reading (June 8, 2021), and Third Reading and Passage (6 April 2022). The Bill was passed into law on March 17, 2023.

2. Geographical Indications (GI) Draft Bill

Through the support of the European Union Intellectual Property Office and the Intellectual Property Rights and Innovation Project in Africa (AfrIPI), a Nigerian Technical Working Group (TWG) was established to undertake a study of various GI laws globally and then produce a GI draft law for Nigeria.

The TWG for the past 2 years has worked on the draft bill and various stakeholder institutions were invited to a National Conference held on February 17-18, 2022, and jointly hosted by AfrIPI, EUIPO and the Africa International Trade and Commerce Research (AITCR) on the validation of the draft before pursuing the sponsorship of the Bill to the house

3. The New Patent Bill

In April 2021, the House of Representatives introduced the Patents and Designs (Repeal and Re-Enactment) Bill (the “PD Bill”), 2021 which seeks to overhaul the Patents and Designs Act 1971 that currently provides for the protection of Patent and Design rights, albeit inadequately.

One significant provision in the new Bill is the introduction of Utility Models. Utility Models are similar to Patents in that they give monopoly rights for a limited time to inventors of new technical inventions that have a short commercial life, or make small improvements to and adaptations of, existing products within the relevant geographical area. It removes the ‘inventive step’ requirement for a patent. Thus, a utility model is a lesser or smaller patent.

National IP Highlights

Updates on Nigerian IP Legislation and Policy

3. The New Patent Bill

This is a welcome development as it has often been argued that most Nigerian inventions do not meet the full requirements of a patent if the same were to be substantially examined. With the pending provisions, Nigerian entrepreneurs and businesses can have a right to register their utility models and gain protection like patents, as well as get a fighting chance for collaboration or negotiation with bigger brands.

Big Issue: IP Strategy in the Beauty Industry

In today's rapidly evolving business landscape, intellectual property (IP) strategy has become an essential component for companies across various industries. This case study delves into the strategic approach of the beauty industry, exploring how IP assets are leveraged to drive innovation, protect valuable ideas, and gain a competitive edge. By examining the experiences and tactics of key players within this industry, we aim to uncover the nuanced ways in which IP strategies are employed to navigate the challenges and opportunities specific to their field.

The most common Intellectual Property Rights (“IPRs”) in the beauty industry are patents, trademarks and trade secrets.

1. Trademark

The Trade Marks Act is the primary legislation on trademark registration in Nigeria. Trademarks are distinctive symbols, words, or phrases used to identify and distinguish goods or services. It provides brand recognition and legal protection against unauthorised use by others. During the trademark application process, a thorough

examination is conducted, relying solely on the information provided. Paying attention to the smallest details is crucial, as they can distinguish your mark and provide a competitive advantage.

The term trademark refers to a recognizable insignia, phrase, word, or symbol that denotes a specific product and legally differentiates it from all other products of its kind. It helps consumers distinguish between different brands and creates a connection between the brand and its reputation, quality, and overall identity. Trademarks can take various forms, including words, names, logos, symbols, designs, or a combination of these elements. They play a crucial role in protecting the intellectual property rights of businesses and ensuring fair competition in the marketplace.



Big Issue: IP Strategy in the Beauty Industry

One of the best methods to safeguard a brand's identity and make sure that buyers seeking a certain product know exactly where to go is to register a trademark. In addition to identifying the point of origin, trademarks represent consumer expectations and, frequently, encourage customers to stick with their favoured brand.

Therefore, producers should endeavour to take steps to register their brand marks which include logos, colours etc with the Trademarks, Patents and Designs Registry to safeguard their brands' identity.

2. Patents

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

There are two types of patent applications in Nigeria, namely;

- (1) Patent Cooperation Treaty(PCT) or Conventional Patent and
- (2) Non-conventional Patent.

PCT or Conventional Patent refers to patent applications that have been registered in one or more countries before being filed in another country. These patents allow the patent owners to claim priority based on the **initial filing date in the first country. For example, a patent registered in the UK, then the US, France, and finally in Nigeria would be considered a conventional patent. The patent owners can maintain the priority date in each country and claim priority in each subsequent filing.**

Non-conventional Patents are patents that are being registered for the first time in the country where the invention was made. These patents are also known as local patents. For instance, an invention undergoing its first patent registration in Nigeria will be considered a local Patent.

Beauty brands can have robust protection from items that replicate their ideas thanks to patents. Cosmetic firms have the option to apply for patents on a variety of product components, such as the composition, application, or usage of a certain ingredient.

Big Issue: IP Strategy in the Beauty Industry

2. Patents

Big brands like Mary Kay Inc. have a patent portfolio including a patented "method for reducing a presence of sebum on skin, reducing an appearance of shiny skin and reducing an appearance of the size of skin pores,[1]" which the company says covers its Clear Proof Deep-Cleansing Charcoal Mask.

The usage of homemade beauty remedies at home has increased after the Covid-19 outbreak. More than ever, customers are forgoing in-person services in favour of online purchases of cosmetics to use at home. This change is reflected in the patents cosmetic businesses have filed recently. L'Oréal submitted many patent applications covering a range of innovative beauty gadgets, such as one that offers users a "personalised skincare recommendation and skin care device having [an] energy regenerating end effector"

In conclusion, the role of patents in the beauty industry is undeniable, serving as a catalyst for innovation and fostering a competitive landscape. As beauty companies navigate this dynamic environment, it is important for players in the industry to proactively engage with patent protection strategies. By securing and strategically leveraging patents, companies can not only safeguard their groundbreaking formulations and technologies but also establish a unique market position. As the beauty landscape continues to evolve, a commitment to intellectual property protection will not only safeguard individual interests but contribute to the industry's overall growth and advancement. Thus, in the ever-changing beauty landscape, a strategic approach to patents is not just a legal necessity but a pivotal tool for sustained success and progress.

Big Issue: IP Strategy in the Beauty Industry

3. Trade Secrets

Trade secrets safeguard confidential information, including manufacturing processes or formulas, that have actual or prospective value for their owner because they are proprietary and have been the subject of appropriate safeguards. The owner will have a de facto monopoly if these conditions are met, and it will remain so until the secret ceases to be hidden.

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From raw material selection and processing to production, packaging, distribution, and marketing to client sales, the skincare and cosmetics sector has emerged as one of the industries with the fastest economic turnover[1]. Naturally, because of its very complicated production and processing procedures, this industry has developed into a capital-intensive corporate sector.

By protecting these aspects of their business such as a formula or a manufacturing method as trade secrets, beauty companies can maintain a competitive advantage, safeguard their investments in research and development, and preserve their brand identity in a highly dynamic and evolving market.



Intellectual Property Predictions for 2024



Emerging Technologies

According to sources, AI will continue to rule the intellectual property space, but they're still monitoring concerns about the metaverse and content production. It is evident that AI and ML will be at the forefront of the changing intellectual property environment by 2024, changing the laws and completely changing the field.

Intellectual Property and Sustainability

IP management is not an exception to the growing trend of environmental sustainability in corporate operations. As we move towards a greener future, organisations that properly combine their IP strategy with their sustainability aims will likely have a competitive edge, contributing positively to the environment while also strengthening their brand reputation and market position.

Standardization of AI in Law Technology

In 2024, the legal tech industry is on the brink of a transformative period, marked by the expected establishment of standardized protocols and best practices for responsible AI. This pivotal shift will prioritize governance, safety, security, and trust, effectively tackling the ethical and legal complexities arising from generative AI technologies.

Intellectual Property Predictions for 2024

The Trademarks Amendment Bill

As we approach the year 2024, there is a heightened anticipation for the culmination of these efforts in the form of the final Bill, which is expected to pave the way for subsequent amendments to the Act. This ongoing commitment underscores the registry's dedication to enhancing and adapting the legal framework, aligning it with contemporary needs and industry developments. For some time, the Trademarks Registry has been working on amending the current Trade Marks Act. In 2024, we anticipate the final Bill and subsequent amendment of the Act.



The header features a blue background with a hexagonal pattern. Various icons are scattered across the hexagons, including a lightbulb, a dollar sign, a bar chart with an upward arrow, a target, a megaphone, a handshake, a speech bubble, a gear, and a globe. The words "INTELLECTUAL PROPERTY" are written in a glowing blue font at the top center. Below this, the title "Glossary of IP Terms" is displayed in a large, white, sans-serif font.

Glossary of IP Terms

- **Assignment:** A written agreement transferring ownership of Intellectual Property.
- **Authorship:** This pertains to the origin or author of a piece of original content. The type of work can vary, including literary works, software, or any other form of work.
- **Copyright:** Legal protection for authors of original works.
- **Fair Use:** Certain uses of copyrighted materials are allowed without violating the rights of the copyright holder, such as teaching, research, reporting in the news, critiques, and commentary.
- **Infringement:** This is the unauthorised use of an innovation or work.
- **Invention:** This is a novel method, object, process, or device that serves a specific purpose or improves an existing invention. However, not all inventions can be patented.
- **Joint inventors:** These are individuals who co-create an innovation, while joint ownership refers to the shared ownership rights of an invention between two or more entities.
- **Utility Patent:** Patent for a new and useful process, machine, or item.

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