IP REPORT 2.0



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INTRODUCTION

Welcome to the second edition of our Intellectual Property (IP) Report, where we bring you the latest developments and insights from the dynamic world of IP.

In this edition, we discuss key legal developments in the IP sector, strategies that are shaping the pharmaceutical industry, and how fashion designers are navigating challenges in protecting their brands through industrial design. We also present our "IP Nuggets", a curated selection of brief but impactful news bites, alongside our projections for the IP landscape in 2025, helping you stay ahead of the curve.

Thank you for joining us on this journey, and we look forward to your continued engagement with our insights and initiatives in the IP space.

WHAT'S IPENING? NIGERIA AND GLOBAL IP UPDATES.

In this section, we briefly touch on developments in some notable IP-related disputes that occurred during the year 2024.

Notable IP Disputes in Nigeria 2024

a. Who Calls the Shots? Netflix and Song Co-Owner Clash Over Rights to Wizkid's 'Joro' in Netflix Inc & Anor V. Mr. Ezra Enesi, Suit No: FHC/L/CS/1691/2021

In a courtroom showdown that had everyone buzzing, Mr. Ezra Enesi, a co-owner of the song "Joro," took on Netflix over the use of his work. Here's how the drama unfolded:

- The Star-Studded Song: The hit song "Joro", made famous by Wizkid, became a hot topic when Sony Music Publishing (Sony) acquired rights to the song through an agreement with just one co-owner Wizkid.
 - License Breach Claim: Sony then licensed "Joro" to Starco TV3 Limited to use in the Netflix series "Sex Education". However, Mr. Enesi claimed that he did not approve the use on Netflix, calling it unauthorized!
 - Court to the Rescue: The Federal High Court clarified the position of the law on assignments by a co-owner, confirming that pursuant to Section 11(5&6) of the Copyright Act, 2004, when a co-owner licenses a work, they act on behalf of all the other co-owners. This meant that Starco was not obligated to pay additional license fees separately to Mr. Enesi for the use of "Joro" since the assignment was granted by a co-owner.
 - A Win for Entertainment Industry Stakeholders: The court's ruling was a big win for key IP industry stakeholders such as streaming platforms who rely on an intricate web of assignments and licenses of IP to create the end product for consumers! It means that if a co-owner licenses a work, stakeholders have less to worry about regarding additional licensing fees that other co-owners may feel entitled to. Netflix could keep using "Joro", and

Mr. Enesi would be bound by the agreements made by his co-owner, Wizkid.

In the end, this case was a refreshing reminder of how copyright laws work in the collaborative world of music and filmmaking, helping everyone understand their rights and responsibilities in creative partnerships.



Forward Guidance

The court's decision brings significant implications for two key categories of stakeholders:

- 1. Last-Mile Stakeholders (e.g., Streaming Platforms and Financiers): Platforms like Netflix and Amazon Prime can find reassurance in this ruling, as it provides a layer of protection from potential claims by aggrieved co-owners in an IP asset, seeking additional licensing fees. Under Nigeria's Copyright Act, the recourse of an aggrieved co-owner lies with their co-owner, who issued the license or assignment—not the licensee or assignee. This means such claims are resolved internally among co-owners, subject to their written agreements.
- 2. Creative Contributors (e.g., Scriptwriters and Songwriters): For creators, the ruling underscores the importance of carefully structuring agreements around revenue sharing and the nature of rights granted to co-owners. If a creator completely assigns their rights without stipulating revenue-sharing terms for future licenses or assignments, they may lose any claim to such future proceeds entirely. It is therefore imperative to obtain professional legal advice to be able to distinguish the nature of rights (whether full assignments or licenses) being assigned to a counterpart co-owner.

This decision highlights the necessity of clear, well-drafted agreements that preempt disputes and ensure equitable outcomes for all parties involved in copyright co-ownership.

b. Shanty Town Showdown: Who Owns the Rights?- Ini Edo V Chichi Nworah

In a dramatic courtroom clash, acclaimed filmmaker Chinenye Nworah and actress Ini Edo found themselves at odds over the ownership rights to the popular Netflix series "Shanty Town," released in January 2023. The dispute is closely linked with a potential Netflix greenlight for production of Season 2 of Shanty Town. Here's a quick look at the key issues and outcome in the matter:

The Claimants: Ini Edo, alongside her production company Minini Empire Productions Limited (MEP), asserted that she owns the trademarks for both "Shanty Town" and "Scar", plus the copyrights for the series.

Trademark Trouble: On January 10, 2024, the Trademark Registry rejected Ini's petition for the trademarks, saying it was "baseless and without merit." In a bold move, they confirmed that Nworah held exclusive ownership of those trademarks.

Copyright Clash: On July 24, 2024, the National Copyright Commission (NCC) dismissed another petition from Ini and MEP, which sought to cancel Nworah's copyright certificate for "Shanty Town." The NCC found no legal grounds to support their claims and upheld Nworah's copyrights, reaffirming her rightful ownership of the series.

The Final Word: In the end, it was a win for Chinenye Nworah, as both the Trademarks Registry and Nigeria Copyright Commission affirmed her as the rightful owner of both the trademarks and copyrights for "Shanty Town." This legal saga serves as a reminder of the importance of clear ownership in the creative world!

And the Rights Go To... Ms. Nworah!

This thrilling legal drama highlights the importance of intellectual property in the entertainment industry.

Forward Guidance

In an evolving movie financing landscape, the importance of a clear root of title for IP rights' ownership cannot be overstated. Movie producers should ensure that their varying contracts such as script-writing agreements or financing agreements do not contain ambiguous provisions on the ownership of rights, as this creates a more comfortable context for streaming platforms to work with. Movie financiers on the other hand, may exercise their interest in potential future developments of successful movies, by obtaining future rights/right of first refusal concessions from producers, in their initial film financing agreements.



c. Goya Goes to Court: The Olive Oil Trademark Tussle-Goya Foods Inc. V FG Suit No: FHC/ABJ/CS/883/2023

In a legal showdown reminiscent of a dramatic courtroom thriller, Goya Foods Incorporated instituted a matter against Chikason Industries Limited over the rights to the famous "Goya Olive Oil" trademark. Here's what went down:

The Background: On December 18, 2006, the Federal High Court delivered a consent judgment against Chikason Industries for trademarks infringement and directed the Trademarks Registry to rectify the trademark register to recognize Goya Foods as the rightful owner of "Goya Olive Oil." The registry was also directed to assign all ownership proprietary interests in the registered trademark Goya Olive Oil in the respective classes (registered by Chikason Industries) to Goya Foods.

The Call for Rectification: Unfortunately, the Trademarks registry failed to adhere to the court's decision which resulted in another suit. Fast forward to June 23, 2023, and Goya Foods is back in court, urging the court to enforce that old consent judgment. They want the trademark register to be corrected so they can fully establish their ownership rights without any further hassle.

The Plea for Justice: Goya Foods' attorney, argued that this rectification is crucial for protecting their trademark and ensuring their business can thrive. He pointed out that despite the earlier court orders, Chikason has not made the necessary changes to the trademark register.

The Goya Showdown: Who Will Get the Olive Oil Crown?

With all these twists and turns, it's clear that this legal battle over Goya Olive Oil is about more than just a bottle of oil; it's about protecting a brand and ensuring fair competition in the market! Who will come out on top? Stay tuned!

Forward Guidance

To enforce judgments in the IP space involving government agencies like the Trademarks Registry, a writ of mandamus may be used to compel an agency to comply with court orders, such as rectifying the trademark register.

Also, monitoring the Registry's actions and, if necessary, initiating contempt proceedings ensures the judgment is upheld effectively.

NOTABLE IP DISPUTES AROUND THE WORLD

a.The Battle of Creative Rights: When Image, LLC and Girard Entertainment Went Head-to-Head Over Artistic Goodies!-Image, LLC v. Girard Entertainment & Media, LLC³

In 1995, Mr. Seliger photographed the Friends cast for a Rolling Stone Magazine cover. The copyright to this photograph is owned by a third party (referred to as "2"), who authorized August Image, LLC to pursue any copyright infringement claims. The defendants, owners of the website 'thenyindependent.com', used a screenshot of an Instagram post by Friends cast member David Schwimmer, which featured the photograph, in an article discussing a possible Friends reboot.

In February 2023, plaintiffs filed a copyright infringement lawsuit against the defendants, who had used the photo without authorization. The court referred both parties to mediation and ordered the plaintiffs to provide records showing recent licensing history of the photograph. However, defendants reported that plaintiffs had not complied with this order. Consequently, the court demanded that plaintiffs' counsel show cause for non-compliance. Later, during a pretrial conference in August, the court took the issue of sanctions under advisement.

The court dismissed the suit and declined sanctions to the claimant's counsel.

b. Art Clash: Andersen vs. AI – The Fight Over Creativity in the Digital Age! [Andersen v. Stability AI, Inc., 3:23-cv-00201 (N.D. Cal.),]

In a groundbreaking case at the intersection of artificial intelligence and copyright law, renowned artist Sarah Andersen filed a lawsuit against Stability Al, Inc., challenging the company's unauthorized use of her distinctive comic artwork in training their Al systems. Sarah sued Stability Al for using her works without permission or compensation thereby infringing on her IP rights.

This case represents a pivotal moment in defining the boundaries between traditional artistic creation and Al development, raising fundamental questions about the legality of using copyrighted works to train artificial intelligence systems.

At its core, the case challenges the current "Wild West"; approach to Al training data acquisition and seeks to balance technological innovation with the protection of artists' creative rights.

c. The Streaming Showdown: Whyte Monkee vs. Netflix - A Tale of Creative Control! [Whyte Monkee Prods., LLC v. Netflix]

In a compelling entertainment industry lawsuit, Whyte Monkee Productions, an emerging production company, has sued streaming giant Netflix, alleging unauthorized use of their creative concept. Whyte Monkey alleges that Netflix used its pitch to produce a show without obtaining consent from them.

The case has become a symbol of the broader challenges faced by independent creators in the entertainment industry, particularly when dealing with major streaming platforms. As the court examines the evidence, including detailed analysis of contracts, creative rights, and the similarity between the original pitch and Netflix's production, the outcome could set significant precedents for how streaming platforms interact with independent producers and protect creative intellectual property in the increasingly competitive digital entertainment landscape.

This David-versus-Goliath scenario highlights the delicate balance between fostering creative collaboration and protecting original concepts in the modern streaming era.



IP STRATEGY IN THE PHARMACEUTICAL INDUSTRY

Introduction

The pharmaceuticals market in Africa is a rapidly growing industry that has been expanding in recent years due to various factors such as population growth, increased urbanization, and rising healthcare expenditure. In 2024, the projected revenue in the Pharmaceuticals market in Africa is expected to reach US\$13.54bn.⁴ The revenue in this market is anticipated to grow at an annual growth rate (CAGR 2024–2029) of 3.88%, resulting in a market volume of US\$16.38bn by 2029.⁵

The adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in 1994 by Member States of the World Trade Organization (WTO) was a watershed event, which gave rise to a new global intellectual property protection (IPP) regime with significant effects on access to medicine.

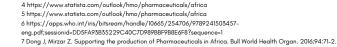
A robust intellectual property (IP) strategy is critical for success in the pharmaceutical industry, as it ensures legal protection, fosters innovation, and provides a competitive edge in a highly regulated market. By leveraging patents, trademarks, copyrights, and trade secrets, pharmaceutical companies can protect their products, brand reputation, and proprietary knowledge. This multifaceted approach not only secures exclusive rights to market breakthroughs but also prevents unauthorized use of valuable assets. However, companies must balance innovation with ethical practices, particularly in patent use, to avoid stifling competition and access to affordable medicines. An effective IP strategy empowers pharmaceutical companies to maximize profitability while contributing to global healthcare advancement.

This section of the IP Report below will examine the various strategies players in the pharmaceutical industry can adopt towards capitalizing on their IP Assets.

IP Protection in the Pharmaceutical Industry

A. Patents

Patents are one the most utilized forms of IP protection by pharmaceutical companies. Pharmaceutical patents provide protection for various aspects of a drug or product, including new chemical entities, drug formulations, manufacturing processes, and medical applications of existing compounds. A patent grants the pharmaceutical company exclusive rights to market new or improved versions of a drug, preventing other companies from making, using, selling, or importing the patented product without authorization from the patent holder.





The patent application process typically requires proving the invention's novelty, non-obviousness, and utility. Patent protection begins from the filing date, and in some cases, the term can be extended due to regulatory delays in obtaining marketing approval.

B. Trademarks

Pharmaceutical companies can protect their brand identities using Trademarks. This may include the company's brand name and logo. Trademarks are crucial in building consumer trust and loyalty and play a key role by helping consumers differentiate between pharmaceutical products and preventing the use of similar marks that could lead to confusion or dilute the brand's identity.

C. Copyrights

Although copyrights are not as commonly utilized by pharmaceutical companies compared to trademarks and patents, they still play a vital role in protecting the company's intellectual property. Copyrights safeguard written publications, such as research papers, clinical study results, product manuals, marketing materials, and packaging text. Additionally, any educational content, instructional videos, software, or digital resources created by the pharmaceutical brand can be protected under copyright law. By securing copyright protection, pharmaceutical companies can prevent unauthorized reproduction or use of their creative works, ensuring that their original content is legally shielded from infringement. This helps maintain the integrity of their brand's reputation and intellectual property portfolio.

D. Trade Secrets

The World Intellectual Property Organization ("WIPO") defines trade secrets as intellectual property rights on confidential information which may be sold or licensed. Trade secrets are an important form of intellectual property protection for pharmaceutical companies, safeguarding confidential business information that provides a competitive advantage. These may include proprietary formulas, manufacturing techniques, research data, clinical trial results, or even marketing strategies. Unlike patents, trade secrets do not require registration but rely on keeping the information undisclosed to maintain protection.

Pharmaceutical companies can protect trade secrets through internal security measures, confidentiality agreements, and restricted access to sensitive information. One key advantage of trade secrets is that protection lasts indefinitely, as long as the information remains secret.

Keeping in mind the projected industry growth for the pharmaceutical industry, companies in the sector can formalize their IP Strategy approach by comprehensively assessing intangible assets within their organizations and ensuring the appropriate IP protections are put in place.

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THE BIG STORY: PROTECTING YOUR **FASHION BRAND THROUGH INDUSTRIAL DESIGN**

Introduction

The fashion industry is one of the most important markets in Nigeria and the world at large. It is an industry that houses many talented hands and attracts investors from all over the world, thus contributing generally to economic growth. The value of the fashion industry in Nigeria is over 10 billion US Dollars° and it accounted for 0.47% of Nigeria's Gross Domestic Product (GDP). If as a fashion designer or fashion enthusiast, you have ever been curious about how you can protect your designs from getting copied or how you can capitalize on your existing IP assets, then this article is for you. In this section of the IP Report, we will discuss the rights of fashion designers to their designs and how they can protect their IP.

What is Industrial Design?

The Patents and Designs Act" ("Act") defines Industrial design as any combination of lines or colours or both, and any three-dimensional form,2 whether or not associated with colours, is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result. From the Act's definition, for a product to qualify as an industrial design, it must have the following requirements:

- a. Visual Elements: This could be any combination of lines, colours, or shapes.
- b. Three-Dimensional Forms: It also covers objects that have a shape, which might include colours as well.
- c. Purpose: The key point is that the design is meant to be mass produced industrially- not just for one-time use but is created with the intention of being mass-produced.
- d. Non-Technical: The design is not intended to solve a technical problem- it is more about the appearance rather than the function.

From this definition, we have understood that fabric designs, and fashion designs meet the criteria for industrial design protection. In Nigeria, industrial designs can be textiles or nontextiles. For instance, the design of a water bottle can be protected under industrial design.





9 Agu and Onuoha (2016)Psychological Influences and Fashion Consumption Behaviour of Consumers in South East Nigeria. International Journal of Research in Business Studies and Management. Volume 3, Issue 12, December 2016, 38-48 ISSN 2394-5923 (Print) & ISSN 2394-5931

10 IP assets refer to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images, that are legally protected through intellectual property rights like patents, trademarks, copyrights, and

11 Patents and Designs Act, 2004

12 A three-dimensional form refers to a physical object or design that has depth, width, and height, giving it volume and occupying space, as opposed to a two-dimensional shape which only has width and height 13 Section 12 Patents and Designs Act.

What Qualifies a design for Registration?

The Act provides that an applicant can file an application to register their Industrial Design under the following circumstances¹⁴:

- a. It is new;
- b. It is not contrary to public order or morality.

A design is considered new unless it has been publicly disclosed before the application date.¹⁵ However, if the creator could not have known about the prior disclosure or if the design was exhibited in a recognized exhibition within six months before applying, it will still be considered new.¹⁶ A design is not deemed new if it only has minor differences from an existing one or applies to a different type of product.

The Supreme Court has held that the publication of an industrial design is confidential if the person to whom the disclosure is made is under an obligation as to secrecy or has himself an interest in the design. Thus, in Blank v. Footman, Pretty & Description (1888) 5 R.P.C. 653, where Blank, the proprietor of a design, before registering it, showed it to one Hummel, a commission agent who had the sole right of selling Blanks goods in England, it was held that Hummel, therefore, had an interest in the design and for that reason, the communication must be regarded as confidential and as such, it does not amount to publication.

The right to register an industrial design belongs to the first person to file the application, even if they are not the true creator. The true creator has the right to be named in the register, and this cannot be changed by contract. If someone files an application using another person's creation without consent, the rights to the application and registration will transfer to the original creator.

When a design is created during employment or commissioned work, the employer or commissioner owns the design, but the creator is entitled to fair compensation if the design was made using resources provided by the job, regardless of the creator's job description.¹⁸

Requirements for Registration

As a fashion designer intending to register a design, you must ensure to prepare all the necessary documents required for registration such as:

- 1. Duly completed application forms ";
- 2. Statement of novelty;
- 3. Specimen or representation of the design; and
- 4. Power of attorney/authorization of agent.



Duration of Industrial Design protection

Once an industrial design is approved for registration in Nigeria, it is initially valid for five years from the date of registration. This validity can be extended by renewing it for two additional five-year periods, allowing the design to remain protected for a total of fifteen years.

Conclusion

In conclusion, protecting your fashion brand through industrial design registration is a powerful strategy for securing your creative assets and standing out in a competitive market. By registering your designs, you not only prevent unauthorised copying but also strengthen your brand's identity, exclusivity and ultimately, value. Understanding the process and taking timely action to secure these rights can provide long-term benefits, ensuring your designs remain exclusive and legally protected. As the fashion industry continues to evolve, safeguarding your brand through industrial design protection will be essential for sustaining growth and innovation.

IP NUGGETS

a. Licensing: Think of licensing as a friendly agreement where you let someone else use your trademark, copyright, or patent for a fee. It's like lending your favorite book to a friend but with a twist—they pay you for the privilege. Licensing helps businesses expand their reach while you earn some cash for sharing your brilliance. Just like how some local artists allow brands to use their music in ads, licensing keeps the good vibes flowing!

b. Infringement: This is the "Uh-oh!" moment when someone crosses the line and uses your intellectual property without permission. It's like a neighbor borrowing your lawn mower (without your permission) and not bringing it back. Infringement can lead to legal battles, so it's important to stand your ground and protect your rights. If someone tries to copy your stuff, you've got every right to call them out!

c. Geographical Indication (GI): Have you ever tasted the unique flavor of a local delicacy like "Bitterleaf soup" or "Ofada rice"? Geographical indication is a special tag that lets everyone know where a product comes from, ensuring it has the unique qualities tied to its origin. It's like a badge of honor for local farmers and producers, helping them stand out and protect their traditional products. So, when you see "Kano Groundnuts" or "Oyo Aso Oke," you know you're getting the real deal!

d. Moral Rights: These rights are all about respecting the creator of a work. If you write a novel or paint a masterpiece, moral rights ensure you get recognized for your creation and that it's not altered in a way that could harm your reputation. It's like being acknowledged for your hard work and creativity, making sure your name stays attached to your creation forever.

e. Fair Use: Fair use is like a friendly neighborhood rule that lets people use parts of copyrighted works without needing permission. It's usually applied in cases of criticism comment, news reporting, teaching, or research. For example, if a teacher uses a short clip from a movie to explain a point in class, that's fair use. It allows creativity and learning without stepping on anyone's toes!

f. Public Domain: Public domain refers to works that anyone can use without asking for permission.





OUTLOOK FOR 2025

As we look ahead to 2025, the landscape of IP is poised for significant evolution, driven by technological advancements, shifting consumer behaviors, and emerging global trends. Here are key areas to watch:

1. Rise of Artificial Intelligence (AI) in IP:

Al is set to play a transformative role in the creation, management, and enforcement of intellectual property. From generating creative works to automating the IP registration process, Al will streamline workflows and reduce administrative burdens. However, this will also raise questions about ownership and copyright—who owns an artwork created by an Al? Expect ongoing debates and potential legal reforms to address these challenges.

2. Strengthening IP Laws in Emerging Markets:

As developing countries continue to expand the growth of their economies, there will be an increased focus on strengthening IP laws to protect local innovations and attract foreign investment. Countries in Africa and Asia are likely to enhance their legal frameworks to better align with global standards, fostering a more conducive environment for creativity and entrepreneurship.

4. Sustainable Innovation and Green IP:

As the world grapples with climate change, there will be a shift towards sustainable innovation. Companies that invest in eco-friendly technologies and sustainable practices will gain a competitive edge. IP rights will play a crucial role in protecting these innovations, encouraging businesses to develop solutions that benefit both the planet and their bottom line.

5. Expansion of Global IP Collaborations:

The trend towards international collaboration will continue, with partnerships between businesses, governments, and research institutions becoming increasingly common. Collaborative IP initiatives will foster knowledge sharing and co-development of new technologies, driving innovation across borders. Expect to see more joint ventures and licensing agreements that leverage the strengths of different players in the market.

6. Evolving Consumer Behavior and Brand Protection:

As consumers become more conscious of brand authenticity and ethical practices, companies will need to adapt their branding strategies accordingly. This will place greater emphasis on protecting trademarks and combating counterfeiting. Brands that engage with their audience transparently and ethically will gain loyalty and trust, making IP protection more vital than ever.



7. Digital Transformation of IP Offices:

The ongoing digital transformation of IP offices worldwide will lead to faster and more efficient processes for trademark and patent registrations. Innovations such as e-filing systems, online dispute resolution mechanisms, and Al-powered search tools will enhance accessibility for businesses and individuals alike. As a result, more creators will be empowered to protect their innovations.

8. Education and Awareness:

As the importance of IP continues to grow, educational initiatives will play a critical role in informing the public about IP rights and responsibilities. Universities and training programs will increasingly incorporate IP education into their curricula, fostering a new generation of creators who understand the value of protecting their intellectual assets.

CONCLUSION

As we move forward in an interconnected world, the importance of intellectual property rights cannot be overstated. They serve as a foundation for creativity and economic growth, enabling industries to thrive while protecting the rights of creators. This report serves as a vital resource for stakeholders seeking to navigate the complexities of IP law and leverage its benefits effectively. Continued engagement with these issues will be essential for fostering innovation and ensuring that the creative spirit remains vibrant across all sectors.

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We are available to provide specialist legal advice on the readers' specific circumstances when they arise. For further enquiries, please reach out to our Intellectual Property and Technology team at awuese@hamulegal.com or team@hamulegal.com.

