

## FAQ'S ABOUT INTELLECTUAL PROPERTY

In this edition, I decided to answer some of the most frequently asked questions that I am being continuously asked by right owners, corporations, students, would be right holders and general members of the public.

### **1. How do I know what type of Intellectual Property protection is available for my work?**

The type of protection depends on the work; the examples given here are not limitless are meant as a guide

A name, logo, symbol or colour or combination of colours will be protected by a trademark e.g Milo, Cadbury, Schweppes, Bata, Skye Bank, Mr Biggs these are all trademark synonymous with the products and services offered by the right owners.

An invention or discovery that is new, non-obvious in its field of practice and useful will be a patent e.g a new drug for the treatment of cancer or HIV/AIDS, a new type of grinding machine that is radically different from any existing one and produces a smoother blend.

An original work of authorship which has been recorded in a physical means of expression such as a book, visual artwork, musical composition, motion picture or a computer software program would be protected as a copyright.

A combination of lines or colours or both if intended by the design creator to be used as a model or pattern to be multiplied by industrial process e.g design on tiles, a motorcycle design, fabric design(our local Ankara ) are protected by design registration.

### **2. How do I protect my Intellectual Property work?**

If there is a name or logo you wish to associate with your product or service you need to conduct a search at the trademarks registry to determine, if an identical or similar name, logo or combination of both has not been registered earlier. If the search reveals no registered similar or identical mark then you may protect it by applying for its registration. If there is already in existence an earlier registered identical or similar mark you may have to change yours. The same procedure applies for patents and designs

Copyright does not depend on official procedures. A created work is considered protected by copyright as soon as it exist

However, many countries including Nigeria have a national copyright office which allows for registration of works for the purposes of identifying and distinguishing titles of works. In Nigeria, a copyright owner can notify the Nigerian Copyright Commission of the existence of the work.

### 3. What rights do I have whilst my application is pending?

For a trademark application that has been accepted for registration by the Registrar of trademarks, the proprietor of the prior application can apply for the withdrawal of any subsequent similar or identical mark based on his earlier acceptance (***It should be noted however that an automatic withdrawal may not be granted where it is discovered that the prior application was filed in bad faith***). In addition, an earlier filed application gives the proprietor the advantage of claiming priority over subsequent similar or identical marks application. It should also be noted that the acceptance of an application does not confer the same rights as a registration and does not amount to a legal claim of ownership.

A patent application filed at the Patents Office is granted a patent pending status whilst the application is being examined. This serves as an official notification to the public that the process or invention has been filed at the Patent office but has not been granted a Patent. Legally, no protection exists for patents pending but many inventors use this as deterrent for others who may be developing similar ideas or products.

A design application once filed at the registry is acknowledge and registered unless the Registrar receives an objection to its registration.

Though copyright is not registrable, the filing for its notification creates an official notice that can be used in a priority claim.

### 4. What do the markings © ® TM mean?

The marking © in connection with copyright means that the work is protected by copyright and the

marking ® in connection with a trademark means that the mark in question has been protected by

registration, whilst the mark TM means that the trademark rights are claimed for the mark even if

the mark is not registered. The registration designation ® for a trademark should only be used in connection with a trademark when the trademark has been registered.

### 5. Do I need to register to be protected?

For trademarks, patents and designs you need to be register logo, invention or design to have statutory protection. Some of the advantages of registration are – it gives a better title to claim for

ownership thereby creating a stronger right, registration precludes others from using the concept without your permission, it's easier to prove ownership, also the remedies available for violation of a registered right is more compensatory . However; the fact that your creation is not registered does not exclude you from protection under the common law.

**6. How do I get permission to use somebody else's work?**

You would have to contact the right owner for permission. Permission to use an Intellectual Property can be granted either as a franchise, license or by registered user agreement.

**7. How much of someone else's work can I use without getting permission?**

It is permissible to use limited portions of a work, including quotes for purposes such as news reporting, research and educational teachings and private personal use.

**8. How can I prove that there has been an infringement of my work?**

If the alleged infringing work is substantially similar or identical to your registered right and your work was accessible to others through publication, where there has been unauthorised use of the registered rights.

In the next edition, I shall discuss how to protect your intellectual property rights.