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## Trademarks, Patent, Copyright and Designs

In the debut edition of this column, I talked about Patents as a type of Intellectual property, what they are; the rights attributable to them and the protection afforded them. This edition talks about the other types of Intellectual property rights that exist namely Trademarks, Copyright and Designs.

### **TRADEMARKS**

Trademarks are protected rights given for names, logos, signs, colors or combination of colors which distinguish goods and services of one proprietor from another. Service marks are the same with a trademark, except that it identifies and distinguishes the source of a service rather than a product. Trademarks are governed in Nigeria by the Nigerian Trademarks Act of 1967.

The basic requirement in most countries for a trademark to be registrable is that the mark must be distinctive, so that it can distinguish the services or product of one proprietor from another. Unlike other Intellectual property rights, the protection given by a trademark registration is indefinite in the sense that it can be renewed any number of times. If trademarks are properly protected they can become very valuable asset for a business.

A trademark registration grants a statutory right, subject to certain conditions to prevent others from using that distinctive word or symbol without the registered owner's permission. Trademarks are transferable by way of assignment, licensing, franchising and registered user agreements.

For a more organized identification and protection system, goods and services connected with trademarks are placed in different classes for the purpose of registration. The idea behind the classification is to provide only a limited monopoly over the marks by restricting it to a particular class of goods/services.

Trademarks are registered for 7 years and renewable every 14 years thereafter in Nigeria.

### **COPYRIGHT**

Copyright is a form of Intellectual Property law that protects original works of authorship including literary, dramatic, musical and artistic works such as poetry, novels, movies, songs, computer software and architecture. Copyright protection arises in any creative work, the moment it is created and fixed in a tangible form so that it is perceptible either directly or with the aid of a machine.

Copyright does not protect facts, ideas, systems, or methods of operation; it may however protect the ways things are expressed i.e you may express your ideas in writing or drawings and claim copyright in your description.

Copyright is not registrable in Nigeria; however, the Nigerian Copyright Commission the statutory body charged with the administration of copyright matters in Nigeria accepts applications for the notification of a copyright in any work, which is eligible for copyright protection.

Copyright in any of the intangible property described above gives the owner the exclusive right to do and authorize others to do the following:

- To reproduce the copyrighted work in copies;
- To prepare derivative works based upon the copyrighted work;
- To distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the copyrighted work publicly, in the case of literary, musical, dramatic, choreographic works, motion pictures and other audiovisual works; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

The duration of copyright in a work depends on the type of work in question.

Copyright in literary, musical and artistic work excluding photographs is for the lifetime of the author and seventy years after death.

The term of years for cinematograph films and photographs is fifty years after the end of the year in which the work was first published.

Copyright in sound recordings is for fifty years beginning with the year immediately following the year in which the sound recording was first made.

Copyright in Nigeria is governed by the Nigerian Copyright Act of 1998, and it sets out the laws relating to the protection, transfer, remedies and penalties for infringement of copyright.

## **DESIGNS**

A design is any combination of lines or colours or both and any three dimensional form that is intended by the creator to be used as a model or pattern to be multiplied by industrial process.

A registered design protects any new or original feature(s) of a product such as its shape or configuration or, in the case of textiles, the pattern or ornamentation. As long as the design is new and not dictated solely by its function it can be protected. This means that a design

has to have some aesthetic value for it to be protected. Good examples of different designs are the new shape of a chair, a lamp, or a bottle.

Design registration protect the new look of the whole or a part of an article.

The following cannot however be protected by design registration:

- . A method of construction
- Works of Sculpture
- Wall Plaques and Medals
- Printed matter that is primarily of a literary or artistic character

The basic requirement for registering a design are;

- That the design is new and its details have not been disclosed publicly before and
- That the design has an individual character that is readily apparent when compared with designs of similar products.

Registration of an industrial design confers upon the registered owner the right to preclude any other person from doing any of the following acts;

- (a) Reproducing the design in the manufacture of a product;
- (b) Importing, selling or utilizing for commercial purpose a product reproducing the design; an
- (c) Holding such a product for the purpose of selling it or of utilizing it for commercial purposes

Registration of a design is for five years from the date of the application for registration and may be renewed for further two consecutives periods of five years thereafter.

The law regulating the registration and proprietorship of Designs in Nigeria is the Patents and Designs Act of 1971

In the next edition, I shall answer some frequently asked questions about how to determine if an intellectual property right exists in a work, how to protect an intellectual property right and what acts may constitute infringement of an intellectual property right.