

# THE INTELLECTUAL PROPERTY MANUAL THAT EVERY NIGERIAN BUSINESS NEEDS



## Introduction

The importance of intellectual property (IP) in a knowledge-based and digital world cannot be overstated. In a fiercely competitive global market, start-ups and small businesses rely on their intangible assets (such as processes, trade secrets, technical know-how, software and innovations) to get ahead of competition and where companies fail to register their intellectual property, they may face certain difficulties.

## What is intellectual property

According to the World Intellectual Property Organisation, “intellectual property” refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. In Nigeria, there are four forms of intellectual property recognised by the law.

- i. Copyright – this refers to the owner's legal exclusive right to copy or reproduce copyright material. Copyright is automatically created when the copyright material has been produced in a particular medium of expression. Examples of work protected by copyright include computer programmes, films, novels, works of architecture in the form of buildings models.
- ii. Trademark – this is a symbol, logo, insignia or a word that is used by companies to distinguish their goods and services from others in the market. In Nigeria, companies can register the name of a company, represented in a special or particular manner; an invented word/words; a word/ words having no direct reference to the character or quality of the goods; or any other distinctive mark.



- iii. Patent- this is the exclusive right given to an inventor in respect of exploiting the invention. In Nigeria, a patent will only be granted where an invention is new; results from an inventive step/activity; and is capable of industrial application. A patent will also be granted in respect of an invention if it constitutes an improvement upon a patented invention and satisfies all the other requirements.
- iv. Designs- this refers to any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process. An obvious example of a design is the famous Coca-Cola bottle.

## Creating an intellectual property strategy

It is crucial that every business seeks professional legal advice in respect of registering its intellectual property rights (IPR) with the appropriate Nigerian government agency.

Small businesses need a clear intellectual property strategy to ensure that all registrable intellectual property assets are registered, and that the company maximises the value of its intellectual property assets. A clear strategy starts from the early identification of intellectual property assets. As soon as these registrable assets are identified, then the company should proceed to register the assets.

After the core intellectual property assets of the company have been registered, the strategy will also ensure that such rights are only exploited by the company or with the company's consent. There should be a plan for enforcement and dealing with any infringement by third parties.



# Commercialisation of intellectual property

Most companies are not maximising the real value of their IP. To be able to commercialise IP, the company needs to know the value of each IP asset. A company can assess the value of its intellectual portfolio through an intellectual property valuation audit. There are several ways to conduct a valuation audit, such as income approach, market approach, cost of creating the intellectual property asset. As an example, a company can calculate how much it has generated through the use of a particular intellectual property asset and then decide to ascribe a value to that asset. Alternatively, the company could calculate all the monies and the value of the time used in creating the asset and then ascribe a value to that asset. Now that the company has an idea of the value of the asset, the company can licence the intellectual property asset to third parties for royalty payments. In another scenario, the company can use its intellectual property portfolio as collateral for a loan from a bank. For small businesses, a sale and lease back option might be useful, as the business can sell its intellectual property asset in exchange for immediate cash flow for its business. This company can then lease the intellectual property and use it for its daily business operations whilst paying royalties to the company that leased them the intellectual property.

## Conclusion

Businesses, and especially start-ups, need to quickly realise the value of intellectual property and how revenue generated from their IP portfolio can affect the growth of their business. Businesses must seek sound legal advice to develop a robust IP strategy that protects its IP assets and IP rights.

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