

Safeguarding Intellectual Property Rights In The Era Of Social Media: challenges and strategies for businesses in nigeria.

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1. Introduction

The emergence of social media has remarkably redefined human interactions, making communication more interactive and immediate. With platforms such as Facebook, X, Instagram, YouTube, TikTok, and LinkedIn ingrained in our daily lives, individuals can now instantly share their thoughts and experiences with the global audience, fostering real-time engagement and feedback. Social media has introduced novel platforms that enable content creators and business owners to connect with their audiences and customers, as well as to promote their offerings and services. While it is indubitable that the emergence of social media has enhanced connectivity and convenience, it is not devoid of its negative impacts and challenges, especially as it relates to protecting intellectual property rights (“IPRs”).

According to WIPO², the internet and other constantly evolving digital technologies have opened up exciting opportunities for business and for new modes of creativity, while at the same time presenting complex challenges for the evolution of copyright. Infringements of IPRs has soared with the advent of social media, making these rights more difficult to protect than they were before the evolution of social media. Consequently, it has become increasingly important for brands and businesses to adopt effective strategies to ensure that their IPRs are protected from infringements

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² World Intellectual Property Organization, An Overview

https://www.wipo.int/edocs/pubdocs/en/general/1007/wipo_pub_1007.pdf. Accessed on 11th January, 2024.

on social media. Thus, the overarching objective of this article is to discuss the challenges brand owners and businesses encounter in safeguarding their intellectual property rights on social media, the impacts of social media infringement on these brands, and the strategies that brands and businesses can adopt to effectively protect their rights on social media.

2. Intellectual Property Rights: Meaning and Legal Framework in Nigeria

Intellectual Property (“IP”) refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images.³ Conversely, Intellectual Property Rights (“IPRs”) refer to rights granted to creators of innovative and novel works, typically affording the creator exclusive control over the use and exploitation of their creations.⁴ The World Trade Organization defines IPRs as rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.⁵

Copyright, Trademarks, Patents, and Designs, are the major IPRs in Nigeria. Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. A Trademark, on the other hand, is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises, while Patent is an exclusive right granted for an invention or design.⁶ The legal framework for the protection of IPRs in Nigeria consists primarily

³ WIPO [https://www.wipo.int/about-ip/en/#:~:text=Intellectual%20property%20\(IP\)%20refers%20to,and%20images%20used%20in%20commerce](https://www.wipo.int/about-ip/en/#:~:text=Intellectual%20property%20(IP)%20refers%20to,and%20images%20used%20in%20commerce). Accessed on 10th January, 2024.

⁴ Driha & Zafrilla, Massive Open Online Courses and Intellectual Property Rights Issues. <https://mooc-book.eu/index/learn-more/key-areas/ipr/>. Accessed 10th January, 2023.

⁵ World Trade Organization, ‘What are Intellectual Property Rights?’ https://www.wto.org/english/tratop_e/trips_e/intell_e.htm. Accessed on 10th January, 2024

⁶ WIPO, What is Intellectual Property? <https://www.wipo.int/about-ip/en/>. Accessed on 11th January, 2024.

of the Copyright Act,⁷ the Trademarks Act⁸, and the Patent and Designs Act.⁹ While both the Trademark, Patents and Designs Acts are silent on IPRs infringements on social media and does not expressly provide for how registered trademarks, patents, and designs are to be protected online, and how unauthorized use of trademarks, patents and designs on social media can be sanctioned, the recently amended Copyright Act of 2022 (“the Act”) made provisions regarding online protection of Copyright. Precisely, the Act grants copyright owners the exclusive right to make their work available to the public by wire or wireless means in such a way that members of the public are able to access the work from a place and time independently chosen by them.¹⁰ In light of this, the Act further safeguards these works from online threats and infringements by specifically providing that no person shall knowingly circumvent a technological protection measure that effectively protects access to copyrighted work either by avoiding, bypassing, removing, deactivating, decrypting, or otherwise impairing such technological measure.¹¹

Furthermore, the Act empowers copyright owners whose works have been infringed online to issue a notice of such infringement to the relevant service provider, requesting the service provider¹² to take down or disable access to any infringing content or link to the content, hosted on its system or network.¹³ The service provider, upon receipt of the notice, is required to promptly inform the subscriber responsible for the content, such person is also mandated to promptly disable access to the infringing content, and thereafter notify the copyright owner accordingly. Failing which, it

⁷ Copyright Act, 2022.

⁸ CAP T13 Laws of the Federation of Nigeria, 2004.

⁹ CAP P2 Laws of the Federation of Nigeria, 2004.

¹⁰ Sections 9(i), 10(1)(f), 11(f), 12(d), and 13(1)(c) of the Copyright Act, 2022.

¹¹ Section 50(1)(3) of the Copyright Act, 2022.

¹² Section 108 of the Copyright Act 2022 defines “service provider” to mean a provider of online services or network access, including operators of such facilities...”. This means owners and operators of social media platforms.

¹³ Section 54(1) of the Copyright Act, 2022.

shall be liable for breach of statutory duty and infringement of the content.¹⁴ The Act in further safeguarding the rights of copyright owners from social media infringements provides a penalty of an imprisonment term of not less than five (5) years or a fine of not less than N1,000,000.00 (One Million Naira) or both for any person found guilty of transmitting to the public, via wire, wireless, or online means, a copyrighted work for commercial purposes without prior and proper authorization and consent from the copyright owner.¹⁵

A service provider who fails to comply with the provisions of subsections (1) and (2), shall be liable for such failure as a breach of statutory duty and for infringement of the content which is the subject matter of the notice under section 54 to the same extent as the person responsible for placing the content on the system or network.

3. Challenges of Protecting Intellectual Property Rights on Social Media:

It is indubitable that every new development comes with its own concomitant challenges. With the advent of social media platforms, intellectual property issues have been confronted with new and complex challenges.¹⁶ The emergence of social media and platforms enabling individuals to share content rapidly and in real time is perhaps one of the biggest challenges bedeviling business owners in protecting their brands. The ease with which content can be disseminated on the various social media handles facilitate the infringement of the IPRs of owners of protected works.

¹⁴ Section 55 of the Copyright Act, 2022.

¹⁵ Section 44(7) of the Copyright Act 2022.

¹⁶ Uche, Ebeze & Obiora. *Intellectual Property and the New Media: Issues and Challenges*.

Infringement of IPRs on social media platforms has become the norm. Copyrighted works such as images, videos, and written content¹⁷ are often disseminated without prior authorization from the copyright owner. Users plagiarize content claiming it as their own without properly acknowledging the original creator's copyright. In 2020, unauthorized dissemination of copyrighted work was the crux of the famous 'Volvo' Instagram law suit.¹⁸ The suit, which was eventually settled out of court by parties, was initiated by a photographer and the model he photographed, accusing Volvo of copyright violation and misappropriation of the model's likeness for posting on its Instagram story photographs of the model posing with one of its cars, and subsequently including a link to Volvo's website.¹⁹ Similarly, in the landmark case of Agence France Presse ("AFP") v. Daniel Morel,²⁰ the court ruled that the news wire service AFP violated Morel's copyright by distributing images he had posted on Twitter in the aftermath of the 2010 Haitian earthquake without permission. Both AFP and Getty Images were found guilty of willful infringement, and a judgment sum of \$1.2 million was awarded in favour of Morel.²¹ These instances underscore the risks and challenges copyright owners face in protecting their IPRs in the social media era and the position that the mere existence of an image, video, or any copyrighted work on social media is not tantamount to an authorization for its use without express permission from the copyright owner.

¹⁷ Section 2 of the Copyright Act 2022 states the categories of works that are eligible for copyright to include: literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts.

¹⁸ Jack Schroeder and Britini Sumida v. Volvo Group North America, LLC and Volvo Car USA LLC, United States District Court, Central District of California, Case No. LACV20-05127-VAP (PVCx) <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=3316&context=historical>. Accessed on 11th January, 2024.

¹⁹ N. Rozansky, 'Volvo' Instagram Lawsuit Exposes Social Media Copyright Nuances. <https://www.forbes.com/sites/legalentertainment/2020/09/03/volvo-instagram-lawsuit-exposes-social-media-copyright-nuances/?sh=5943d6124f88>. Accessed on 11th January, 2024.

²⁰ A summary of the case is accessible at; <https://www.loeb.com/en/insights/publications/2014/08/agence-france-presse-v-morel>. Accessed on 11th January, 2024.

²¹ A. Murabayashi, Expensive Copyright Mistakes that Brands Make on Social Media <https://stories.photoshelter.com/expensive-copyright-mistakes-that-brands-make-on-social-media/>. Accessed on 11th January, 2024.

In the same vein, instances of trademark infringements on social media abound. Registered trademarks are used to market products without due authorization, leading to confusion about the source or affiliation of such products and services. Infringement of a trademark on social media could involve profiting from the goodwill associated with a trademark belonging to someone else.²² In 2022, Nigerian online skit maker and content creator Sabinus threatened to sue Friesland Foods Wamco Nig. Ltd. owners of Peak Milk, for using his trademarked slogan “Something Hooge” to advertise its product, Peak Milk, on all its social media platforms without authorization.²³ As regards Patents and Designs, social media platforms enable unauthorized use of patented inventions as well as the sale and distribution of counterfeit goods. Instagram currently appears to be the favourite platform for counterfeiters to sell fake products, and from an analysis of certain branded hashtags on the platform, it was discovered that most of the comments were from sellers of counterfeit products.²⁴ Similarly, reported data suggested that Facebook was becoming a hotspot for fake football items, with detections of fake football jerseys quadrupling in just two years.²⁵

Infringement of IPRs on social media has several negative impacts on brands and businesses, including reputation damage, decline in market value, customer confusion, exposure to cybersecurity attacks, and loss of brand goodwill. Social media infringements of IPRs often result in a loss of sales and revenue for genuine brands, as consumers, may opt for cheaper or

²² Mintz, When Can a Trademark Owner Take Action for Unauthorized Use of its Trademark Online? <https://www.lexology.com/library/detail.aspx?g=f82f4314-7c1c-4223-87c1-455e491cf744>. Accessed 11th January, 2024.

²³ Skit Maker Sabinus Sues Peak For Using Trademark ‘Something Hooge’ <https://guardian.ng/life/skit-maker-sabinus-sues-peak-for-using-trademark-something-hooge/>. Accessed 11th January, 2024.

²⁴ R, Williams, The Growth of Fake Products on Social Media. <https://www.redpoints.com/blog/the-growth-of-fake-products-on-social-media/>. Accessed on 11th January, 2024.

²⁵ Ibid.

unauthorized alternatives. Also, when a brand is associated with counterfeit products, it may lead to a loss of trust among consumers and ultimately reducing sales for the brand.

4. Strategies for Businesses and Brands to prevent or mitigate infringement of IPRs:

For businesses and brands to fortify themselves against infringements on social media and to avert the negative impacts of such infringements, the following strategies can be adopted to safeguard their IPRs.:

- i. **Registration of Intellectual Property:** Officially registering a brand's Intellectual Property with the appropriate regulator provides a strategic advantage and makes it easier for the brand to enforce its rights if violated, either by filing a law suit against the infringer or filling a 'take down notice' to the service provider of the platform on which such rights are infringed.
- ii. **Use of social media platforms' IP protection tools:** Social media platforms have tools²⁶ designed to safeguard IP, including IP reporting systems, content recognition technology, brand rights protection, and rights manager that enable rights holders to protect their content. Brands should effectively explore these tools to protect their IPRs on social media platforms.
- iii. **Adoption of Digital Rights Management (DRM) techniques:** DRM involves a number of technologies that businesses and brands can utilize to control access to and distribution of their digital content. It involves content encryption. which makes it challenging for

²⁶ For example, Facebook provides for three (3) different IP protection tools that right holders who desire to protect their IPRs on the platform can adopt. Click https://web.facebook.com/business/help/611786833293457?_rdc=1&_rdr#%3A%2Ftext%3DRights%20holders%20who%20want%20to%20and%20the%20IP%20Reporting%20API to read more about these tools.

unauthorized users to access and distribute content on social media without permission, and also licensing agreements which enable owners of protected work to determine how their work is to be used by licensees, the duration, and other terms and conditions they desire.

- iv. **Inclusion of IP Policies in Social Media Regulatory Policies:** Incorporating IP policies into a brand's social media policies to establish how employees and clients are to appropriately use IP on social media will boost IP protection. These policies should clearly contain guidelines on creating and sharing content which involves the brand's IP on social media as well as the consequences for any breach.

5. Conclusion:

As businesses and brands increasingly leverage social media for growth, visibility, and broader reach, the importance of safeguarding intellectual property rights on these platforms becomes paramount. By implementing the strategies recommended in this article, brands can effectively protect their intellectual property rights in the social media space.

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