



UDO UDOMA &  
BELO-OSAGIE

# DID YOU KNOW SERIES

(Vol. 2)

**PROTECTING  
YOUR BRAND'S  
INTELLECTUAL  
PROPERTY**





*Did you know that Intellectual Property law protects your brand image, creations, and inventions to the extent that they are properly registered?*

*Read along as we explore how Intellectual Property Law helps you achieve brand protection.*

**Trademark Registration:** *Did you know that trademark registration not only protects names and logos but that legal protection extends to the shape of goods, their packaging, and a combination of colours?*

- One way to protect your brand name from unauthorised exploitation is by trademark registration. Registration underlies the concept of trademark protection as it is a pre-requisite for the institution of infringement actions under the Trade Marks Act, Cap 436, LFN 1990 (“Trade Marks Act”).
- The definition of “trade mark” under the Trade Marks Act was recently amended by the Business Facilitation (Miscellaneous Provision) Act 2023, the definition of “trade mark” now includes the shape of goods, their packaging and combination of colours.
- This means that you can claim exclusive rights to not only your business name and brand identity but also the shape of your products, packaging and colour combinations.
- In Nigeria, trademark protection is based on first to register. Thus, it is advised that the registration is carried out as promptly as possible to ensure that your brand is not registered by another individual or company.
- There is no limit to how long you may own a registered trademark. However, trademark registrations are required to be renewed. The registration of a trade mark shall be for an initial period of seven years for fourteen years thereafter.

**Renewal of your Trade Mark Registration:** *Did you know that your mark(s) registered under the Trade Marks Act is required to be renewed before the expiration of its validity period?*

- Section 23 of the Trade Marks Act provides the initial validity period of a trademark in Nigeria to be seven (7) years and thereafter renewable from time to time for a period of 14 years.



- Failure to renew your registered mark before it expires can be a ground for removal of the mark from the Register of Trade Marks as provided in section 23(3) of the Trade Marks Act.
- The effect of such removal is that the trademark loses its protection. However, where a trademark has been removed from the register for non-payment of renewal fee, it shall, nevertheless, for the purpose of any application for the registration of a trademark during one (1) year next after the date of the removal, be deemed to be a trademark that is already on the register.
- The renewal application can be filed personally or through an authorised agent at the trademark registry.

**Registration of Copyright:** *Did you know that the Copyright Act 2022 (CA 2022) now recognises the registration of works protectable as copyright with the Nigerian Copyright Commission (NCC)?*

- While there is no requirement for the copyright owner to register their work, the CA 2022 places increased importance on works registered with the Nigerian Copyright Commission.<sup>1</sup>
- The implication of this amendment is that registration with the NCC raises a rebuttable presumption of copyright subsistence and authorship in a given work, which reduces the need to prove the same before the court in an infringement proceeding.
- As a result, copyright owners should prioritise the registration of their copyright to give them the most effective protection of their copyright.

**Copyright Infringements:** *Did you know that there are certain acts that may constitute an infringement on a work that enjoys copyright protection?*

- The CA 2022 provides a list of acts which, if done without the authorisation of the owner, will constitute an infringement on the copyright. These acts include:

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<sup>1</sup> Section 87(4) of CA 2022

- a) Where any person does or causes any other person to do an act which constitutes a violation of your exclusive right conferred under the CA 2022;
- b) Where any person imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under the CA 2022;
- c) Where any person sells, offers for sale or hires any work in respect of which your copyright is infringed;
- d) Where any person makes or has in their possession plates, master tapes, machine or equipment used for the sole purpose of making infringing copies of your work;
- e) Where any person permits a place of public entertainment or business to be used for a public performance of your work, where the performance constitutes an infringement of the copyright in your work unless the person was not aware or had no reasonable ground to suspect that the performance constitutes an infringement of your copyright;
- f) Where any person permits the reproduction of your copyrighted work;
- g) Where any person performs or causes to be performed for the purpose of trade or promotion of trade, any work in which your copyright exists.

- In any of the instances, an action for infringement of copyright can be instituted, and the copyright holder may be entitled to reliefs such as damages, injunctions, or accounts of profits.

**Notice and Takedown of Infringing Works:** Did you know the owner of copyright in a work can request a service provider to take down content or disable access to any content that infringes on a copyright, which is hosted on the service provider's system or network under the CA 2022.

- The CAC 2022 provides that the notice of takedown shall be written and may be transmitted electronically to the service provider or his designated agent.
- In addition to the notice being in writing, it must include:
  - a) A physical or electronic signature of the owner of the copyright or a person authorised to act on behalf of the owner of the right allegedly infringed;
  - b) Identification of each work claimed to be infringed;



- c) identification of the infringing material or the subject of infringing activity that is to be removed or access to which is to be disabled, including information sufficient to enable the service provider to locate the material;
  - d) Information sufficient to enable the service provider to contact the complaining party, such as an electronic mail address, telephone number, or a location address at which the complaining party may be contacted;
  - e) A declaration on oath that the complainant believes that the use of the material in the manner complained of is not authorised by the owner of the copyright, his agent or the law; and
  - f) A statement that the information in the notification is accurate and that the complainant is authorised to act on behalf of the owner of the right allegedly infringed.
- While the CA 2022 does not rule out the possibility of a virtual notice meeting the requirements for a valid notice, the requirement of a declaration on oath means that physical documentation would be required as part of the notice for it to comply with the requirements under the CA 2022.
  - Please note that, you do not need a website or service provider to have a notice and takedown procedure before requesting for an infringing content to be taken down. You may request for an infringing content to be taken down by following the procedure under the CA 2022.

## Conclusion

Intellectual Property owners must ensure that they take adequate steps to safeguard their brand's intellectual property assets. This is crucial in the ever-evolving landscape of business and creativity. The recent legislative changes in Nigeria, particularly the CA 2022 and the Business Facilitation Act 2023, offer enhanced protection for creators and innovators. To ensure the long-term profitability and integrity of your intellectual property, you must be aware of the legal frameworks that protect intellectual property rights and you must take proactive measures to register, renew, and enforce these rights.

This update is for general information purposes only and does not constitute legal advice. If you need any legal advice in relation to your intellectual property assets or information about our practice offerings, please contact us at [IPTeam@uubo.org](mailto:IPTeam@uubo.org).