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# Intellectual property and the protection of business ideas

EKENE OKAFOR May 18, 2021

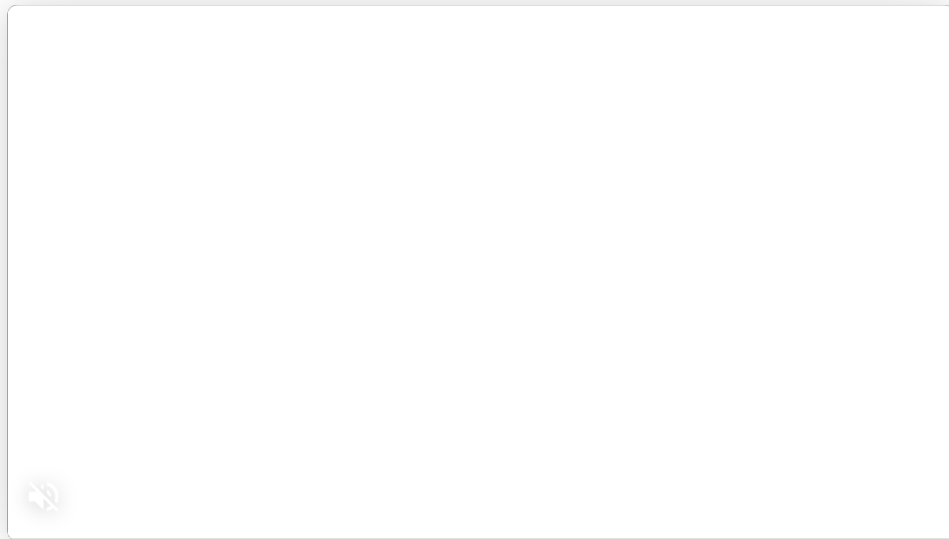


Just as there are laws governing the protection of man and his physical properties, there are also laws governing the protection of the intangible property of man. The concept of intellectual property seeks to protect the products of the human mind the same way the physical property is also protected.

Tolu Olaloye, a Senior Associate of Intellectual Property Practice at Jackson, Etti and Edu, a leading law firm in Nigeria, gave a presentation at the LBS-CKCRLE conference titled 'Intellectual Property and the Protection of

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was a very insightful presentation as intellectual property is a fast-growing field everywhere in the world. It was very obvious from her composure and the ease with which she spoke, that the topic was one close to heart and she did not have any problems driving her well-articulated thoughts home.



According to the World Intellectual Property Organisation (WIPO), intellectual property refers to the creations of the mind— literary, artistic, scientific works, performances, designs, trademarks, services— products of our ingenuity. These creations can be protected by law and enforced by the courts by virtue of the Copyright Act 2004, Patent and Designs Act 2004, Trademark Act 2004 and various international and regional frameworks for the protection of intellectual property. Intellectual property consists of two divisions:

- Copyright and Neighbouring Rights;
- Industrial Property Rights

According to Tolu, copyright is the legal term used to describe the exclusive proprietary rights that creators have over eligible creative works. For a work to enjoy copyright, it must be eligible, that is, it must fall under the works eligible under the Copyright Act. It must be original; time must have been expended in creating it. It must be fixed; it cannot remain an idea in the mind, and it must have nexus to Nigeria.

Industrial Property on the other hand encompasses the legal protection of a wide range of industrial and commercially valued information. These rights apply to business branding marks, business names, unique business processes and so on.

Something Tolu kept emphasizing on was the fact that nobody can have monopoly over an idea. If you have an idea, fix it because until you do that, it is free for all. She said, “an idea is the foundation of the pyramid when it comes to running a business. Therefore, an aspiring business owner must take steps to move beyond the idea stage to the action stage in order to make the idea a commercially viable venture.” A crucial aspect of the action stage is to identify which category your idea falls into, to know what intellectual property protection you might need.

Industrial Design on the other side of the spectrum protects the physical representation of a product. It is the intellectual property right in the aesthetical or ornamental part of a product capable of being applied in an industrial process. For example, textile designs, product packaging and so on. It is also only registrable if it is new and not contrary to public order and morality.

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Patent, which comes under industrial design, gives exclusivity of commercialisation to a person who has invented a product or process or has improved a process of doing something for a specified number of years. A patentable invention consists of either products—electronic, mechanical, etc., or processes— recipes, formulas, etc. For your product to be patented, it must be new and capable of industrial application or an improvement on a patented invention. Patent lasts for only twenty years and after that, it goes into the public domain, meaning after twenty years, it can be improved on or used by anybody. As a patent holder, you have the right to enforce a patent right, to assign patent and to license patent to third parties.

Just like patent, trademark falls under industrial design. It refers to the marks used during trade to distinguish goods emanating from a particular proprietor who has the right to exploit it. For example, Dangote, Google, Coca Cola are trademark names. Trademarks can be words, logos, shapes, colours or symbols. Therefore, the apple sign of Apple is its trademark, the four boxes of Windows is also their trademark, meaning wherever you see these signs, you immediately associate the product to the company. This is where the tortuous act of passing off comes into play, where another company uses a very similar sign as an already existing company, causing confusion among the consumers and making

them believe the two establishments are the same. This act is frowned upon by law and the rights can be enforced in court. Nevertheless, a trademark can last forever if the owner continuously renews the protection.

Trade Secrets on the other hand is a veritable tool for long term protection of technical information. A very good example is Coca Cola who has protected its formula since 1886, well over a century. This is amazing because no other cola company has come close to reproducing that same taste. Protecting your trade secret gives you an edge over other businesses such that if it were known, the edge will be lost. It is said that the Coca Cola formula is not even hidden in the headquarters which is a classic example of hiding in the least expected place. Trade secret is protected as a “right to claim for breach of confidence” so ways of protecting are– inserting confidentiality clauses in employee contracts, Non-Disclosure Agreements with vendors or creation of trade secret policies. Generally, a third party cannot be liable for using a trade secret unless he knew the information was secret or he got it through illegal means.

In conclusion, Tolu Olaloye made it clear that it is not enough to protect your intellectual property but to commercialise it; to make a living from it, which can be seen with Chimamanda Adichie’s novel *Half of a Yellow Sun*, which was made into a movie and a painting. This happened because she licensed the work to these people to create works of art and of course, she gained from it.

“A concept without a brand has no identity” –Tolulope Olaloye. We should therefore not let the “Nigerian factor” of “nothing ever works” to stop us from taking the right steps, who knows, we might become the next Mark Zuckerberg.

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