



## Intellectual Property Rights in Nigeria-A Legal Perspective

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### ABSTRACT

This paper critically exposes the concept and legal framework for the implementation of Intellectual Property Rights (IPRS) in Nigeria. Intellectual property in summary comprise legal rights which result from intellectual activity in the industrial, scientific, literary and artistic areas of human endeavours. Most countries including Nigeria have enacted laws to protect intellectual property in order encourage inventors, creators and artists and preserve their rights to the fruits of their labour. Also such laws attract foreign direct investment to the country which creates jobs and increases the country's revenue through taxes. It was discovered that Nigeria has adequate laws both domestic and International Laws to which Nigeria is a signatory for the protection of Intellectual Property (IP) but what is lacking is diligent implementation of these laws. Consequently, Nigeria has become a destination of first choice for all kinds of pirated works and counterfeited products from various parts of the world. Dubious Nigerian businessmen are also mass producing cassette discs of local movies and popular local songs. Recommendations have been made on how to solve this problem.

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### 1. INTRODUCTION

Intellectual property rights (IPRS) can best be described as intangible property rights or rights in ideas. As a World Intellectual Property Organisation (WIPO) publication explained:

The history of the human race is a history of the application of imagination, or innovation and creativity, to an existing base of knowledge in order to solve problems. Imagination feeds progress in the arts as well as science. Intellectual property (IP) is the term that describes the ideas, inventions, technologies, artworks, music and literature, that are intangible when first created, but become valuable in tangible form as products. Suffice it to say that IP is the commercial application of imaginative thought to solving technical or artistic challenge. It is not the product itself, but the special idea behind it, the way the idea is expressed, and the distinctive way it is named and described.<sup>1</sup>

The word 'property' is used to describe this value, because the term applies only to inventions, works and names for which a person or group of persons claim ownership. Ownership is important because experience has shown that potential economic gain provides a powerful incentive to innovate.<sup>2</sup>

Intellectual Property Rights (IPR) are assuming increasing importance in every facet of life today, beyond their original position, as a result of new developments in modern science and technology as well as challenges arising from the competitive nature of international trade. Nations across the world have indeed been compelled to pay greater attention to the development of intellectual property, as well as its protection.

Nigeria's status as a favorable destination for foreign direct investment and place where local creative talent can flourish is in jeopardy, due to the activities of individuals that place no value on Intellectual Property (IP).<sup>3</sup>

The incidence of infringement and violation of Intellectual Property Rights (IPRS) especially in the nature of counterfeiting and piracy has been on the increase in Nigeria. Activities of infringers/counterfeiters have deprived many producers, manufacturers, artists, marketers and stakeholders of the benefits of their creativity, and they have prevented the industry from more-rapid financial growth and development.

### 2. THE SCOPE OF INTELLECTUAL PROPERTY

IP covers many unrelated areas: The Stockholm Convention,<sup>4</sup> which established the World Intellectual Property Organization, states that intellectual property includes the rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor, scientific discoveries, industrial designs,
- trademarks, service marks, and commercial
- names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Although Nigeria currently has a legal regime in place to curb, or at least reduce, this menace, it has only the barest minimum of effects, and more still needs to be done to

<sup>1</sup> *Intellectual Property: A Power Tool for Economic Growth*, (WIPO Publication No 888 2012) p10-11.

<sup>2</sup> *Ibid.*

<sup>3</sup> K.M. Waziri, *Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum*, 4 U. Abuja J. Pol. and Law 196 (2011).

<sup>4</sup> Stockholm Convention was concluded on July 14, 1967.

ensure effective enforcement and stay in tune with the best international practices. IPRS are governed by the Trademarks Act,<sup>5</sup> the Patents and Designs Act,<sup>6</sup> the Merchandise Marks Act,<sup>7</sup> the Federal High Court (Civil Procedure) Rules<sup>8</sup> and the Copyright Act,<sup>9</sup> in addition to the principles of common law.

IPRS are protected through the registration of rights with the relevant registries and regulatory bodies established by the Nigerian Government, such as the Trademarks, Patent and Designs Registry,<sup>10</sup> the Nigerian Copyright Commission (NCC), as well as other related offices, such as the National Office for Technology Acquisition and Promotion (NOTAP), the Standard Organization of Nigeria, and the National Agency for Food and Drug Administration and

Control (NAFDAC). All these offices run their independent registries and often interface in the discharge of their mandate.

IPRS in Nigeria are enforced through the court system, through tribunals such as the Trademarks and Patent Tribunal, and through various regulatory bodies such as the Nigerian Customs Service (NCS), the Nigerian Immigration Service (NIS), the Consumer Protection Council, and the Nigerian Police (for counterfeiting claims). Section 251 (1) (f) 1999 of Constitution of the Federal Republic of Nigeria vests exclusive jurisdiction in the Federal High Court over disputes relating to copyright, patent, trademarks and passing-off, industrial designs and merchandise marks. In addition to its original jurisdiction, the Federal High Court sits on appeal over the proceedings of the Tribunals established by the Trademarks Act and the Patents and Designs Act. The Court of Appeal,<sup>11</sup> and ultimately the Supreme Court, exercise appellate jurisdiction in relation to matters emanating from the Federal High Court.

Today, Nigeria is facing challenges in the process of strengthening its intellectual property system. The areas of concern for Nigeria specifically involve establishing an appropriate legal and institutional framework, creating awareness on the importance of IPRS, enforcing IPRS, and securing the future of the Intellectual Property system in general.

In common parlance, "enforcement" connotes the act of ensuring that a system is adhered to or obeyed. In relation to IPRS, the meaning of "enforcement" ranges in scope, stretching from registration and investigation all the way to final administrative or judicial actions. A survey conducted by the World Intellectual Property Organization's Advisory Committee on Enforcement<sup>12</sup> indicated that an under-

estimation of the value of IPRS has contributed to ineffective enforcement overall. IP assets are intangible in nature and are therefore generally overlooked when classifying business assets. This is especially true in Nigeria and surrounding nations, where such assets are all too-infrequently recognised as valuable income-earning assets for the company.

Assessment of the value of industries based primarily on IPRS in terms of a percentage of the Gross Domestic Product would lead to an appreciation of the value of intellectual property rights in terms of a country's economic environment, as well as in respect of economic, social and cultural growth and development.<sup>13</sup>

Enforcement of IPRS is an integral part of a developing country's economic development strategy.<sup>14</sup> There are several reasons why a country would wish to enforce IPRS. In developed countries, there is good evidence that intellectual property is, and has been, important for the promotion of invention in some industrial sectors, particularly the pharmaceutical, chemical and petroleum industries as well as biotechnology and some components of the information technology space.

For developing countries, the nurturing of indigenous technological capacities through the intellectual property system has also proved to be a key determinant of economic growth and poverty reduction. The enforcement of IPRS thus protects local commercial and industrial innovation, as well as encouraging technology transfer and foreign investment.

The enforcement of IPRs has gained prominence in recent years on the global trade and intellectual property agenda. A number of initiatives and developments in this area at the global, regional and bilateral level carry wide-reaching implications for the regulation of a country's economy.

Concerted efforts to enforce global IPRS continue to focus intensely on the developing countries of Africa in particular. These efforts have spawned a complex, and ever-evolving, system of legal mechanisms, encompassing international and regional conventions, World Trade Organization dispute settlements, bilateral and multilateral treaties, decisions of national courts and regulatory bodies, and a welter of local laws and border controls.

Enforcement of IPRs in Nigeria should be greatly facilitated as this will further improve the country's image abroad, develop confidence in the Nigerian investment climate, and increase the inflow of business activities to the country. The major cost to developing countries in which piracy, infringement and counterfeiting thrives is the loss of access to foreign investment, due to investor concerns that the intellectual property produced by the relevant investment will be stolen by others.

This discouragement of investment has the obvious short-term effect of reducing taxes and revenues and the long-term effect of stifling economic development. More specifically, the establishment of key industries in developing countries will be difficult in the absence of effective intellectual property laws or enforcement.

<sup>5</sup> Trade Marks Act (1967) Cap. (T13), Laws of the Federation of Nigeria, 2004.

<sup>6</sup> Patents and Design Act (1990) Cap. (P2), Laws of the Federation of Nigeria, 2004.

<sup>7</sup> The registry is an agency operating under the Commercial Law Department of the Federal Ministry of Commerce.

<sup>8</sup> Constitution of Nigeria (1999), S. 239.

<sup>9</sup> U.N. WIPO Advisory Committee on Enforcement, 8th Sess., U.N. Doc. WIPO/ACE/8 (Dec. 19–20, 2012).

<sup>10</sup> Michael Blakeney, *Guidebook on Enforcement of Intellectual Property Rights* (Apr. 2005), on [http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc\\_12264\\_1.pdf](http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_12264_1.pdf). Accessed 6th Feb. 2018.

<sup>11</sup> U.N. WIPO Advisory Committee on Enforcement, 8th Sess., U.N. Doc. WIPO/ACE/8 (Dec. 19–20, 2012).

<sup>12</sup> UNCTAD-ICTSD Project on Intellectual Property Rights and Sustainable Development, *Intellectual Property Rights:*

*Implications for Development*, 2003), [http://www.iprsonline.org/unctadictsd/Policy%20Discussion%20Paper/PP\\_Overview.pdf](http://www.iprsonline.org/unctadictsd/Policy%20Discussion%20Paper/PP_Overview.pdf) Accessed on 6<sup>th</sup> Feb., 2018

<sup>13</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 41–61, Jan. 1, 1995, Marrakesh..

<sup>14</sup> Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (1994) [hereinafter TRIPS Agreement].

In order to keep up with global economic trends and challenges relating to intellectual property, Nigeria has signed up to various international treaties and conventions with the intention of creating an avenue for the rapid development and appreciation of intellectual property, brand names and quality products as an intangible business asset. Nigeria is a signatory to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) which seeks to establish new rules and disciplines concerning the provision of adequate standards and principles concerning the availability, scope, effective and appropriate means for the enforcement of trade-related IPRS amongst others.

There is a need however to domesticate the relevant treaties into Nigerian laws for them to have a force of law. At the moment, several treaties cannot be enforced without their being made part of Nigerian laws as provided by Section 12 of the 1999 Constitution of the Federal Republic of Nigeria: "No treaty between the Federation and any other country shall have the force of law, except to the extent to which any such treaty has been enacted into law by the National Assembly".

Part III of the TRIPS Agreement obliges Members to establish a comprehensive enforcement regime so as to permit effective action against any act of infringement of IPRS covered by the Agreement. These procedures also require "expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements."<sup>15</sup>

In relation to the IPRS covered by the TRIPS Agreement, members are enjoined to make available civil judicial procedures for the enforcement of those rights to rights holders. In cases involving infringements of IPRS, it is important that courts be empowered to award damages that both compensate the right holders and deter potential infringers from engaging in illegal activities.<sup>16</sup> There is also provision for Ancillary orders such as injunction, delivery up for destruction, corrective advertising, and account for profit amongst others.

A key feature of the TRIPS Agreement is the members' obligation to introduce border measures for the protection of IPRS. Given the concern about the trade in pirated and counterfeit goods which precipitated the interest of GATT<sup>17</sup> in intellectual property protection, it was probably to be expected that the architects of the TRIPS Agreement would look to the customs authorities to assist in the interdiction of this trade. It is obviously more effective to seize a single shipment of infringing products while they are in transit, rather than to await their distribution in the market. Section 4 of Part III establishes a scheme for suspension of the release into circulation of suspected counterfeit trademark or pirated copyright goods. This suspension may be on the application of a right holder or pursuant to ex officio action by the border authorities.

Factors working against Effective Enforcement of Intellectual Property Rights in Nigeria are numerous and a variety of forms. A survey conducted by WIPO in 2002 indicated that the principal barriers to eliminating counterfeiting and piracy did not exist in the substantive law, but rather in the remedies and penalties available (or not available) to stop and deter counterfeiting and piracy. The ineffectiveness of enforcement systems was attributable, in many cases, to lack of human resources, funding and practical experience in IP enforcement of relevant officials, insufficient knowledge on the side of right holders and the general public, concerning their rights and remedies, and systemic problems resulting from insufficient national and international coordination, including a lack of transparency. Other impediments include:

**a. Obsolete Laws:**

The dates of enactment of principal legislations relating to IPRS in Nigeria clearly show that the laws were made long ago at a time that many of the current day developments were not in the consciousness of the legislators. The result of the use of these outdated legislations is that the protection offered in Nigeria is substandard in comparison to the updated laws now operating in other jurisdictions. Nigeria's laws are craving for substantial amendments.

**b. Inadequacies of Judicial Enforcement:**

Delays in the judicial system and other barriers to justice also discourage intellectual property litigation and enforcement in Nigeria, in several areas. Furthermore, there are inadequacies in the system of civil judicial procedures and remedies, including injunctions for a party to desist from an infringement, the attribution of adequate damages and expenses, destruction or removal from the channels of commerce of infringing goods, materials or machinery used in the production of such goods and the closure of facilities where production or trade of infringing goods take place. Remedies are available in the law, but are expensive to obtain and are easily-circumvented by the defense.

There are inadequacies in the system of provisional or temporary protective measures to prevent, in a prompt and effective manner, the infringement of an IPR from occurring or to preserve relevant evidence with regard to an infringement (such as raids, seizures, suspensions of release into trade channels, provisional closing of facilities, etc.), including, in urgent cases, measures issued *ex parte* (at the request of one party and without previous notification of the other party).

There are inadequacies in the system of criminal procedures, leading to the imposition of deterrent penalties such as fines or imprisonment terms, seizure, forfeiture and destruction of the infringing goods and machinery or materials used in the production of such goods, closing of retails or outlets, etc. Criminal procedures are fraught with unnecessary delays and deficient.

There are inadequacies in the system of penalties for infringements, piracy and counterfeiting in Nigeria, which are still very much outdated. It is important to review this to serve as deterrence to prospective infringers. An upward review of the fines will help the law to be properly administered in areas where there has been a breach of the same and it would be seen as justice well dispensed.

There is an overall lack of transparency in the enforcement system, which means that rights holders are generally in the dark about ongoing investigations and cases. There is little public awareness or understanding of the

<sup>15</sup>Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 41–61, Jan. 1, 1995, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (1994) [hereinafter TRIPS Agreement].

<sup>16</sup>WTO Secretariat, *Nigeria: Trade Policy Review*, WTO Doc. WT/TPR/S/147 (May 11, 13, 2005).

<sup>17</sup>Obafemi Agaba, *Filling the Vacuum of Intellectual Property Rights Regulatory Enforcement: Nigerian Customs Service to the Rescue*, Business Day (Nigeria), May 14, 2009.

intellectual property laws in the country. Existing laws are not readily accessible even to the educated class. The average man on the street is also

ignorant of touted benefits of intellectual property protection. The Nigerian copyright commission admits that lack of awareness about the laws and administration of copyright constitutes “a major inhibition to the development of a sound copyright system in Nigeria.” Meaningful public education at the grassroots level must form a critical component of intellectual property enforcement in Nigeria.

Finally, there is a shortage of funds, computer facilities, and manpower, as well as inadequate understanding and appreciation among regulatory officials, distributor networks, and consumers of the benefit of IPRS, contribute to the weak IPR enforcement climate.<sup>18</sup>

### 3. REGULATORY BODIES TO THE RESCUE:

Commercial, health, and safety exigencies have necessitated the establishment of various regulatory agencies whose function are primarily to ensure that products of all types meet the requisite minimum standards and are safe for human use and consumption. Some government regulatory agencies have functions which greatly impact IP, and they can be used to enforce IP rights indirectly.<sup>19</sup>

While the main statutory functions of these government agencies are not to regulate or enforce IPR, they have nevertheless proven to be an effective, indirect way to curb the menace of illicit trade in counterfeit goods. Thus, in addition to civil and criminal court actions which are available to a brand owner seeking redress for the breach of his IPRS, the brand owner may also decide to go through the administrative and regulatory route to enforce his IPRS.

Brand owners have become more interested in adopting the regulatory approach, as a result of frustrations with the traditional court system. Such frustrations are borne out of the undue delay and long time to fully determine a case, coupled with ineffective enforcement of the final court orders. In criminal actions, the prosecuting officers are not well trained to handle such a specialized area of law, and are often not diligent enough in prosecuting such cases.

Given the expense and complexity of the judicial enforcement of IPRS, administrative remedies are often a less expensive solution. The shortcomings with the court system have made regulatory intervention a more attractive way of enforcement of IPRS, albeit indirectly.

Such regulatory agencies include the National Agency for Food and Drug Administration and Control,<sup>20</sup> the Nigeria Copyright Commission, the Nigerian Customs Service,<sup>21</sup> the Nigerian Police,<sup>22</sup> and the Nigerian Intellectual Property Office, all of which will be discussed in more depth below.

#### a. The National Agency for Food and Drug Administration and Control

The National Agency for Food and Drug Administration and Control (NAFDAC) is a body corporate established by the NAFDAC Act.<sup>23</sup> The body is empowered under the enabling law to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, packaged water and chemicals, generally known as regulated products.

The Agency is mandated to undertake the registration of regulated products. Related to this, is the recognition of IPRS in evaluation of data and products submitted for marketing authorization. Under the provisions of various regulations and related guidelines on registration, the submission of evidence of ownership of trademark is a condition precedent for the registration of branded regulated products. Where an infringed trademark is used in respect of a product that is within the purview of NAFDAC powers, a petition can be presented to NAFDAC in that respect.

Having recognized counterfeiting and circulation of fake products as a health issue as well as an infringement of IPRS, NAFDAC has a police squad responsible for ensuring that its regulations and guidelines are adhered to, as part of the overall NAFDAC Enforcement Directorate. The police squad are authorized to arrest any persons suspected of committing an offence under the national law on counterfeiting and collation of files for prosecution by the Agency’s legal team.<sup>24</sup>

Part of the commission’s most effective strategies in combating product counterfeiting and ensuring effective protection of IPRS are public enlightenment campaigns. Both enforcement agencies (NAFDAC and NCC) are perceived as increasing the public profile of counterfeiting. NAFDAC has seized and destroyed increasingly large quantities of counterfeit products over the last three years. However, more needs to be done, in particular in terms of providing adequate levels of enforcement resources and in prosecuting identified counterfeiters by the courts.

#### b. The Nigeria Copyright Commission

The role of the Nigeria Copyright Commission (NCC) in IPR enforcement is limited to works which are eligible for copyright protection under the Act. It is a unique agency responsible for the enforcement of the Copyright Law in Nigeria, carrying out raids and seizing items that are pirated, prosecuting perpetrators and convicting them for copyright infringement.

Although Nigeria has a relatively strong copyright law, and although the NCC takes its mandate seriously and has launched many commendable programs, enforcement of existing legislation remains a challenge. Efficient enforcement of copyright is a critical element in enabling the future development of Nigeria’s creative industries. Since its establishment in 1989, following implementation of Copyright Decree No. 47 of 1988, the NCC has worked

<sup>18</sup>WTO Secretariat, *Nigeria: Trade Policy Review*, WTO Doc. WT/TPR/S/147 (May 11, 13, 2005).

<sup>19</sup>D.N. Akunyili, *Consideration of Intellectual Property Rights in Regulation and Control: Activities of the National Agency for Food and Drug Administration and Control*, U.N. WIPO Advisory Committee on Enforcement, 3d. Sess., U.N. Doc. WIPO/ACE/3/9 (May 15–17, 2006).

<sup>20</sup> National Agency for Food and Drug Administration and Control Act Laws of the Federation of Nigeria 2004.

<sup>21</sup> Customs and Excise Management Act (1959) Cap. (C45), Laws of the Federation of Nigeria, 2004.

<sup>22</sup> Police Act (1943) Cap. (P19), Laws of the Federation of Nigeria, 2004.

<sup>23</sup>D.N. Akunyili, *Consideration of Intellectual Property Rights in Regulation and Control: Activities of the National Agency for Food and Drug Administration and Control*, U.N. WIPO Advisory Committee on Enforcement, 3d. Sess., U.N. Doc. WIPO/ACE/3/9 (May 15–17, 2006).

tirelessly to clamp down on piracy. Campaigns such as the Strategic Action Plan against Piracy and the Copyright Litigation and Mediation Program, launched in 2005, are testimony to this. Since December 2010, the NCC has intensified its copyright enforcement and anti-piracy activities. The underlying objective is to minimize piracy levels in order to provide an environment conducive to the growth of legitimate copyright industries in Nigeria, an environment in which the rights of creators are respected.<sup>25</sup>

In December 2010, the NCC launched a campaign for collective action to tackle piracy on all fronts. The aim is to send a strong signal to piracy syndicates around the world that it is no longer “business as usual” in Nigeria. The broad-based program seeks to build a proactive, intelligence-based copyright enforcement and regulatory system by creating an expanding network of strategic partnerships and alliances with key stakeholders at home and abroad. These include private sector stakeholders, the right holder community and sister regulatory and enforcement agencies.

On the domestic front, the NCC’s close cooperation with the Nigeria Police Force (NPF) is critically important, especially in terms of ensuring the safety of the Commission’s unarmed Copyright Inspectors during anti-piracy raids across the country. The Nigeria Customs Service (NCS) also plays a key role in tracking down infringing goods at entry ports and land borders, making it possible to identify and seize large consignments of imported, pirated works that would otherwise flood the market and undermine legitimate business interests.

#### c. Nigerian Customs Service

Before, the customs powers were limited to collection of duties and ensuring that goods on the prohibition list did not find their way into the country. This posed a limitation to brand owners in engaging the customs in fighting counterfeits from the strategic entry points into the country.

Today, things are changing for the better. The new fiscal policy of Nigeria, as contained in the Common External Tariff for 2008–2012 Schedule 4, provides the list of goods which are absolutely prohibited from being imported. Specifically, Item 3 prohibits the importation of “all counterfeited or pirated materials or articles including base or counterfeit coin of any country.”

The implication is that all categories of counterfeit goods are now prohibited from being imported into the country, and would be subject to all the powers which the customs service has over such products under the Customs and Excise Management Act.<sup>26</sup>

In this regard, section 46 of the Act provides that the following goods shall be forfeited:

(a) except as provided by or under this Act any imported goods, being goods chargeable with a duty of customs, are without payment of that duty landed or unloaded in Nigeria, or removed from their place of importation or from any approved wharf, examination station, customs station or customs area; or

(b) any goods that are imported, landed or unloaded contrary to any prohibition; or  
 (c) any goods, being goods chargeable with any duty or goods the importation of which is prohibited, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship or aircraft or in any vehicle; or  
 (d) any goods that are imported concealed in a container holding goods of a different description; or  
 (e) any imported goods that are concealed or packed in any manner appearing to be intended to deceive an officer; or  
 (f) any imported goods that are found, whether before or after delivery, not to correspond with the entry made thereof

In addition to forfeiture of the goods in violation of Section 46 as stated above, Section 47 of the Customs and Excise Management Act provides that any person found to have engaged in such improper importation of goods and allied offences shall be sentenced to a term of imprisonment for five years without the option of fine.

The combined effect of the foregoing provisions and the Common External Tariff is that customs may now join in combating illicit trade and enforcing IPRS straight from the ports of entry to the warehouses and indeed the markets. This is a welcome development for brand owners.

#### d. The Nigerian Police

Section 4 of the Police Act provides for the general duties of the police, as follows:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.<sup>27</sup>

From the foregoing provisions, it can be deduced that the Nigerian Police play an active role in the enforcement of IPRS in Nigeria. Police raids are conducted under the Merchandise Marks Act, which makes it an offence to falsely apply a trademark to goods not belonging to the true proprietor. However, penalties under the Act only include small fines and no custodial sentences; it is thus rare to see any resulting prosecutions.

#### e. The Nigerian Intellectual Property office (IPO)

The IPO oversees the administration of Industrial Property (Trademarks, Patents and Designs) in Nigeria. The IPO is an arm of the Commercial Law Department under the Ministry of Trade and Investment, and is also known as the Nigerian Trademarks, Patent and Designs Registry.

The Trademark Registration System in Nigeria provides numerous opportunities for applications to be challenged before and after registration. An application may be challenged before registration by the issuance of Refusal Notice or Opposition.

<sup>25</sup> Afam Ezekude, *Nigeria’s Anti-Piracy Drive Yields Results*, WIPO Magazine (June 2012), [http://www.wipo.int/wipo\\_magazine/en/2012/03/article\\_0004.html](http://www.wipo.int/wipo_magazine/en/2012/03/article_0004.html)

<sup>26</sup> Customs and Excise Management Act (1959) Cap. (C45), Laws of the Federation of Nigeria, 2004.

<sup>27</sup> Police Act (1943) Cap. (P19), Laws of the Federation of Nigeria, 2004.

After the issuance of an Acknowledgment Notice, the Registrar of Trademarks is empowered to cause a preliminary search to be conducted about the proposed mark. The examination is on both relative and absolute grounds of objection. The relative ground is to ascertain that same is not in conflict or identical with any previously registered mark or otherwise prohibited under the Act.

Through registering a trademark, the Trademark Registry will refuse registration to any trademarks it deems confusingly similar to the trademark. This measure is aimed at enforcing the rights of existing registered proprietors.

Government agencies such as the Standards Organization of Nigeria and the Consumer Protection Council do not directly aid the enforcement of IPRS in Nigeria. The Standard Organization of Nigeria is a body charged with the responsibility of designating, establishing and approving standards of products and processes, and ensuring compliance with government's policies on Standards, Metrology and Quality assurance of products throughout Nigeria. The organization's major pre-occupation is ensuring that products in Nigeria conform to designated standards.

On the other hand, the Consumer Protection Council is saddled with the responsibility of ensuring that consumers get what they bargain for from manufacturers and importers, and that consumers are not deceived as to the nature, quality or origin of the products they have purchased.

#### **CONCLUSION**

For an average Nigerian, it is no longer news that the nation has well articulated laws, but very weak enforcement of those laws. This, without a doubt, is causing untold hardship to the citizenry. Nigeria can be a better place if the authorities concerned could take responsibility as to effectively enforce the pre-existing laws. The government must seriously address the numerous factors that undermine effective enforcement of laws in the country including corruption, lack of coordination among the responsible agencies, lack of accountability, ignorance on the part of the consumers and lack of adequate funding.

#### **RECOMMENDATIONS**

The country is flooded with several governmental agencies and regulatory bodies saddled with the responsibility of administering and regulating various sectors of the Nigerian economy. These agencies may become sentinels of intellectual property laws through strategic reformation, as outlined below:

1. Adequate funding of government agencies for IPRS' enforcement should be made a matter of utmost priority.
2. Appointment of IP experts and professionals to key policy-implementing offices is important.
3. Various regulatory agencies should employ adequate, competent and experienced personnel. This can be bolstered through continuous intensive training for law enforcement officers, to enhance qualitative service and boost operational excellence.
4. Establishment of an IPRS section at the State CID (Criminal Investigation Department) level, at the area command level and at the division level of the Nigerian Police.
5. Collaboration between governmental agencies whose functions overlap will enhance effective enforcement. Regulatory agencies should collaborate in areas of information exchange, staff training and technical assistance.
6. Ultimately, the fight against counterfeiting and piracy has to involve public enlightenment on the ills and harm to society of this vice, since its purchasing power causes these illegal practices to flourish.
7. As IPRS are ultimately private rights, right holders have the largest immediate financial stake in ensuring the protection of those rights. For this reason, rights holders should be particularly willing to assist in enforcement efforts by providing information to assist in the identification of infringing products' producers and importers and in cooperating in awareness and training programs.