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## EVALUATING THE ECONOMIC DYNAMICS OF THE NIGERIAN TRADEMARKS REGIME

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### Abstract

*Adequate Trade Mark regime will contribute to Nigerian economic renaissance. A robust Trademark regime will discourage infringement of trademarks thus providing benefits to trademark owners in the form of economic rights thus helping in improving the economic dynamics of the Nigerian depressed economy. Nigeria is having financial turmoil. Creators need to control and make use of their marks to obtain an appropriate economic reward. The objective of this paper is to evaluate the economic dynamics of Nigerian Trademark in Nigeria's depressed economy. This paper adopted a doctrinal methodology because it has the potential to help in achieving the objective of this research. In tandem with the objective of this research, the paper found that the Nigerian Trade Mark needs to be repealed. The provisions of the Act are inadequate and insufficient to protect trade mark in the digital space. Criminalization alone is not a viable solution to stopping Trademark infringement. The paper found that the Nigerian Trademark because of the economic depression in Nigeria should only protect types of trademarks with real effects in commerce that go beyond merely generating income for the Trademark Registry. Thus, apart from regular trademarks, the Act should focus more on Collective trademarks, Well-known marks, and Certification Marks. The paper recommends that the National Assembly should amend the Trade Mark Act to make the Act more effective and to make Nigeria an economic destination for foreign trademark proprietors.*

**Keywords:** intellectual property; trademarks; trademark and the economy, Nigerian trademark regime.

### 1. Introduction

Nigerian Trademark regime is not adequate enough to enhance enormous economic benefits to Trademark right holders.<sup>1</sup> In developed and developing countries like Nigeria, an adequate Trademark regime can play important role in the process of industrialisation and economic growth. Apart from increasing per capita income and output, trade mark registration will create employment opportunities enhance regional economic balance. A robust Trademark regime in Nigeria has the potential of employment generation and wealth creation in any economy.

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<sup>1</sup>OS Adesina, 'The Negative Impact of Globalization on Nigeria' (2012) 2(15) *International Journal of Humanities and Social Science* 193-201.

Yet in Nigeria, we have a Trade Mark regime that is stagnated and remains relatively small in terms of its financial reward to the owner of the Trademark and its contribution to Nigerian economy.

It is no longer news that Nigeria's economy is experiencing total collapse and if nothing is done to put the peg in the right spot something worse than what we are witnessing may soon be on sight.<sup>2</sup> Thus to ensure greater effectiveness, the Nigerian Trademark regime should also protect types of trademarks with real effects in commerce that go beyond merely generating income for the Trade Mark Registry. Thus, apart from regular trademarks, the Act should focus more on collective trademarks, well-known marks and certification marks.

Each of these marks has practical implications. For instance, collective trademarks are employed to distinguish the goods and services of the registering association and its members from those of non-members; Well-known marks confer protection on marks which, even though they may not be registered in Nigeria, have acquired a protectable reputation in Nigeria; while certification marks serve the purpose of indicating that the goods or services carrying them have been certified by the proprietor in respect of origin, quality or other indicia. It is, however, difficult to see the practical implications of Separate trademarks, Associated trademarks and Resembling trademarks which are registered as a series.

For in-stance, what is the legal effect of protecting a separate trademark? By s 24 Act, if a proprietor wants protection for a particular part of his mark, he must register that part separately. But, in reality, this mark is not being used on goods as a trade mark. It is the entire mark as registered that is employed on registered goods or services. There is therefore no basis for keeping unused marks on the register simply because a proprietor desires additional monopoly. The same argument goes for associated trademarks. The registration of mark(s) as associated trademarks hinders the freedom of a proprietor to deal with his property in the mark as he wishes. For instance, his decision to assign the marks either in part or as a whole is taken away from him because associated trademarks are compulsorily assigned or transmitted as a whole.

Resembling trademarks as a series is not of any significance to the trade mark proprietor; it is only of importance to the Trademark Registry. These three types should therefore be reviewed.

Two major international agreements with trade mark obligations signed by Nigeria are the Paris Convention and the Agreement on the Trade-related Aspects of Intellectual Property Rights ('the TRIPS Agreement').<sup>3</sup> The first

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<sup>2</sup> Ibid.

<sup>3</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights(adopted 15 Apr. 1994, entered into force 1 Jan 1995) 1869 UNTS 299, art 16(2)–(3) ('TRIPS Agreement').

requires Nigeria to protect Convention (trademark) applications, further, even though s 44 Nigerian Trade Mark Act provides for Nigeria's Paris Convention obligation requiring that Nigeria to protect Convention applications and recognize priority rights, this protection has remained inchoate for more than 50 years of the existence of the Act. This is due to the failure of the Nigerian Presidents to explicitly declare which Convention countries can benefit from including Convention applications and priority rights in Nigeria.

Also, despite the fact that the Paris Convention requires Convention countries to protect collective trademarks under Article 7bis this class of trade mark currently enjoys no statutory protection in Nigeria. In addition to the existing international trade mark obligations, Nigeria should ratify and domesticate both the Madrid Agreement and its accompanying Protocol, or one of the two, as a way of harmonising trade mark laws. The advantages of this would be enormous for Nigeria. It would mean that a single application for the registration of a trade mark at the International Bureau would confer protection on an applicant in Nigeria if he so wished, without him having to make a separate application in Nigeria.<sup>4</sup> All in all, to make the Act more effective and to make Nigeria an economic destination for foreign trademark proprietors, the various sections of the Act identified above must be amended to give effect to the country's international obligations such as protection of well-known marks, collective marks, Paris Convention applications and recognition of priority rights. The Madrid Agreement and Protocol should also be ratified and domesticated so as to make it easier for foreign trade mark owners to register their marks and do business in Nigeria.

Is there any justification for retaining the division of the Register into Parts A and B? This dichotomy is artificial, unclear, useless and should be removed. It only creates confusion, rather than indicating superiority of marks registered in one part over those in the other. It is thus imperative that the two parts be unified by defining trademarks in terms of their capability to distinguish and to be graphically represented. This is contrary to the current position where marks must either be inherently distinctive or must have acquired distinctiveness through long use to be registered in Part A or Part B of the register.

Constitutionally, Nigeria is composed of 36 states and federal capital territory with sub-nested 774 Local Government Areas (L.G.A). The Bi-camera legislative arm of government is unruffled of 109 Upper/ Red Chamber legislators (Senate), and 360 Lower/Blue Chamber legislators (House of Representative) that are saddled with policy formulation and enactment of law

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<sup>4</sup> Olugbenga Ajani Olatunji, 'Fundamentals of the Nigerian Trade Marks Act' *ARTICLE 137 University of Witwatersrand* on February 11, 2016. <<http://jiplp.oxfordjournals.org/>> accessed on 18/05/2024.

among many others.<sup>5</sup> The judicial system and its setting as well as security architectures were also visible at all levels of the federation for upholding law as pronounced by the constituted authorities for check and balancing and to restore peace and order respectively in the democratized nation.<sup>6</sup> The executives arms is saddled with the responsibilities of running the affairs of the country through the nation established Ministries, Agencies and diplomatic constellate for effective management.<sup>7</sup> Pursuant to the above Nigerian Trademark regime should be adequate to protect owners of trademark in Nigeria.

In nutshell the above forms the basis for the call to extend the Scope of Trade Mark protection in Nigeria. Trade mark law in Nigeria is out dated and restrictive when compared to what is obtainable in more advanced trade mark jurisdictions. For instance, infringement will only occur under the TMA if a person, not being the proprietor or registered user of the mark, uses a mark identical to, or closely resembling, the registered mark in relation to any goods for which the mark is registered. This kind of definition ignores the need to protect some marks which have acquired reputation over a long period of time. It also fails to recognize other nuances of trade mark infringement. Under the UKTMA 1994,<sup>8</sup> for instance, infringement will occur in any of the following circumstances:

Where a mark identical to the registered trade mark is used on identical goods or services: there is no need to prove likelihood of confusion in this situation as the existence of confusion is presumed; or where either a mark identical to the registered trade mark is used on similar goods or services, or

a mark similar to the registered trade mark is used on identical or similar goods or services: in which case likelihood of confusion non the part of the public must be proved to succeed; or

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<sup>5</sup> I Dialoke, FO Ukah, IV Maduagwun, 'Policy Formulation and Implementation in Nigeria: The Bane of Underdevelopment'. *International Journal of Capacity Building in Education and Management (IJCBE)*. 2017; 3(2): 22-27. Retrieve from Website: ISSN: 23502312(Online) ISSN: 2346 7231 (Print); Samson E.A. Stanley, 'Public Policy Failures in Nigeria: Pathway to Underdevelopment' *Journal of Public Policy and Administration Research* (2014) 4(9): 38-43. ISSN 2224-5731 (Paper), ISSN 2225-0972 (Online).

<sup>6</sup> CI Nwagboso, 'Security Challenges and Economy of the Nigerian State' (2007 - 2011). *American International Journal of Contemporary Research*. (2012) 2(6) 244-258; I Okorie, 'Insecurity Consequences for Investment and Employment' *The Punch*, Thursday. 2011 September 9: 37-38.

<sup>7</sup> LN Chete, JO Adeoti, FM Adeyinka and O Ogundele, 'Industrial Development and Growth in Nigeria: Lessons and Challenges' *Nigerian Institute of Social and Economic Research (NISER)* Working paper No 8 Ibadan 2014.

<sup>8</sup> UKTMA 1994, ss 10(1)-(3).

where a mark identical or similar to the registered trade mark is used on dissimilar goods: it must be proved that the registered mark has a reputation in the UK, the mark is used without due course and the use takes unfair advantage of, or is detrimental to, the distinctive character or repute of the registered mark.

The above expression of what amounts to infringement under the UK jurisdiction is wide enough to cover cases of normal infringement and other special cases of infringement such as dilution (by blurring or tarnishment) and cyber-squatting. A similarly extensive and pro-proprietor position is contained in the Australian Trade Marks Act which protects well-known marks against infringement and recognizes infringement by dilution.<sup>9</sup>

Protection of these special-case infringements is, however, not available under the Nigerian Trade Mark Act with the result that reputable trademarks belonging to foreign proprietors are susceptible to dilution and cyber-squatting. Equally important is the issue of comparative advertising which is completely prohibited under the TMA of Nigeria, unlike other jurisdictions where a balanced position is legislated. For instance, the UK TMA allows comparative advertising, provided it is done in accordance with honest practices of the industry.<sup>10</sup> This balanced position encourages healthy competition among traders and benefits consumers by making it possible for them to choose one product over another because an honest comparative advertising clearly indicates that the former product is better than the latter. To ensure efficiency and encourage more foreign economic presence in Nigeria, the scope of infringing acts should be extended to accommodate dilution, cyber-squatting and the adoption of a balanced position on comparative advertising. Nigerian should properly domesticate Nigeria's international trade mark obligations. Two major international agreements with trade mark obligations signed by Nigeria are the Paris Convention and the Agreement on the Trade-related Aspects of Intellectual Property Rights ('the TRIPS Agreement'). The first requires Nigeria to protect Convention (trade mark) applications,<sup>11</sup> well-known marks,<sup>12</sup> collective marks,<sup>13</sup> and recognize priority rights for those applications;<sup>14</sup> whereas the second reiterates the need to protect well-known marks, among other general obligations. The Nigerian government has, however, completely failed to comply with the above expectations.

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<sup>9</sup> Australian TMA, s 120(3)(a) and (b).

<sup>10</sup> UKTMA 1994, n 15, s 10(6).

<sup>11</sup> Paris Convention, Art 4.

<sup>12</sup> Ibid, 6bis.

<sup>13</sup> Ibid, 7bis.

<sup>14</sup> Ibid, 4.

## 2. Trademark Infringement

For an action for infringement to succeed in court, the unauthorized use of the mark must be one likely to cause confusion in the minds of the consumers. Section 9 of the Trade Marks Act provides for distinctiveness required for registration of a trademark. By that section, in order for a trademark to be registrable under part A of the Act, it must contain at least one of the following particulars:

- 1) the name of a company, firm or individual presented in a special manner;
- 2) a word that has no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or surname; and
- 3) any other distinctive mark.

Following the provision of section 5 of the Act, an infringement of a registered trademark cannot be maintained unless the court finds that the defendant is engaged in the use of the mark identical with the registered trademark.

There are factors to be considered by the court before the action for infringement of a trademark in Nigeria can succeed, they include the followings:

- i The marks do not need to be identical before infringement can occur, rather there must be a similarity so great as to create a likelihood of confusion to a reasonable man.
- ii The court will consider how widely known and recognized the plaintiff's infringed mark is? And what strength does the plaintiff's mark carry?
- iii There must be evidence that the defendant's mark caused confusion
- iv The location of the business of the plaintiff and defendant and how careful consumers might be when considering both businesses. Is a consumer in the marketplace likely to be confused by similar marks?
- v The court will consider the commercial value of the infringed mark and how it is likely to affect the brand of the plaintiff.
- vi The court will also consider the intention of the defendant because the defendant could intentionally copy the plaintiff's mark to divert their business. The court will consider if the defendant was aware of the mark before infringing on it.

This test for determining an infringement of trademark was enunciated in the Supreme Court case of *Ferodo Limited v Ibeto Industries Limited*<sup>15</sup> where the

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<sup>15</sup> 2004 LPELR.

plaintiff, an English company are the manufacturers of FERODO brand of brake linings for motor vehicles and it is sold in cardboard packages. They claimed in their suit that they had been marketing the product in Nigeria for 10 years preceding the suit. The defendant is a Nigerian company that manufactures brake lines in the brand of UNION SUPA brake lines. The claim by the plaintiff was that the packaging of the defendant's product was so similar to theirs, thereby constituting an infringement to their registered trademark. It was observed that the defendant's cardboard package was painted in red, black and white combination so closely resembling that of FERODO cardboard packaging. The defendant in their defence stated that their design box was not distinctive to the plaintiff alone but that the colour combination was traditional to the trade of brake linings. They also denied ever using the plaintiff's mark to pass off their product.

The trial judge held that the defendant was far off the plaintiffs FERODO and does not in any way resemble the plaintiff's mark and thereby found that there was no infringement. The matter was taken to the Court of Appeal, which also affirmed the decision of the trial judge stating that it is wrong to take two marks side by side to determine whether they are identical but rather the true test is whether a person who sees it or has seen the mark is likely to confuse it with an existing one, as to confuse and create the impression that the new one trademark is same as the existing one.

The Appellant still not satisfied with the judgment further appealed to the Supreme Court where it was held in a leading judgment by Justice Dahiru Musdapher, JSC that the appellants had not discharged the burden of proof placed on them by procedural law after dealing with the exhibits brought forward, the appeal lacked merits and that the appellant cannot succeed because there are clear differences between the two trademarks. The Supreme Court subsequently dismissed the appeal.

Where a trademark has been infringed upon, the owner has several options available to enforce his rights. According to the provision of the Evidence Act, the burden of proof lies on the plaintiff to prove that the trademark of the defendant is an infringement of its own. One of the processes of registering a trademark is that it must be published in the journal so that opposition to the registration of a mark similar to it can be raised timeously, within 2 months after the publication.

The owner of a trademark who wishes to enforce its rights can explore the following options, but must do so timeously and aggressively. Firstly, the proprietor of the mark can file for opposition within 60 days of the publication in the trademark journal against the registration of a similar or identical mark, which is likely to cause confusion. This can be done by filing a Notice of Opposition and statutory declaration; the responding

party will file a counter statement and the matter will be determined at a hearing before the Registrar.

Where the owner of a mark is aware of a likely infringement on its mark, the owner can apply to the court for a grant of search and seize orders. It gives the owner the right to raid the premises of the infringer without notice to seize all infringing goods found. The owner can collaborate with law enforcement agencies, NAFDAC or Nigerian Customs. The owner can also enforce its rights by writing a cease and desist letter to the infringer. The owner can also enforce its trademark by alerting the general public and consumers through the newspaper and various media forums, on who the real owners of the trademark are and how to recognize their genuine products.

The Trade Marks Act grants a proprietor a civil right of action to sue for any infringement made on its mark. The court that has the right to adjudicate on infringement related matters is the Federal High Court of Nigeria. The following remedies may be sought by and be granted to the proprietor whose trademark is infringed:

- i The owner can seek injunctive reliefs restraining the infringement and unauthorized use or sale of the trademarked items. Before this remedy is granted the court will consider the followings:
  - a) whether the plaintiff can succeed based on the merit of the case;
  - b) whether the plaintiff has suffered irreparable damage;
  - c) How the injunction will affect both the plaintiff and the defendant; and
  - d) if it is in the interest of the public to grant the injunction.
- ii The proprietor can seek for damages for compensation on the loss suffered resulting from the infringement and passing off based on the actions of the infringing party, where the violation of their mark impacted negatively on the reputation of the plaintiff's business. For damage to be awarded, the burden of proof is on the plaintiff to prove that harm was caused by the infringement that led to consumers' confusion and deception and sales were diverted from the plaintiff's business. This can be backed by direct evidence of a consumer, testimony from the public or by circumstantial evidence.
- iii The owner of the mark can seek an Anton Pillar Court order, which is also an injunctive relief made by an ex-parte application, to enable access into the defendants' premises for the purpose of taking possession of the infringed products or documents.
- iv Another remedy granted to a plaintiff in an infringement matter is an order of account of profit to recoup all the profits made by the infringer from the unauthorized use of the trademark, especially in a commercialized industry where the defendant has made profits from

using the trademark of the plaintiff to pass off products and the plaintiff suffered a gross loss of profit as a result of that act.

### **3. Registration of a Trade Mark in Nigeria**

The requirements for an application to register a trademark include details of the applicant/proprietor – including name, nationality, prints or a representation of the proposed trademark, class and specification of goods or services for which the trademark is to be registered; authorisation of Agent (Power of Attorney) signed by the applicant and where the applicant is a body corporate, by an officer duly authorized to do so. No legislation or notarization of this document is required.

It is advisable that searches be conducted to determine the availability of a trade mark before any application for registration is made. On receiving the application, the Registrar will issue an Acknowledgement Form confirming the receipt of the application by the Registry and the temporary number allocated to the trademark, pending registration and allocation of a permanent registration number.

The Trademarks Registrar will conduct an examination of the Trademarks Register to confirm that there is no earlier conflicting trademark which may preclude the registration of the mark. The Registrar's examination shall also extend to whether the mark is distinctive, deceptive, scandalous or in any way disallowed as containing names of single chemical substance, prohibited words, Arms of Nigeria or state, national flag, 'President', 'Governor', Arms of City, Town, Place, Society, Names of living persons or persons recently dead except with permission.

If the Registrar is satisfied that the mark may be registered, an Acceptance Form will be issued. This is usually within 3 weeks after the issuance of the Acknowledgment. Otherwise, a Refusal Form will be issued. After acceptance, the application will be published in the Trademarks Journal to notify any interested party who may have an objection to the registration. Publication of mark in trademark journal is usually within 12 -18 months after the issuance of Letter of Acceptance.

Any interested party may file an objection by giving a notice of opposition within two months of the publication in the trademark journal. It is important to note that this period is non-extendible. The opposition hearing takes place before the Registrar, who shall after hearing the parties and considering evidence take a decision. The decision of the registrar in this regard, may be appealed to the Federal High Court.

Where there are no third party objections to the registration of a trademark within the opposition period or where the objections are resolved in favour of the applicant, the Registrar shall issue the applicant with a Certificate of Registration. The registration of a trademark takes effect retrospectively from

the application/filing date. Thus, although an applicant's rights start upon registration, same take effect retrospectively. The registration of a trade mark shall be for a period of seven years but may be renewed from time to time for a period of fourteen years.

Trademarks are registered for an initial period of seven years from the date of the application for registration. After this, they can be renewed for subsequent periods of fourteen years.

The Act allows for assignment and transmission of registered trademarks either in connection with the goodwill of a business or not. It is also assignable and transmissible in respect either of all the goods in respect of which it is registered or was registered, as the case may be, or of some of those goods. Every assignment of a registered mark must be recorded in the Trademark Registry.

#### **4. Application of International Conventions**

Though Nigeria is a signatory to the Paris Convention, the executive order which will designate the relevant convention countries to which claims for priority are applicable has not been made. Consequently, the Trademarks Registry does not recognize trade mark applications claiming priority from other countries.

An International Registration (frequently referred to as an IR) is the designation for a registration secured under the Madrid System. Following the Brexit transition period, as with the conversion of the UK portion of an EUTM into a separate and independent UK registration, the UKIPO will automatically and free of charge convert the UK portion of a IR designating the EU into a separate and independent UK trademark registration with the same filing date as the EUTM designated under an IR. For EUTM applications that are still pending as of January 1, 2021, the trademark applicant will have nine months from December 31, 2020 to file a new and separate UK trademark application that will take the same filing date.

As trademark rights generally are geographic in scope, it is possible for a trademark to be registered in different jurisdictions by different owners. Consequently, trademark owners should consider obtaining protection for their marks in all jurisdictions or regions of interest in order to secure their rights in the marks and prevent others from obtaining them. In a few jurisdictions, there can be more than one registration for a trademark, with each registration covering a different geographical region of the jurisdiction.

If you are planning on using your trademark in several countries, it is a good idea to use the international application system known as the Madrid Protocol. By filing one application you can apply for trademark registration in many countries at the same time.

The Madrid Protocol system is administered by the World Intellectual Property Organization (WIPO) in Geneva. Individuals or companies in any of the

member countries of the Madrid Protocol may apply for registration of a trademark in other member countries on the basis of a national application or registration of a trademark.

You file an international application to WIPO via the Madrid e-Filing service on the WIPO website. The Industrial Property Office will validate the application you have filed to WIPO before it is processed and distributed to those countries you have selected. Each country will then assess whether it is possible to register the mark in that country.

Processing time in each country may vary, but is not normally longer than 18 months. If the trademark is not rejected within this period, it is considered registered in the country concerned.

It is easier and cheaper to submit one international application under the Madrid Protocol than to apply in each country separately. You may broaden your international registration to include additional countries at a later date.

Renewals and other changes to a registered international trademark (via the Madrid Protocol) must be made directly to WIPO. Only the initial examination takes place at NIPO. Other changes may be, for example, transfers and name changes.

Like other intellectual property rights, trademark rights are, as a whole, considered to be distinct in each country or jurisdiction in which they are obtained. Each jurisdiction is entitled to recognize and protect trademark rights in a manner that fulfills its policy goals. Although the term ‘international trademark rights’ refers to a set of trademark rights across a number of jurisdictions, the existence and enforceability of these rights are unique to each jurisdiction and, generally, not interdependent.

Notwithstanding differences in recognizing and enforcing trademark rights, many jurisdictions have agreed upon common procedures or protocols for filing trademark applications. The EUTM system offers trademark owners a unified system of protection throughout the EU with the filing of a single application. If successful, this one application results in an EUTM registration, which is recognized in all the EU member states. As new member states are added to the EU, the coverage of existing EUTMs automatically expands, without any action or payment required of the trademark owner; the protection of an extended EUTM in a new member state, however, dates from the admission date of the member state to the EU rather than the filing date of the EUTM. The initial registration period is 10 years from the date of filing of the EUTM application. The registering authority is the European Union Intellectual Property Office (formerly the Office for Harmonization in the Internal Market), in Alicante, Spain.

An EUTM registration may be beneficial for several reasons, including: it is a time-saving and cost-effective procedure; having to maintain just a single trademark registration results in administrative efficiencies; and, perhaps most important, and; genuine use in one EU member state may be sufficient to protect an EUTM in all member states from cancellation on the ground of non-use. There is a risk that if a ground for rejection exists in just one of the member states, then the mark cannot be registered as an EUTM, although conversion to national applications is possible in some cases.

Following the end of the Brexit transition period on 31 December 2020, effective 1 January 2021, the UK Intellectual Property Office (UKIPO) will automatically and free of charge convert the UK portion of a registered EUTM into a separate and independent UK trademark registration with the same filing date as the EUTM. For EUTM applications that are still pending as of January 1, 2021, the trademark applicant will have nine months from 31 December 2020 to file a new and separate UK trademark application that will take the same filing date as the EUTM. The EUTM will no longer extend trademark protection to the UK after 31 December 2020.

The Paris Convention for the Protection of Industrial Property is an international treaty concerning the protection of intellectual property. It has been adopted by 177 countries. The countries to which the Paris Convention applies constitute the Paris Union. The main principle of the Convention is that nationals of any country of the Union are afforded the same advantages with respect to intellectual property protection and enforcement that the national law of any country of the Union grants its citizens.

The right of priority under the Paris Convention provides that, on the basis of a trademark application filed in one of the countries in the Paris Union, the applicant may, within six months of that filing, apply for protection in any of the other countries in the Union. These subsequent applications will be regarded as if they had been filed on the same day as the first application; that is, they have priority over applications for the same mark filed by others during that six-month period.

Some jurisdictions allow for multiple and partial priority applications, which mean that priority can be claimed from more than one basic application (multiple priority application) or for only part of the basic application (partial priority application). The representation(s) of the mark(s) must be identical to the trademark that is the subject of the basic application(s), and the list of goods and services must not exceed the scope of the goods and/or services defined in the basic application(s). In most countries, an application may include the list of goods and/or services both within and outside the scope of the basic application(s) and be filed as one. Some countries, however, require that an application be filed strictly within the initial scope.

The Madrid System is a system for the international registration of marks. It provides a means to simultaneously seek protection for a trademark in a large number of jurisdictions. The system is governed by two separate international treaties, the Madrid Agreement (Agreement) and the Madrid Protocol (Protocol). Under the Agreement, nationals of any signatory may secure protection of their trademark, registered in the country of origin, in all other states that are parties to the Agreement. Under the Protocol, nationals of any signatory may secure protection in countries and jurisdictions that are contracting parties to the Protocol based on a pending application or registration in the country or jurisdiction of origin.

Both the Agreement and the Protocol are administered by the International Bureau of the World Intellectual Property Organization (WIPO). As of 1 September 2008, for countries bound by both the Agreement and the Protocol, only the provisions of the Protocol apply. Consequently, from that date, International Registrations are governed exclusively by the Protocol (1) in all jurisdictions that are party only to the Protocol and (2) in those jurisdictions that are party to both the Protocol and the Agreement. The Agreement governs only those jurisdictions that are bound solely by the Agreement.

### **5. African Regional Intellectual Property Organisations**

The African Regional Intellectual Property Organization (ARIPO) was formed by members of certain English-speaking African nations. The organization enables applicants to file a single application for the protection of a trademark in designated jurisdictions that are contracting states to the Lusaka Agreement, which created ARIPO.

The contracting states are Botswana, Eswatini (formerly Swaziland), Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, the Sudan, United Republic of Tanzania, Uganda, Zambia, and Zimbabwe. Nigeria is yet to be a member.

The African Intellectual Property Organization (French: *Organisation Africaine de la Propriété Intellectuelle* (OAPI)) was formed by members of certain French-speaking African nations. The organization enables applicants to file a single application for protection of a trademark in designated jurisdictions that are contracting parties to the Bangui Agreement, which created OAPI. The contracting parties are Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, Republic of the Congo, Côte d'Ivoire (Ivory Coast), Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, the Niger, Senegal, and Togo.

For an applicant wishing to file a trademark application in multiple jurisdictions, filing an application for an International Registration may have advantages over filing individual national applications. An International Registration allows trademark owners to register their trademarks in multiple jurisdictions (contracting parties) with a single, uniform application filed

through a centralized filing system administered by the WIPO International Bureau. WIPO checks formal requirements, including the accuracy of the goods and services specification and the relevant fees payment, and directs the International Registration to the designated jurisdictions.

The intellectual property office of each designated country has 12 or 18 months (under the Madrid Protocol) to grant or refuse protection under the International Registration and to communicate its decision to the trademark owner. Fixed examination periods make the application examination process predictable and, in some cases, shorter than examination by national trademark offices. International Registrations can be subsequently extended to countries not originally designated. International Registrations also may be renewed in all designated countries with one electronic filing through the Madrid System. Because there can be significant downsides to filing an International Registration, for example, the dependence of the International Registration on the status of the basic national application or registration for a limited period, trademark owners should consult with trademark counsel for more information on International Registrations before filing under the Madrid System.

International registrations have a five-year dependency period, within which they depend on a national basic application or registration. If the national application or registration lapses within a period of five years following the date of the International Registration; or as a result of an action begun before the expiration of the five-year period, the protection resulting from the International Registration may no longer be invoked. Despite the dependency, the holder is vested with the right to transform its International Registration into respective national applications within three months from the date on which the International Registration was cancelled, thus benefiting from the IR date and the priority date, if applicable.

The holder of an International Registration can subsequently designate additional jurisdictions that are contracting parties to the Madrid Agreement or the Madrid Protocol to its existing International Registration. In that case, the term of protection of a subsequent designation is not an independent 10-year period, but coincides with the registration date of the International Registration.

The Nice Classification is an international system for classifying goods and services administered by WIPO. It was established by the Nice Agreement.

Where a jurisdiction is party to the Nice Agreement, it is bound to use the Nice Classification in connection with the registration of marks. Currently, the Nice Classification consists of 45 classes of goods and services (Classes 1–34 cover goods and Classes 35–45 cover services). It is regularly revised and updated to remove inconsistencies and to add new entries. The list of goods and services is organized in class order and in alphabetical order, allowing the applicant to search for and properly classify goods and services.

Each class comprises a class heading, an explanatory note, and a list of specific entries. The class headings describe the nature of the goods or services in the class. The explanatory note explains which goods or services fall under the class heading. The list of goods or services is grouped according to characteristics they share, within the meaning of the class heading.

Although some jurisdictions interpret a class heading to identify all goods or services in the class, other jurisdictions interpret a class heading to identify only those goods and services included in a literal reading of the class heading.

## **6. Conclusion**

This paper focused on evaluating the economic dynamics of Nigerian trademarks regime. The scope and economic dynamics of Nigerian Trademark regime was evaluated. All hands therefore should be on desk to move Trademark regime in Nigeria, forward because it will help boost employments and enhance Nigerian economy.

The Trademark Registry because of the numerous applications received daily can sometimes make mistakes in the process of registering trademarks, thereby leading to double applications or a situation where the Registrar accepts a mark identical to an existing trademark. As a result of this, it is important to emphasize that trademark goes beyond registering the mark and obtaining the Certificate of Registration; the proprietor must be alert and be on the lookout for any possible infringement likely to occur on its mark. Where an infringement occurs, the owner of the mark shall have a right to enforce its mark and may be entitled to the remedies or reliefs stated above.

The economic dynamics of Nigerian trademarks regime makes it a necessity why Nigerian Trademark laws and regulations should also focus more on types of trademarks with real effects in commerce that go beyond merely generating income for the Trademark Registry. Thus, apart from regular trademarks, the Act should focus more on, Collective trademarks, Well-known marks and Certification Marks.

A robust and efficient Nigerian Trademarks regime will play substantial roles in improving Nigerian economy. Furthermore, robust Trademarks regime will discourage infringement of Trade Mark thus providing economic benefits to Trademarks owners and improving Nigerian economic status.

Nigerian Trademark should have adequate protection on types of trademarks with real effects in commerce that go beyond merely generating income for the Trademark Registry. Thus, apart from regular Trademarks, the Act should focus more on, Collective trademarks, Well-known marks and Certification Marks. The paper recommends that the National Assembly should amend the Trademark Act to make the Act more effective and to make Nigeria an economic destination for foreign Trademark proprietors. The Act must be amended to give effect to the country's international obligations such as

protection of well-known marks, collective marks, Paris Convention applications and recognition of priority rights. The Madrid Agreement and Protocol should also be ratified and domesticated so as to make it easier for foreign trade mark owners to register their marks and do business in Nigeria.