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Intellectual Property & Small and Medium-Sized Enterprises: Taking Your Ideas to the Market



Introduction

Small and Medium Enterprises (“SMEs”) play a pivotal role in the sustenance of any economy. SMEs have made phenomenal contributions to the growth of developed and developing economies. According to the report by the World Bank, SMEs provide for more than 50% of employment worldwide and account for about 90% of businesses worldwide. SMEs provide about 50% and 80% of employment in Cambodia and Kenya, such that SMEs are integral to the achievement of a nation’s Sustainable Development Goals.¹ According to the Small and Medium Enterprises Development Agency of Nigeria (“SMEDAN”) and the National Bureau of Statistics (“NBS”) Micro, Small and Medium Enterprises (“MSME”) Survey conducted in 2018, SMEs contributes nearly 50% of Nigeria’s GDP, accounts for over 80% of employment in the Country and comprise over 96% of the total businesses in Nigeria. It is in recognition of the importance of SMEs that the theme of the 2021 World Intellectual Property Day is “Intellectual Property and Small and Medium Sized Enterprises”.

SMEs have exhibited great adaptability to differing economic conditions whether restrictive or open and continue to participate actively in the digital transformation which is essential to boosting economic growth and contribution to globalization². Despite the challenges posed by the COVID-19 pandemic, Nigerian SMEs have exuded resilience and great ability to adapt, and arguably, thrive.

Intellectual Property and SMEs

Intellectual Property (“IP”) has become a well-known and acceptable concept for businesses worldwide forming the economic value attached to decisions including introduction of new products, designing and creation of a new brand, introducing innovative business processes and coming up with new product designs. Taking cognizance of the importance of SMEs to national development and the fact that businesses now compete within the knowledge economy, IP assets are fundamental for SMEs. Hence, SMEs should not consider IP as an esoteric and obscure legal concept but a valuable business asset necessary for economic growth and future profit.

In an MSME Survey conducted by PriceWaterHouseCoopers in 2020, the consulting firm identified the legal regime as one of the challenges facing SMEs, the respondents to the survey however identified the issues relating to IP registration and protection as an important consideration. This connotes that majority of SMEs do not consider IP rights as a valuable business asset and awareness of its importance within the SME community is rather low.

Most SMEs are vulnerable to several intellectual property thefts, because it is at this stage of their development that their inventions, innovations, and brands are most susceptible to several threats such as plagiarism, theft, cybersquatting and trademark squatting. Thus, SMEs are enjoined to take several protective and precautionary measures such as protection of brand identity through trademark registration, notifying the relevant copyright authorities of the creation of copyrightable works, protection of innovation through patents and importantly enhancing the value of the SMEs through effective IP asset valuation and management. Registering brands, logos, inventions, or innovations strengthens the marketability of business ideas and concepts which makes the businesses of SMEs more attractive to potential investors who are reassured that their investments in the execution of the business ideas and concepts are well protected.

¹ Unlock the potential of SMEs for the SDGs. (2017). <https://oecd-developmentmatters.org/2017/04/03/unlocking-the-potential-of-smes-for-the-sdgs/>

² OECD (2017), Meeting of the OECD Council at Ministerial Level: Enhancing the Contributions of SMEs in a Global and Digitalised Economy

It is imperative to state at this point that no brand, logo, invention and innovations at the conception stage is too early to be registered. This is one of the misconceptions hindering the growth of SMEs in Nigeria. Identifying intellectual property assets at the early stage of the business will help SMEs determine their IPRs that need protection.

Intellectual Property Challenges Faced by SMEs in Nigeria

Firstly, the lack of awareness of the value of the IP protection and registration amongst SMEs and the misconception amongst SMEs that the IP assets and their protection has little or no relevance to their businesses.

Secondly, the cost of IP registration. Due to the costs of registering IP rights in Nigeria, many SME operators find it difficult register their intellectual property. Other SMEs basically kick the can by postponing the registration of their IP assets to a later stage in their business lifecycle thereby exposing their businesses to the risk of intellectual property infractions and inability to realize the returns on IP related investments.

Thirdly and related to the second challenge, is the bottleneck registration process that is also rigged with baksheesh. A lot of SMEs find it cumbersome to register their IP right in time due to associated red tapes and inconsistent timeline provided by the regulatory agencies. This state of affairs has resulted in many SMEs losing potential investors, thereby stifling their growth.

Governmental Policies for Intellectual Property for SMEs

While it is the duty of entrepreneurs like SMEs to enable a competitive market to the benefit of consumers, it is the duty of the government to create an economic climate conducive for businesses to operate and thrive. In other words, the government plays a key role in establishing a conducive environment for the development of SMEs competitiveness. In order to promote the importance of IP rights recognition and utilization by SMEs, the government through the relevant government agencies such as the Trademark Registry, the Patent Registry and the Nigerian Copyright Commission play a significant role.

One of the primary challenges identified earlier is the lack of awareness amongst SMEs of the importance of IP protection. Thus, the SMEDAN and the relevant government agencies can provide substantial awareness campaign educating SMEs on the role IP protection plays in business success. Furthermore, the government can intensify tax incentives granted to SMEs in respect of creative and innovative products. For instance, Section 22 of the Finance Act 2020 provides that capital expenditure incurred by companies on the development or acquisition of software qualify for capital allowance.

There also has to be an update on the existing IP laws in order to make them more favorable for SMEs.

The goal of the government should be enabling the competitiveness of new and existing SMEs through efficient use of the IP legal system, sustained efforts to bridge the gap in awareness of, access to, and use of the IP system by SMEs.



Conclusion

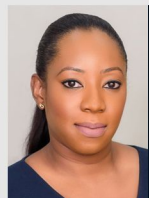
Conclusively, it is imperative that the interaction between regulatory agencies and SMEs is strengthened. Stakeholders in the SMEs ecosystem such as SMEDAN and the Bank of Industry need to actively collaborate with regulatory agencies to identify the IP needs of SMEs, the barriers that hinder the effective utilization of IPRs by SMEs and formulation of policies that will enable SMEs scale these barriers to efficient use of IP system by SMEs.

The role of the government in the interaction between SMEs and the IP protection system cannot be over-emphasized. It transcends the creation of an awareness on the importance of IP protection to the success of their business environment and will include the creation of an enabling legal system that will encourage the reliance and use of the IP protection system. This will accommodate efficient and transparent registration process (especially by leveraging on technology), reduction of the costs associated with IP registration.

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