

THE NAME, PAPA AJASCO AND WALE ADENUGA PRODUCTIONS REGISTRATION IMBROGLIO: A COPYRIGHT OR TRADEMARK ISSUE?

Omoniyi Bukola Akinola*
Alayoku Abayomi Anthony**
Goodness Mary Adebayo***

Abstract

Recently, one Mr. Ayoyinka Richard, an actor, granted an interview, where he made some comments about Wale Adenuga Productions, the producer of the popular televised series known as PAPA AJASCO. Mr. Richard in the past had acted as PAPA AJASCO in the series; however, he lamented that he was not allowed to make use of the name PAPA AJASCO in any other movies that are not produced by Wale Adenuga Productions because the name PAPA AJASCO has been registered, and this prevents him from adopting the name in any other movie. The question that originated from the registered name PAPA AJASCO is whether the registration of the name constitutes a copyright or trademark. Trademark and copyright overlap when it come to movies, broadcast, and

* LL. B (Hons), LL.M, Ph.D., Barrister at Law and Professor of Law, Faculty of Law, Baze University, Abuja. Former Dean of Law, Faculty of Law, Redeemer's University, Ede, Osun State, Nigeria. Former Dean of Law, School of Law, Kampala International University, Uganda and Former Deputy Director of Academics, Nigerian Law School. Email Address: profobakinola77@gmail.com, omoniyi.akinola@bazeuniversity.edu.ng.

** LLB, LL.M, PhD, Candidate, Babcock University, Lecturer: Faculty of Law, Redeemer's University, Ede, Osun State.

*** LL. B(Hons) Redeemer's University, Ede, Osun state, Nigeria Email Address: goodnessadebayo235@gmail.com.

television series. The paper adopts the doctrinal research methodology relied mainly on primary sources, such as statutes, international convention, and other secondary sources. The paper found that, in televised broadcasts or movies, copyright and trademark issues often overlap. The paper recommends and concludes that, although the weekly televised series can be granted copyright, the name PAPA AJASCO, originally coined by Wale Adenuga Productions, can be registered as a trademark because Mr. Wale Adenuga is the proprietor of the name.

Keywords: Copyright, Trademark, Intellectual Property and WAP

1. INTRODUCTION

Intellectual Property Rights have gained prominence in the post-industrial age, where the manufacture and manipulation of goods have given way to the production of knowledge and its application to innovation.¹ Intellectual property is intricately related to trade, competition, industrial growth and economic development. Nigeria arguably has a very comprehensive IPRs regime in terms of the requisite laws and legislation.² Copyright has been the most popular among the other IPRs in terms of activities in Nigeria.³ This paper sets out to discuss who owns the trade mark or copyright for the exclusive use of the name ‘PAPA AJASCO’.

¹ Aboki, Y. (2002) Economic and Cultural basis for Copyright Protection in Nigeria: in: Asein J.O. and Nwauche E.S. (ed) A Decade of Copyright Law in Nigeria, Nigerian Copyright Commission, Nigeria

² Hon. Justice TA Odunowo Nigerian Copyright Law: A juridical overview in A decade of copyright law in KGB Oguakwa, Implementing the Copyright Decree, (2005) This Day Newspapers, 1 (109) p. 15

³ Adewopo A. *Nigerian Copyright System: Principles and Perspectives* (Odade Publishers, 2012) Pp.120-123.

2. CONCEPTUAL CLARIFICATION

It is apposite to put some concepts in proper perspective in this paper. Some of these concepts are explained briefly below:

2.1 Intellectual Property

Any creation of the mind as an intangible asset which provides for protection of same is referred to as intellectual property. It is the result of creativity which brings profitability and protection to the pioneer of such idea. It is the name given to various types of intangible properties arising from creations of the mind which in its broadest form, may have no physical form.

It can be further articulated that intellectual property,⁴ including the patent rights, copyrights as well as literary works protection from being infringed, the aim of this is not only to bring about legal protection but also to benefit the original owners of the works.⁵ IPR are essentially established to perform two functions; to create incentives for innovative behaviour and to help diffuse knowledge. It is presupposed that the monopoly power created by competition, which improves the appropriability of knowledge through IPRs is what acts as incentive to invent and innovate.⁶ Article 7 of TRIPS states that the objective of IPR is to contribute to the promotion of technological innovation and to the transfer and dissemination of technological knowledge in a manner conducive to social and economic welfare, and a balance of rights and obligations.” IPRs make it possible for innovative firms to appropriate the proceeds of creation. Intellectual

⁴ Patents give temporary protection to technological inventions and design rights to the appearance of mass-produced goods. Copyright gives longer-lasting rights in literary, artistic, and musical creation

⁵ David I. (2010) *Intellectual property* 18th Edn; Longman person, Britain

⁶ This presumption is based on the neo-Schumpeterian economics of innovation

property rights (IPR) enable the private appropriation of economically useful knowledge.⁷ and thus, are commonly viewed as stimuli for invention and innovation.

2.2. Copyright

A copyright is a legal device that gives the creator of a literary, artistic, musical, or other creative work the sole right to publish and sell that work. Copyright refers to an original expression of a work of authorship. An author may grant or sell those rights to others, including publishers or recording companies. The author Ocheme⁸ defined copyright as a statutorily granted right exercisable by certain group of persons, over some designated work of art and upon certain specified terms and conditions as provided by law. Copyright may subsist in a wide range of creative or artistic form or “works”; including literary works, movies, musical works, sound recordings, paintings, photographs, software and industrial designs. Cornish, described copyright as the right of a person to protect his ideas and information from commercial exploitation.⁹ The Black’s law Dictionary defines copyright as the right of literary property as recognized and sanctioned by positive law. It is an intangible incorporeal right granted by statute to the author or originator of certain literary or artistic production, whereby he is invested for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.¹⁰

⁷ Lundvall, B.A. et al. 2002. ‘National Systems of Production, Innovation and Competence Building.’ *Research Policy* 31: 213-231. 4

⁸ Ocheme, P.A., (2000) *Law and Practice of Copyright in Nigeria*: Ahmadu Bello University Press Ltd, Zaria

⁹ Cornish W.R, *Intellectual Property*, (Sweet & Maxwell) (1981). Pp.1-7

¹⁰ B A Garner (ed) *Black’s Law Dictionary*, (10th edition, USA: Thomson Reuters, St. Paul M N, 2014) p 543.

The Black's Law Dictionary¹¹ further defines copyright as the right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, cinematographic, pictorial, graphic, sculptural and architectural works, motion pictures and other audio-visual works and sound recordings) fixed in any tangible medium of expression, given to the holder the exclusive right to reproduce, adapt, distribute, perform and display the work. By the above definition, copyright serves to control the copying of protected works by unauthorized persons. Copyright is the exclusive right to do or to control or authorize the doing of certain acts in relation to the work in which the rights subsist.¹² Its primary concern is with the expression of ideas rather than the ideas themselves. In *Donoghue v Allied Newspapers Ltd*,¹³ Lord Farewell said that there was nothing copyright in an idea or ideas. A person may have a brilliant idea for a story or for a picture or for a play and one which appears to him to be original; but if he communicates that idea to an author or an artist or playwright, the production which is the result of the communication of the ideas to the author or the artist or playwright is the copyright of the person who has clothed the idea in form whether by means of a picture, a play or a book and the owner of the idea has no right in that production...

Nigeria Copyright Act ¹⁴did not in specific terms, defined the term but it implies that copyright involves the sole right to produce or reproduce a work or any substantial part thereof in any material form, whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public, if the work is unpublished, to

¹¹ibid

¹² Section 9-13 Copyright Act, Act. No. 2 LFN 2023

¹³ (1924) 2 ALL ER 828

¹⁴ Nigeria Copyright Act 2022

publish the work or a substantial part thereof. Copyright applies to creative works such as books, journal articles, research reports, novels, poems, pieces of music, computer software, proceedings of a conference, artwork and so on.¹⁵ Section 51 of the Act states that “copyright” means copyright under this Act. Perhaps this is not a sufficient definition, but it suggests that copyright protection in Nigeria can only derive its force from the provisions of the Act.

In the light of the foregoing, it can be construed that copyright is the exclusive right given under the law to the owner to control the reproduction of the work which is the subject of copyright.¹⁶ Copyright is a branch of Intellectual property which is the product of the mind and has been described as man’s only genuine property worthy of protection.¹⁷

2.3. Trademark

Any such sign that protects a brand’s identity, precluding it from others is a trademark. It is a form of intellectual property that consists of a word, sign, phrase or even a symbol which legally distinguishes a product or service of a particular source from another. A trademark is a recognizable sign, design or expression whose showing, distinguishes between products or services of a particular trader from the similar products or services of other traders.

¹⁵ Section 2 Copyright Act Op. Cit.

¹⁶ Uvieghara, E.E “*Essays on copyright Law and Administration in Nigeria*’ (Ibadan) (1992) Pp.102-104. Copyright has been defined as” right to literary property as recognized and sanction by positive law, an intangible, incorporeal right granted by statute to the author or original of certain literary or artistic productions, whereby he is invested, for a limited period with the sole and exclusive privilege of multiplying copies of the same published work and selling them”.

¹⁷ Ameh I ‘An Appraisal of the Role of the Nigerian Copyright Commission in the Enforcement of Copyright Laws in Nigeria’ *Ahmadu Bello University, Journal of Commercial Law* (ABUJCL), vol5, no 1, (2010-2012) Pp 140-150.

The law of trademark is aimed at even subtle or obvious infractions as both organs of hearing and sight must be involved in the exercise.¹⁸ A trademark is a symbol which indicates and is responsible for the goods placed before the public. Different makers or sellers of the same goods use (different) trademarks.

2.3a. Brief information on the Imbroglio between Papa Ajasco and Wale Adenuga Productions

Wale Adenuga Production is an industry founded and established by Wale Adenuga in 1978. The idea of the formation of the team came to existence when the founder, Mr Wale Adenuga, graduated from the University of Lagos in 1974. In his desire to set up his on affecting lives of others, the natural artistic background he had in school birthed the popular TV series magazine Nigeria has ever had, the series known as Super Story and Binta, having published and sold magazines in half a million copies. It also produced popular drama series such as Papa Ajasco in 1983 and Binta My Daughter in 1995. However, it generated more revenue in the movie Papa Ajasco.¹⁹

The actor, Abiodun Ayoyinka Richard who plays the character ‘Papa Ajasco’ employing his popular ‘ogigbigigbi’ sound in his interview with Lucky Udu, a YouTube influencer in March 2026, mentioned that despite his fame, he does not own a car of his own. Papa Ajasco stated that at the peak of his career, he earned as low as two thousand, five

¹⁸ (1972) The words of Coker JSC in *Bell & Sons Co v Aka and Anor*

¹⁹ "*Wale Adenuga Productions Ltd CAREER and RECRUITMENT EMPLOYMENT PORTAL | Careerslip.com*". *careerslip.com*. Archived from the original on 2019-06-16. Retrieved 2026-05-29 ; "*WALE ADENUGA PRODUCTIONS LTD*". *BusinessList.com.ng*. Retrieved 2026-05-29; "*Wale Adenuga Productions Ltd*". *www.waplimited.com*. Archived from the original on 2020-02-19. Retrieved 2026-05-29.

hundred naira only [#2,500] from Wale Adenuga, the founder and executive producer at Wale Adenuga Production. He further stated that the show started in 1997 when he earned two thousand naira only [#2,500] per episode and only about 12 episodes are filmed in a year. He explained that the ‘Papa Ajasco’ name and character is owned by the Wale Adenuga Production popularly known as WAP which means he cannot use the identity for personal deals or endorsement.²⁰ He disclosed that legal restrictions tied to the iconic character has hindered his ability to secure work outside the long-running comedy series.²¹

poverty narrative and confirmed that there has been no irreconcilable difference between them.

3. LEGAL FRAMEWORK ON COPYRIGHT AND TRADEMARK

A. Copyright Act 2022

The Nigerian Copyright Act 2022²² is the extant law regulating copyright issues in Nigeria.²² The Act provides for the protection of various categories of works. The Act brings significant benefits to creators, inventors, and brand owners, especially those in the digital realm. It aims to balance the fair compensation of artists with the public's access to new works and information. Furthermore, the Act addresses the challenges faced by copyright holders in the digital sphere and empowers them to take legal action against online infringements. Generally, the Act demonstrates a bold step in addressing the risks posed by technological advancement.²³ Sequel to this power, the commission has made several regulations to curtail the

²⁰ Ibid

²¹ Ibid

²² Act No. 2 LFN 2023

²³ Section 25, Copyright Act Op. cit.

alarming rate of copyright infringement and piracy in Nigeria.²⁴ Some which regulations include the copyright (Reciprocal Extension order of 1973.²⁵ This allows for the protection of copyright works originating from other countries that are members of these conventions in Nigeria, and vice versa.²⁶ Copyright (Security Devices) Regulation 1999 which is made pursuant to section 49 of the Copyright Act. The regulation establishes a Technical Implementation Committee saddled with the responsibility of supervising the administration of the hologram.²⁷ Copyright (Video Rental) Regulation 1999 was made by the Commission pursuant to the power conferred on it under section 78 of the Act. It also enables the Commission to oversee the activities of the video rental outlets and provides that these outlets be registered.²⁸ Copyright (Optical Discs Plant) Regulation 2006. The regulation was made pursuant to section 97 of the Copyright Act. The regulation directly addresses the important issue of optical disc piracy as one of the most prevalent of all the sources of piracy. Copyright (Collective Management Organisation) Regulation 2007 The regulation provides that fair and equitable formula should be used in distributing royalties to members.²⁹ Copyright (Levy of Materials) Order 2012. The Levy on Materials Order was enacted pursuant to the powers conferred on the Commission under section 80 of the Copyright Act. The Order

²⁴ Ibid section 75

²⁵ Copyright (Reciprocal Extension) Order 1972, available on accessed 19th May 2026

²⁶ See *Liberty Records & E. M. Records v M Y Owotutu Enterprises*, (Unreported) Suit No FHC/L/116/86 delivered 16 March 1990 (which held that ‘the provisions of copyright (Reciprocal Extension) Order 1972 are [[sick]] still very much in force by virtue of paragraph. 3(2) of schedule 5 of the Copyright Decree 1988’)

²⁷ O Uguru, U. and Umobong, M. (2022) Appraising the Impact of the Nigerian Copyright Act and Regulations in Combating Piracy in Nigeria. *Beijing Law Review*, 13, 247-264. doi: 10.4236/blr.2022.132016.

²⁸ Uguru, U. Op. Cit.

²⁹ Ibid, pg 56

provides for the payment of levies and the formula to be applied in distributing the proceeds. It further states that the payable levies should be collected at the point of entry or at the point of manufacture, production or assembly, by the manufacturer, producer or person responsible for the assembling. The Order exempts certain materials from payment of levy.³⁰

B. Constitution of the Federal Republic of Nigeria, 1999

The Constitution remains the fundamental law against which every other law derives its validity. By virtue of section 251(1)(f), the Constitution confers jurisdiction relating to copyright matters on the Federal High Court. In addition, the exclusive legislative list in the Second Schedule includes copyright (item 13).

C. International Instruments

International law is another source of copyright legal framework which provides the legal platform for cross-border protection. Article 27 Universal Declaration of Human Rights³¹ states that: (2) everyone has the right to the protection of the moral and material interests resulting from scientific, literary or artistic production of which he is an author. Nigeria is a signatory to the following conventions and treaties on Copyright.

i. Berne Convention of 1886

The first international copyright convention was held in Berne, Switzerland in 1886 and resulted in an agreement called the Berne Convention for the Protection of Literary & Artistic Works (commonly known as the Berne Convention). Most of the major

³⁰ Ibid pg. 61. Other relevant laws include the Trademark Act 1967, CAP T13 LFN 2004, Trademark Regulations 1990, the Nigerian Data Protection Act 2023, and the Trademark (Miscellaneous Offences) Act, Cap T12 LFN 2004

³¹ Article 24 of the Universal Declaration of Human Rights Charter.

countries in the world are members of the Berne Convention, and it is consequently the single most important copyright treaty. The Berne Convention is administered by the World Intellectual Property Organization (WIPO), an agency of the United Nations based in Geneva, Switzerland. The vast majority of countries in the world are members 20 Article 24 of the Universal Declaration of Human Rights Charter. Page 9 of 68 of the Berne Convention. The convention brings about the principle of 'National Treatment', ³² 'Minimal Protection',³³ and 'Formalities'.³⁴

ii. Universal Copyright Convention (UCC)

The Universal Copyright Convention ("UCC") is another international copyright treaty which many countries including the United States belong to. The UCC is similar to the Berne Convention except that it allows member countries to require some formalities as conditions to copyright protection. However, the UCC's importance has diminished since most member countries are also members of the Berne Convention which provides for greater protection.

iii. WIPO Treaties 1998

³² This means each Berne member country agrees to give citizens of other member countries at least the same degree of copyright protection that it gives to its own citizens.

³³ These are certain minimum standards of protection that all member countries must guarantee. Some of the most important of these minimum standards are: The duration of copyright protection must be at least for the life of the author plus 50 years, each member country must provide moral rights which can never be transferred by an author

³⁴ Member country must provide moral rights which can never be transferred by an author 23 This implies that member countries cannot condition copyright protection on any formal requirements (formalities) such as copyright registration and copyright notice.

The World Intellectual Property Organization ("WIPO") is an agency of the United Nations, which works toward increasing international legal protection for copyright and other intellectual property. In 1998, WIPO drafted two treaties designed to ensure some degree of protection to copyrighted works in the digital environment.³⁵ The most important provision of the WIPO Copyright Treaty clarifies that the right of reproduction applies in the digital environment by providing that the storage of a work.³⁶ The WIPO Performances and Phonograms Treaty provide protection for sound recordings distributed digitally over computer networks. It requires that member countries provide at least fifty years of protection for recordings.

4. WHAT CAN BE COPYRIGHTED IN NIGERIA VS WORKS THAT ARE QUALIFIED AS COPYRIGHT WORKS

4.1. Musical Work ³⁷

A musical work is defined as any musical composition irrespective of musical quality and includes work composed for musical accompaniment. A song will have two copyrights: one in the music and one in the words of the song, the latter being a literary work. Making a new performing edition of an incomplete old work of music out of copyright may itself be worthy of copyright protection even if few or no new notes are added. In the case of *Hyperion Records Ltd v. Dr. Lionel Sawkins*, Dr. Sawkins wrote new performing edition of some of Lalande's Baroque musical compositions. He added a figured bass (numbered guidance to musicians, giving them some flexibility in playing the piece of music). He also corrected notes that he considered

³⁶ Ibid

³⁷ S. 2(1)(b) Copyright Act, 2022

wrong or unsatisfactory. It was held by the court that he has created a new work.³⁸

4.2 Literary Work³⁹

The Act grants the owner of a literary work in Nigeria the exclusive right to control the doing of any of the following acts: reproduce the work in public; publish the work; perform the work in public; produce, reproduce, perform or publish any translation of the work; make any cinematograph film or a record in respect of the work; distribute to the public, for commercial⁴⁰ purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement; broadcast or communicate the work to the public by a loud speaker or any other similar device; make an adaptation of the work; do in relation to a translation or an adaptation of the work.⁴¹ Also, the Act defines literary works to include (a) novels, stories and poetic works; (b) plays, stage directions, film scenarios and broadcasting scripts; (c) choreographic works; (d) computer programmes; (e) text-books, treatise, histories, biographies, essays and articles; (f) encyclopedias, dictionaries, directories and anthologies; (g) letters, reports, and memoranda; (h) lectures, addresses and sermons; (i) law reports, excluding decision of courts; (j) written tables or complaints.

4.3 Artistic Works⁴²

The Act defines an artistic work to include any of the following work (s) similar thereto: a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; (b) maps, plans and diagrams; (c)

³⁸ [2005] RPC 808.

³⁹ S.2(1)(a) Copyright Act, 2022

⁴⁰ [1938] Ch106 at 109. 7 [2005] RPC 808

⁴¹ Op Cit Copyright Act section 9.

⁴² S.2(1)(c) Copyright Act, 2022.

works of sculpture; (d) photographs not comprised in a cinematographic film; (e) works of architecture in the form of buildings models; and (f) works of artistic craftsmanship and also (subject to section 1(3) of this Act) pictorial woven tissues and articles of applied handicraft and industrial art.⁴³

4.4 Broadcast⁴⁴

The Act states that copyright in a broadcast shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is-

- (a) the recording and the re-broadcast of the whole or a substantial part of the broadcast;
- (b) the communication to the public of the whole or a substantial⁴⁵ part of a television broadcast, either in its original form or in any form recognizably derived from the original; and
- (c) The distribution to the public for the commercial purposes, of copies of the work, by way of rental, lease, hire, loan or similar arrangement.⁴⁶ The Act defines broadcast to means sound or television broadcast by wireless telegraphy or wire or both, or by satellite or cable programmes and includes re-broadcast.⁴⁷

4.5 Audiovisual Works

Copyright in an audiovisual work shall be the exclusive right to do and authorize the doing of any of the following acts: reproduce the audiovisual work; cause the audiovisual work that consists of visual images to be seen in public and of sounds to be heard in public; communicate the audiovisual work to the public; broadcast the

⁴³ *ibid*, Section 108(1).

⁴⁴ S2(1)(f) Copyright Act, 2022.

⁴⁵ *Op Cit*. Copyright Act; section 9. *Ibid*: Section 108(1)

⁴⁶ *Ibid*, Section 13.

⁴⁷ *Ibid*, Section 108(1)

audiovisual work; make any copy of the sound track of an audiovisual work.⁴⁸

4.6 Sound Recording⁴⁹

Sound recording means the fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include sound track, accompanying or incorporated in an audiovisual work.⁵⁰

Copyright in a sound recording shall be the exclusive right to do and authorize the doing of any of the following act: reproduce the sound recording; broadcast the sound recording; communicate the sound recording to the public; make the sound recording available to the public by wire or wireless means in such a way that members of the public are able to access the sound recording.

It should be of worthy note that for either of the above to acquire full eligibility status, some conditions must be fulfilled simultaneously⁵¹

- a. Some effort must have been expended on making the work to give it an original outlook. This could include the cover of a song.
- b. The work must have been fixed in a medium of expression or later intends to be developed (even if mere words were spoken on an intention to create such) for which it can be perceived or communicated.⁵²

Copyright shall be conferred by this section on every work that is eligible, where the author or in the case of a work of joint authorship,

⁴⁸ Ibid, Section 11

⁴⁹ S.2(1)(e) Copyright Act, 2022

⁵⁰ Ibid, Section 108(1)

⁵¹ S. 2(2)(a)(b) Copyright Act, 2022

⁵² S. 7(3) Copyright Act, 2022

any of the authors is at the time when the work or a substantial part made is — (a) an individual who is a Nigerian citizen or is habitually resident in Nigeria ; or (b) a body corporate incorporated by or under the laws of Nigeria. Copyright shall be conferred by this section on a work that is eligible and is made by or under the direction or control of a government, an agency of government or a prescribed international body.

Some categories of art or work are not eligible to be copyrighted⁵³

- a. Ideas, procedures, processes, formats, systems, methods of operation, concepts principles, discoveries or mere data⁵⁴
- b. Official texts of a legislative or administrative nature, as well as any official translations except their compilations⁵⁵
- c. Official state symbols and insignia, including flags, coat of arms, anthems and bank note designs.⁵⁶

5. REGISTRATION OF TRADEMARK AND WHO CAN REGISTER TRADEMARK

Nigeria uses the Nice International Classification of Trademarks as products are classified into various classes: Class 1, 2 ,3 etc. Unlike other jurisdictions where use is a mandatory requirement for the registration of a trademark, the mere intention to use is sufficient.

Certain requirements for registration of a trademark

1. The name of a company, individual or firm, representation of a special or particular manner
2. The signature of the applicant for registration or same predecessor in his business
3. An invented word

⁵³ S.3(a)(b) Copyright Act, 2022

⁵⁴ S 3(a)

⁵⁵ S 3(b)

⁵⁶ S 3(c)

4. A word(s) having no direct reference to the character or quality of the goods and not being according to its ordinary signification, a geographical name or a surname and
5. Any other distinctive mark

5.1. Effects of Registration

Registration gives the proprietor exclusive right to the use of the trademark in relation to the goods. The proprietor can claim damages against anyone who infringes on his trademark.⁵⁷ It is instructive to note that the initial validity duration is 7 years, renewable every 14 years.⁵⁸

6. VIEWS ON COPYRIGHT AND TRADEMARK IN OTHER JURISDICTIONS

6.1. South Africa⁵⁹

South Africa's IPR system is traceable to the Patents, Designs Trade Marks and Copyright Act of 1916.⁶⁰ When this Act was repealed, the different categories of IPRs, namely trademarks, patents, designs and copyright were placed under different legislations which then developed more or less independently. Statutes in South Africa are guided by the equivalent British and European Patent Convention legislation.⁶¹ There have been attempts recently to bring the various Acts in line with each other. The 1996 Intellectual Property Laws

⁵⁷ (2021) *Morison Industries Plc v CPL Industries Ltd*

⁵⁸ *Ibid*, Section 23

⁵⁹ Kameri-Mbote, P. 2004. "Intellectual Property Protection in Africa: An Assessment of the Status of Laws, Research and Policy Analysis on Intellectual Property Rights in South Africa.

⁶⁰ Act No. 9 of 1916

⁶¹ Wolson, R. 2001. Towards TRIPS Compliance: *South Africa's Experience and Legislative Reforms, ICTSD, ACTS & QUNO*

Rationalization Act seeks to integrate IPRs subsisting in some parts of South Africa to the entire Republic.⁶² Further the Intellectual Property Laws Amendment Act brought South Africa's IPR legislation in conformance with TRIPS.⁶³

6.2. Kenya⁶⁴

Intellectual property laws in Kenya, like most other laws, are a colonial heritage. The most radical review of copyright law in Kenya however only happened in 2001 when a new Copyright Act was passed with a view to modernizing copyright law in Kenya to make it compliant with international treaties to which Kenya is a party and especially the Agreement on Trade related aspects of Intellectual Property Rights. The National Council for Science and Technology (NCST) and the Legal and Patents Committee were mandated to draw up guidelines for the best way in which the patent system could operate in Kenya, harmonize patent, trademarks and standards policies in Kenya and make recommendations pertinent to national patenting policy formulation and implementation. The Committee was convinced of the need to have an independent patent system. It pointed to the need for trained personnel and infrastructure for carrying out the examinations and processing applications. The Industrial Property Act Cap 509 was thus enacted in 1989 to replace the Patent Registration Act. It came into force in 1990. The Act was amended a number of times and finally replaced by the Industrial Property Act No. 3 of 2001 which reflects the current position of IP law and came into force on the 3rd of August 2001.

6.3. Ghana⁶⁵

⁶² Act No. 107 of 1996

⁶³ Intellectual Property Laws Amendment Act 1997

⁶⁴ Kameri-Mbote, P. 2004. "Intellectual Property Protection in Africa: An Assessment of the Status of Laws, Research and Policy Analysis on Intellectual Property Rights in Kenya

The Copyright Ordinance of 1911 made all laws in the UK, the colonial power, applicable to the colony of the Gold Coast as Ghana was then called. Upon independence, the Ghanaian Copyright Act of 1961 was enacted but was essentially a re-enactment of the existing law in the UK then providing somewhat limited protection for authors in their works. This Act was subsequently updated in 1985 when the present law, which regulates copyright matters in Ghana, PNDC Law 110, was enacted. The Act extended protection to a wide range of works such as paintings, maps, diagrams, sculptures, architectural models or buildings, photographs, works of applied arts such as handicrafts and jewellery, etc. Other works protected include literary works, choreographic works, derivative works, and programme carrying signals.⁶⁶ Outside these developments, IPRs laws, except for copyrights, have remained largely static in Ghana.

7. INFRINGEMENT OF COPYRIGHT AND TRADEMARK

"Infringement" is the violation of intellectual property rights in relation to patents, copyright, and trademarks, and "misappropriation" in relation to trade secrets, may be a breach of civil law or criminal law depends on the type of intellectual property involved, jurisdiction, and the nature of the action. Except a person falls within the statutory exceptions,⁶⁷ the rights of the copyright owner will be deemed to be infringed by any person, who, without the license or authorization of the owner, does any of the following acts.

⁶⁵ Ibid

⁶⁶ Mould-Iddrisu, B. 2000. "Copyright Protection and the Journalist" in Karikari, Kwame and Kofi Kumando (eds.), *The Law and the Media in Ghana* University of Ghana, Legon

⁶⁷ S.9 Copyright Act, 2022.

1. Does or causes any other person to do an act, the doing of which is controlled by copyright
2. Imports into Nigeria, otherwise than for his private or domestic use, any article in respect of which copyright is infringed under paragraph 1
3. Exhibits in public any article in respect of which copyright is infringed under paragraph 1
4. Distributes

a. Copyright Infringement

If any person or body is reproducing, distributing, displaying or performing a work, or to make derivative works, without permission from the copyright holder⁶⁸, which is typically a publisher or other business representing or assigned by the work's creator is called copyright infringement which is commonly known as "piracy". If the owner registers the copyright, he can claim damages. Enforcement of copyright is generally the responsibility of the copyright holder. The remedies include injunction, forfeiture, delivery up, damages and seizure.

c. Trademark Infringement

Trademark infringement occurs when one party uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services of the other party. In case of copyright common law rights protecting a trademark, but registering a trademark provides legal advantages for enforcement. Infringement can be addressed by civil suit and, in several jurisdictions, under criminal law.

⁶⁸ Ibid, Section 36.

8.0 SUMMARY OF FINDINGS

It is trite that copyright protects works of creativity such as scripts, episodes or music in a bid to prevent unauthorized reproduction or distribution without proper reference or acknowledgement. Copyright is that brand of intellectual property responsible for preservation of work of art, accruing benefit, financial and honorary to the maker or author of such work of art. Trademark on the other hand protects brand identity from interruption; brand identity such as name, logo, customer and distinctive features.

Trademark law protects a trademark owner's exclusive rights to use the mark, thereby preventing any unlawful use of the mark by an infringer. Trademark protects the mark from any unauthorized use of the mark which shall cause confusion in the minds of a layman.⁶⁹ Whenever the plaintiff proves that the defendant has caused confusion in the minds of the public by using same or similar mark, a trademark infringement claim shall prevail.

Drawing inference from the forgoing, the Papa Ajasco persona in question is name and customer specific as the name alone gives a mental picture of the character even without physical appearance, so does a mere description of the pot-bellied, bald-headed man who wears a round binocular serve as a befitting description of the said character. The Wale Adenuga Productions' action to trademark this unique character is greatly applauded as it ensures brand consistency and prevents unauthorized exploitation. I aver that Ayoyinka is not the brain behind the persona, Papa Ajasco and as such is not entitled at

⁶⁹ Anamika Bhaduri, Trademark: Infringement and Passing off, *RGNUL Student Law Review*, Vol. 1 Issue 1

law to enjoy proceeds from it, neither does the law permit him to present himself as Papa Ajasco without the express permission from the author, Wale Adenuga. Ayoyinka is not the first person to play the character. In this context, the actor, if permitted to use the character shall cause confusion to the general public as the public would be unsure of who the original character is because of sameness of character,

Only the author of a piece should have such right to deal with the piece as he desires especially a piece, more specifically known as a work of art here, registered within the precincts of intellectual property. Actors do not own the characters that portray except the producer says otherwise as producers are vested with the ownership of commissioned work. Similarly, trademarks registered exist separately from the actor. Section 67 of Trademark Act permits WAP upon registration if the visual identity of Papa Ajasco-bald head, glasses, wrapper and shirt, even though Ayoyinka's face is under it, any other person can be employed by WAP to play the same role upon the termination of Ayoyinka's employment. The persona strictly belongs to the WAP. Once it has been registered, no one can use it in the course of trade without consent.

9.0 CONCLUSION AND RECOMMENDATIONS

Some methods that could be employed by actors include a character license clause, which allows the actor the right to make a personal appearance as the character for a fee, with revenue share agreed on; a reversion clause, which permits that the right to persona shall revert to the actor if the show stops airing for a stipulated number of years. The Papa Ajasco dilemma is a cautionary tale in Nollywood.

By way of emphasis and drawing inference from the foregoing, the Papa Ajasco persona in question is name and customer specific as the

name alone gives a mental picture of the character even without physical appearance, so does a mere description of the pot-bellied, bald man who wears a round binocular serve as a befitting description of the said character. The Wale Adenuga Productions' action to trademark this unique character is necessary as it ensures brand consistency and prevents unauthorized exploitation.